

**LEARNING OUTCOMES AND CURRICULUM
DEVELOPMENT IN LAW**

**A report commissioned by the Australian Universities
Teaching Committee (AUTC)**

Richard Johnstone and Sumitra Vignaendra

Higher Education Group
Department of Education, Science and Training
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This report is a ‘stocktake’ of legal education; it is not a review.

Furthermore, to encourage and inform national debates about legal education (and by virtue, discourage unhelpful comparisons between individual law schools), no law school has been mentioned by name in the report’s findings (i.e. in Chapters 2-18). This also came at the request of many of the participant law schools.

The project was overseen by a Steering Committee comprising:

- Chair: Professor Richard Johnstone *Pro-Vice Chancellor (Quality), University of Technology, Sydney; Deputy Chair, AUTC*
- Professor Paul Ramsden *Pro-Vice Chancellor (Teaching and Learning), University of Sydney*
- Professor Paul Redmond *Faculty of Law, University of New South Wales; Convenor of the consortium of law deans to which the AUTC project grant was awarded*
- Ms Anne Trimmer *Partner, Minter Ellison Lawyers; President, Law Council of Australia*
- Professor David Weisbrot *President, Australian Law Reform Commission*

which met formally on the following dates –

- 17 August 2001
- 13 December 2001
- 14 June 2002
- 30 August 2002
- 9 December 2002

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PREFACE

Often the details of a project's planning stages are just as revealing as the project's findings. This was also true for this project.

It was commissioned by the Australian Universities Teaching Committee (AUTC), who commissioned similar projects in other disciplines at the same time. Our involvement began in August, 2001 (Richard) and November, 2001 (Sumitra), when we were sub-contracted to undertake this project by the consortium of eight Deans and Heads of School who were awarded the AUTC grant. Once we were contracted, the consortium played no role in the project's development, in part, to prevent eight law schools from influencing the project's outcome.

Our coming on board brought radical changes to the project design. The purpose of the final design was ultimately to help us meet the detailed and lengthy Project Brief (mentioned in Chapter 1) as comprehensively as possible, and in the limited time we had to undertake the project – 14 months at most, each on a part-time basis. Some aims in the Project Brief had to be rationalised to assist us in our task. As such, while our intention was to capture the many changes to legal education in Australia over the past 15 years, at best we have only scratched the surface.

The project design was also dependant on the involvement of all Australian law schools; however, in the early stages of the project, many schools declined participation. One objection was to the amount of time that participation would take. This is not a small issue for law schools given that – and this was one of the project's main findings – significant changes to law school resourcing now means that law teachers are more pushed for time than they ever were. Furthermore, many schools, mistaking this project for a review, mentioned that they were subjected to so many reviews (and had either just finished, just started, or were about to embark on, a review of their own) that they were unsure “what further improvement yet another review would produce”.

Some law schools were also reluctant to participate because of a concern that this project would replicate the 1987 ‘Pearce Review’ of legal education, which had its critics. In the words of one, “‘Pearce’ generated a considerable amount of rivalry between law school – it’s therefore never far from our minds”.

Given their objections, it is to their credit that most of the law schools who initially opted not to participate, allowed us to persuade them to do otherwise. This, firstly, involved convincing law schools, via the Council of Australian Law Deans (CALD), that the report would not produce a review of legal education, but rather a ‘stocktake’, which could be used to inform national debates about curriculum design and teaching and learning. Secondly, to those Deans/Heads of School who were concerned that our project would encourage unhelpful comparisons between individual law schools, we agreed to not mention any law school by name in the findings sections of this report.

Thirdly, we agreed to only trespass on as much of their time as law schools were able to give.

What ultimately convinced many law schools to participate in the study, however, was the absence of national debates about legal education, which many law teachers and Deans and Heads of School thought was a result of “fierce competition among Australian law schools which, in turn, means none of us are aware of what the other is *really* doing”. It was thought that the first of many steps towards such national debates about curriculum design and teaching and learning in Law – “which ultimately we could all only benefit from” – was some documentation of what was occurring at the different law schools in these areas.

We hope we have provided some of this documentation; however, as mentioned above, time (and funding) constraints meant that we have only scratched the surface. Nonetheless, the existence of such a report may encourage others to add to, and build on, the details that we have collected and collated.

In the end, all but one law school chose to participate in this project (i.e. 27 out of 28 Australian law schools). We thank all the Deans and Heads of School, law teachers, and administrative staff who spoke to us, for generously giving their time, for being so frank, and providing us with a wealth of useful information, and the many law teachers whose classes were interrupted for the student survey. We are indebted to the Council of Australian Law Deans (particular the 2002 Convenor, Professor Ros Atherton), for making time to hear about, and debate, the value of this project.

Law schools were not the only project participants; students and employers of law graduates were also included. We thank the employers who made time in their busy schedules to speak to us, and the students who participated in the survey, interviews and focus groups, for providing valuable feedback during the most time-poor period of their studies. We are grateful to the Australian Law Students Association (ALSA), particularly past President, Joanna Davidson, who helped organise the administration of the student survey, and current President, Daniel Murnane; and the students who administered the student survey in classes at their law school.

As indicated above, the project design was transformed with the involvement of each new member of the project team. We are most grateful to Professors Paul Ramsden and Mike Prosser and Chris Roper for commenting on early versions of the project design; Professor Paul Ramsden for co-designing, and taking an unfailing interest in, the student survey; members of the Faculty of Law and Socio-Legal Research Centre at Griffith University, for their comments on the school interview schedule used to interview Deans and Heads of School and law teachers; Sally Kift, Sharon Christensen, Lawrence McNamara and the editor-in-chief of the Legal Education Review for permission to reproduce material in this report.

For helping us complete the project on time, Veronica Peek showed exemplary diligence and accuracy in transcribing interview and focus group data; Gemma Jenkins for her assistance with the employers' interviews; University of New South Wales for housing Sumitra during the duration of this study; particularly Tony Antoniou, Maggie Ghali, Paul Gwynne, Jane Kelly, Jill McKeogh, Brett O'Halloran, and Reg Potter, who assisted with all manner of monetary and bureaucratic challenges, and Dawesh Chand and Paul Rodwell for invaluable IT support.

Last but by no means least (in fact, on the contrary), we thank the project's Steering Committee for supporting all our suggestions and, more generally, for their guidance, advice and interest. Your company was a pleasure.

Finally, some points about the report itself. We have relied largely on project participants' self-reports and as such, we have taken care to let participants 'speak for themselves' in this report – hence our considerable reliance on quotations from interviews and focus groups. The report is clearly also a long and detailed one. Readers with little time to spare may want to begin with the overview chapter (i.e. chapter 18) and be guided by it. We also ask the reader to overlook awkwardness in expression and tense throughout this report. In an attempt to capture all of the information provided in the time we had available, we sacrificed editing time.

Richard Johnstone and Sumitra Vignaendra
January 2003

CHAPTER ONE

INTRODUCTION

The past 15 years have seen significant developments in legal education in Australia (see Goldring, Sampford and Simmonds, 1998). Whereas there were a dozen law schools in Australia in the mid-1980s, there are now 27. Most law schools in the mid-1980s aimed their LLB programs at school-leavers, taught a stand-alone LLB program, and offered a few combined degree programs (usually Arts/Law and Commerce/Law). Additionally, most were concerned with teaching legal rules to undergraduate law students, and there was very little attention to the teaching of legal ethics, legal theory, or generic or legal skills in LLB programs. The lecture method was, in many law schools, the unrivalled teaching method, and students were assessed by end-of-year examination. Postgraduate coursework programs were relatively small, and confined to a handful of law schools. As this report illustrates, the situation has radically changed and many law schools now offer a wide range of combined degree programs, as well as graduate entry LLB programs. Most have embraced the teaching of legal ethics and legal skills, albeit in different ways, and most require LLB students to engage with at least one subject in legal theory. Some schools have developed undergraduate law degrees that include professional legal training preparing students for admission to the legal profession. While lecturing is still common, it is now rivalled, even overshadowed, in some law schools by small group teaching, more class discussion, small group work and other methods aimed at fostering activity-based learning.

This report documents the extent of these changes. It is essentially a *stock take* of developments in legal education in Australia since the late 1980s. It describes, and assesses the impact of, the rapid change in Australian legal education, particularly in relation to innovations in teaching and learning and curriculum development and review, which have, furthermore, taken place in a dramatically changing environment.

The rest of this first chapter will outline the nature of the changed environment for legal education, and then provide a brief overview of reviews of legal education in this country and overseas. These reviews introduced the major debates about legal education that started in the 1980s, and provided a framework of sorts for Australian legal education in the 1990s. This chapter concludes with a discussion of the objectives of the project on which this report is based, and the methods used to meet these objectives.

The changing environment of legal education in Australia

Until relatively recently, law was seen as an apprenticeship, and not an education (see Thornton, 1991; Manderson, 2000). In contrast with a tradition of university-based legal education that emerged early on in continental Europe, Australian lawyers, in common with much of the common law world, learned their craft in articles of clerkship. Even after the first law schools were established in the nineteenth century, “law continued to be a non-academic discipline” (Brand, 1999: 111), and, until the 1950s, university-based law programs were largely

taught by part-time practitioners. During the late 1950s law schools were increasingly staffed by tenured full-time academics.

In 1964 the Martin Report recommended that students intending to enter legal practice should complete three years of university education for the purposes of gaining “background intellectual training” for their future roles in society. But because there were no other requirements for entry to the legal profession (such as Bar Exams or the like, as is the case in some other common law jurisdictions), law schools were under pressure to cover most, if not all, of the important areas of law. Even after the number of university graduates entering the profession exceeded the number admitted through apprenticeships, the professional admission authorities scrutinised the subjects taught by law schools and occasionally took action over subject content (Brand, 1999: 112).

Since the 1960s legal education has been provided in three “relatively discrete stages, involving (1) academic training at a university; (2) subsequent practical training with both institutional and in-service components; and (3) continuing education” (Weisbrot, 1990: 124-5). There is still some debate as to what the university academic component should contain. In part, the debate is about whether a legal education is about training for practice, or a general liberal education. But the debate also encompasses the scope of legal scholarship – a study of legal rules, or a broader approach involving interdisciplinary perspectives and empirical research. Until recently, most Australian law schools followed a traditional, legal positivist approach, teaching law as a closed system of rules (see Goldring, 1987; Chesterman and Weisbrot, 1987), with little attention to legal skills, legal theory, and the context within which rules operate. This traditional model involved teaching students legal rules covering a range of areas of law, using a traditional lecture method (sometimes accompanied by problem-solving tutorials). It took a narrow approach to law, and portrayed it as a particular mode of reasoning, drawing on a particular set of sources (cases and statutes), and then are applying these same techniques to a different body of sources (that is, different areas of substantive law).

The decade and a half since the last comprehensive review of Australian legal education in the Pearce Report (see below) has seen dramatic changes in the number of law programs and the environments – funding, professional, student recruitment and graduate destination – in which they operate. There has also been a notable change in thinking about the focus and substance of legal education. During the 1980s, law schools began to move away from their traditional ‘trade school’ approach, “towards the classic, liberal model of university education” (Chesterman and Weisbrot, 1987: 718). Brand (1999: 114) remarks that:

This promotion of education values reflected the growing strength of moves for reform of legal education in Australia. Debate on the form and content of legal education in Australia continued to intensify during the late 1980s and the early 1990s, with the launch of the first refereed journal devoted to these issues, *Legal Education Review*, increased publication of articles in the area and the appearance of a text dealing with the improvement of teaching in law in Australia (*The Quiet (R)evolution*). Many critics of existing models of legal education found themselves gravitating to the ‘newer’ law schools. Law educators began to challenge more openly the assumption that a law degree was little more than a

passport to practice and that professional requirements must therefore dictate both curriculum and methods.

In the period 1855 to 1960, six law schools were established in Australia, one in each State capital city. In this report these law schools will be referred to as ‘first wave law schools’. By 1987 a further six law schools (‘second wave law schools’) had emerged. Since 1989, seventeen new schools have been established (‘third wave law schools’). The rapid growth in law schools has been accompanied (as might be expected) by significant growth in law student numbers. By 1995 growth in the number of students studying law was only exceeded by health and business. This increased participation itself contributed to diversity in student intake by academic background and prior achievement, geographical location, career aspiration, and socio-economic status (Goldring and Vignaendra, 1997). The “emergence of new and regional law schools has prevented the study of Law from being confined exclusively to the more affluent groups from higher status backgrounds” (Goldring and Vignaendra, 1997: 13).

The establishment of many new law schools in the post-Pearce period was justified in terms of the needs of a particular geographical region or the distinctive character and orientation of the new LLB program. A significant motivation was also the status and financial benefits to universities of having a law school. These included the ability of law schools to attract high achieving students, who would usually undertake combined degree programs and thus would strengthen other degree programs; the links law schools would develop with the legal profession and the judiciary; and the relatively low cost of law programs when compared to other prestigious programs such as medicine and veterinary science. The rapid growth in law schools undoubtedly produced innovation in teaching and curriculum development; however, it also produced some splintering of experience in that the need for justification in terms of distinctiveness shifted the focus from recognition and emulation of appropriate educational innovation across the sector.

This growth took place during a significant move to mass higher education, a new era of accountability to consumers of higher education (in legal education, law students and employers of law graduates), and in a weakening funding environment for law. In 1990 the Commonwealth Government constructed a relative funding model to compare the costs of different disciplines in Australian higher education. The “Dawkins Reforms” of the late-1980s had as their objective an alignment of higher education with broader economic aims and

to move universities to a more market footing. Universities made a fundamental transition from universities as public funded institutions towards universities as service providers to a range of clients including government, students and industry (a process occurring elsewhere in the public sector at the same time and which came to be known as ‘commercialisation’.) The federal government instigated a period of rapid growth in the sector, centralised public research funding, decentralised the ability to engage in market-based activities, and reintroduced student fees. (Brand, 1999: 116-117).

Law was assigned to the lowest cost cluster, a measure that prompted most universities to apply the model as the presumptive basis for internal resource

distribution. The low funding assigned to law teaching, coupled with its capacity to attract academically able enrolments, undoubtedly contributed to the proliferation of law programs in the years after Pearce. As the Australian Law Reform Commission (1999: 43) noted:

Law faculties are attractive propositions for universities, bringing prestige, professional links, and excellent students, at a modest cost compared with comparable professional programs such as medicine, dentistry, veterinary science, architecture or engineering.

In 1996 a differential system of student contribution to the cost of their education was introduced under which law courses were assigned to the highest charge band. In general the differential charge structure was justified on the dual basis of actual course costs (for example in medicine and veterinary science) and the anticipated salary levels of graduates (for example, law). Law alone was included in the highest charge band because of the projected earning power of graduates, while other disciplines (such as medicine, dentistry and veterinary science) were included because of the high costs of training. As noted above, law had been allocated the lowest level of funding, so that law students are charged on a full cost recovery basis while law schools operate in a system in which they are starved of resources. We return to the issue of the resources allocated to law schools at several points in this report as it forms a recurrent theme in this report. From the intake of 1997 onwards law student higher education contributions (HECS) doubled. For law this created apprehension about the impact upon equity in access to legal education since there are significant income differentials evident between particular career settings. In particular, there were fears that the high level of law student contribution might inhibit graduate employment in the less remunerative fields, such as in community legal centres, rural law firms or teaching and accentuate gender and other social differences in career paths (we already have evidence that women work disproportionately in the less well remunerated areas – Vignaendra, 1998)

Although this increase in student contributions may have fuelled student (and perhaps staff) expectations of improvements in law course resourcing, the introduction of differential HECS generally did not change the resourcing of law programs. As such, law schools increasingly have looked to the generation of fee income from postgraduate coursework programs (whose numbers have greatly proliferated), international student recruitment and, in some cases, enrolment of local fee paying students under measures introduced from 1997 to supplement the funding of their LLB courses. For this reason, marketing of programs, formal and non-award, has become a central activity for most Australian law schools.

Another important development in legal education has been the adoption of nationally unified set of requirements for admission to the legal profession. In 1992 the so-called Consultative Committee of State and Territory Law Admitting Authorities, chaired by Mr Justice Priestley, prescribed 11 “areas of knowledge” (known colloquially as the “Priestley 11”) that students were required to have studied successfully before they could be admitted to the profession. These areas of knowledge include: contract, tort, real and personal property, equity (including trusts), criminal law and procedure, civil procedure, evidence, professional

conduct (including basic trust accounting), administrative law, federal and state constitutional law, and company law. The Priestley Rules do not go further to give detailed content to these “areas of knowledge”. However, the Law Council of Australia has recommended more specific content for each area of knowledge, and these are widely used as a guide as to whether a program has satisfied the requirements. It is notable that the Priestley Rules focus on areas of knowledge, and not on graduate attributes or skills requirements (although it should be noted that the Priestley Committee has also listed 12 skills areas of importance to practising lawyers, sometimes referred to as “The Priestley 12”, to be undertaken during the practical legal training).

From the early 1970s, dissatisfaction with the standards of training under articles of clerkship (viz, apprenticeship training in a lawyer’s office) prompted the introduction of institutional practical legal training courses in several States, usually in lieu of, but sometimes as a supplement to, articles. In the early 1990s some of the newer law schools elected to integrate practical legal training into the LLB program, a trend that was followed in 2001 by at least one of the first wave law schools (see chapter 5). The effect of these changes has been that the structure of legal education and training has been at once both labile and unusually variegated in its mix of institutional and in-service training within and across the several jurisdictions.

Among other significant changes in the environment of legal education are the introduction of more flexible modes of delivery including distance education and mixed mode teaching, increased use of information and educational technology resources in teaching and learning, pressures for the development of clinical legal education, an enhanced role for professional skills in the LLB curriculum, as well as the changing structure of integration of practical legal training into the LLB at some schools. At the same time, many law teachers have argued successfully for a greater emphasis on legal theory in the law curriculum. International enrolments have increased dramatically, particularly in postgraduate programs. Issues of language proficiency have arisen and, while not peculiar to law, have a particular impact upon language-intensive disciplines such as law.

Evidence emerged in the early 1990s of a wider range of career intentions among law student than had been earlier assumed — slightly less than half of Australian final year law students were seeking a career in the private practice of law as their preferred career destination (Roper, 1995; Armytage and Vignaendra, 1996). These preferences were generally matched by a supposed widening demand for law graduates in both the public and private sectors. Of those who completed their law studies in Australia in 1995, 55% were working in the private legal profession three years later and only 7% were unemployed or seeking employment; however, 82% of 1997 graduates reported that they are engaged in legal work of some kind and a similar proportion reported that their job required knowledge of substantive law and legal practice and procedure (Vignaendra, 1998). The range of graduate destinations appears may reflect student choice as much as limits upon the opportunities to enter the legal profession. The phenomenon undoubtedly reflects the growing utilisation of law graduates, legal skills and knowledge in society and the economy as a whole.

Many of the major changes in legal education mentioned above have been in response to the radical government-initiated changes to the tertiary education sector. As Brand (1999: 121) observes, these changes:

had the effect of both pressuring law schools to return to (some would say retain) a more 'legal practice' focus on the delivery of the curriculum, and at the same time of focusing law schools on the need to broaden the curriculum to accommodate a wider range of students with presumed diversified career intentions.

Reviews of legal education

While this report is not a review of legal education and training, it is worthwhile to briefly highlight the debates that emerged from legal education reviews both here and in other common law and English-speaking countries about the role of law schools, and systemic orientation of legal education, especially the balance between the academic and professional dimensions.

United States reviews

Over the past three decades years a series of reports has provided a body of reflection on the goals and direction of legal education in the United States, particularly the balance between academic and professional orientation.

The Carrington Report: training for the public profession of law

The Carrington Report in 1971 was produced by a group of legal scholars and educators, constituted as a committee of the Association of American Law Schools (Carrington, 1971). The report proposed a Model Curriculum comprising three distinct sets of curricula. The Standard Curriculum was proposed as the central element of the modern curriculum and provides for a two-year law degree after three years higher education. (The American model then, as now, is for a three-year law degree following four years of college education.) The Standard Curriculum was designed to assist students to attain competence as "professional generalists." It sought to achieve economies by abandoning the doctrinal organisation that was said to dominate the traditional law curriculum and focus attention on social problems and the social sciences. It would also include a segment of intensive instruction to ensure deeper penetration of professional training, including clinical education. The Model Curriculum also included an Advanced Curriculum for those seeking specialisation through university study and an Open Curriculum for persons wishing to learn about law without seeking professional qualification.

Perhaps because of their radical character, the Carrington proposals for structural change in the law school curriculum attracted little academic or professional support in the United States. However, they gave voice to the need for greater attention to skill development beyond the traditional domains of legal analysis and writing. That cause was shortly to find more a persuasive voice in coming reviews.

The Cramton report on lawyer competency

The Cramton Report on Lawyer Competency (American Bar Association, 1979), written by a task force of academic and practising lawyers, was more influential although its practical outcomes depended upon action at the level of the individual law school.

The task force reported while legal education was not beyond improvement it did not accept the “simplistic view that attributes to the law schools the deficiencies of the legal profession” (Cramton, 1979) —

We also believe that improvements in legal education are most likely to come from within – from each law school making judgements as to how its goals can be best achieved given the situation in which it finds itself. We reject the views that every law school should be the same and that external regulation of legal education is the path to its reformation.

The task force considered that lawyer competence has three basic elements: certain fundamental skills, knowledge about law and legal institutions and ability and motivation to apply knowledge and skills with reasonable proficiency (American Bar Association, 1979: 9). These three elements are ‘developed and shaped’ by legal education but are affected also by other education and experiences (American Bar Association, 1979: 9).

What skills are necessary for lawyer competence? The Cramton Report identified the following skills, viz, to analyse legal problems; perform legal research; collect and sort facts; write effectively (both in general and in a variety of specialised lawyer applications such as pleadings, opinion letters, briefs, contracts or wills, legislation); communicate orally with effectiveness in a variety of settings; perform important lawyer tasks calling on both communication and interpersonal skills (interviewing, counselling, and negotiation; and organise and manage legal work (American Bar Association, 1979: 9-10).

These skills are the province of pre-admission legal education; resources devoted to their acquisition are at the expense of emphasis upon knowledge acquisition. The task force referred to the “relative unimportance” of transmitting specific information about law and legal institutions in the training of competent lawyers in view of the relatively brief period of formal legal education and the “dizzying” pace of change in knowledge required in legal practice. The Cramton Report emphasised qualities of intellectual curiosity, character and professional responsibility, and skills of self-learning, rather than the information content of law school courses. It favoured “speculative” or “theoretical” courses in the law school curriculum, including courses in comparative law, jurisprudence and legal history, since they might lay the theoretical conceptual base “for forty years or more of continuing self-learning about an ever-changing set of laws and legal institutions” (American Bar Association, 1979: 10).

The task force considered that in most law schools “the fundamental skill dimensions of fact gathering, oral communication, interviewing, counselling, negotiation and organisation and management of legal work receive even less

systematic attention than legal writing.” The task force believed that there is “substantial room for improvement in these areas” (American Bar Association, 1979: 15).

The task force considered that competent lawyering depended not only upon the fundamental skills and knowledge but their application in a disciplined manner supported by “constructive work habits, personal integrity, and a complex of attitudes and values, such as conscientiousness, an understanding of the need to stay abreast of changes in the law, and appreciation of the limits of one’s own competence” (American Bar Association, 1979: 10). These habits might be nurtured by encouraging more co-operative law student work and by “more comprehensive methods of measuring law student performance than the end of year examination”; what is needed are methods that “furnish greater reinforcement” for the development of these personal and professional qualities (American Bar Association, 1979: 17).

The task force considered that legal education would provide more challenge if the three-year JD program was restructured to present students with problems of successively broader scope and challenge, to enable students to teach themselves, and to utilise skills and knowledge acquired earlier through a tiered, structured curriculum (American Bar Association, 1979: 17). The task force also recommended that law schools should experiment with teaching programs that provide opportunity for periods of intensive instruction in fundamental lawyer skills focussing concentrated attention on a particular subject for a period to the exclusion of others.

The Cramton Report was influential in focussing attention upon skills rather than acquisition of knowledge. However, its proposals for reform the structure of the law curriculum had little effect – at most law schools compulsory subjects still occupy the first year only and the upper years offer students choice between a wide range of electives.

The Foulis Report on Legal Education

The Special Committee for a Study of Legal Education was established by the ABA in 1973 in advance of the Cramton task force although the latter reported first. Its conclusions, briefly stated, were (American Bar Association, 1980) —

There seems to be solid evidence to support the conclusion that ‘thinking like a lawyer’ is at the core of what most law schools are about. ‘Thinking like a lawyer’ emphasises intellectual skills and law schools generally do their best work in teaching skills of analysis and synthesis. Indeed, it is only fair to conclude that law schools do a good job of teaching analytical skills.

The committee concluded from its review of research that both law students and lawyers were looking for more practical legal education, including greater emphasis on professional skills such as like legal drafting, oral and written advocacy, counselling and negotiation (American Bar Association, 1980: 92-93). The perceived under-weighting of professional skills received closer attention in the MacCrate Report in 1992.

MacCrate report on legal education and professional development

The MacCrate Report in 1992 is the most influential of the United States reviews of legal education. It was prepared by a task force of practising and academic lawyers appointed by the American Bar Association whose name – *The Task Force on Law Schools and the Profession: Narrowing the Gap* – reveals the motive for its establishment, namely, to address the perceived gap between expectation and reality in the education of United States lawyers. The report expresses the problem thus (American Bar Association, 1992) —

It has long been apparent that American law schools cannot reasonably be expected to shoulder the task of converting even very able students into full-fledged lawyers licensed to handle legal matters. Thus, a gap develops between the expectation and the reality, resulting in complaints and recriminations from legal educators and practicing lawyers. The lament of the practicing bar is a steady refrain: ‘They can’t draft a contract, they can’t write, they’ve never seen a summons, the professors have never been inside a courtroom.’ Law schools offer the traditional responses: ‘We teach them how to think, we’re not trade schools, we’re centers of scholarship and learning, practice is best taught by practitioners.’

The task force considered that the criticisms of each group “have a strong base in reality” (American Bar Association, 1992:5) —

From the perspective of law schools, the practicing bar may not fully appreciate the benefits, and the limitations, that flow from a system of academically strong university-based law schools. ... While practising lawyers undoubtedly appreciate the value of the law school experience to their own careers, surveys understandably indicate that practicing lawyers believe that their law school training left them deficient in skills that they were forced to acquire after graduation. Practitioners tend to view much academic scholarship as increasingly irrelevant to their day-to-day concerns, particularly when compared with the great treatises of an earlier era. It is not surprising that many practicing lawyers believe law professors are more interested in pursuing their own intellectual interests than in helping the legal profession address matters of important current concern.

The task force considered that the criticisms of law schools overlooked what was “unquestionably” the most significant development in legal education since World War 2 - the growth in the skills training curriculum. As recently as 20 years before, the task force said, the typical skills training component of the law school curriculum consisted only of a first-year moot court program and perhaps a trial advocacy course. Today, it noted, clinical courses occupy an important part of the curriculum of virtually every ABA-approved law school.

The task force emphasised that education in lawyering skills and professional values should be central to the mission of law schools and recommended measures to improve and integrate the process by which lawyers acquire the skills and values necessary for professional development throughout their practising careers. The principal measure proposed was a Statement of Skills and Values to be used by law students to prepare for practice, in choosing courses at law school and in part-time or vacation employment. It hoped that law schools would also use the Statement in developing curricula to support development of legal skills and values.

The task force thought that effective teaching of lawyering skills and professional values should ordinarily have three characteristics:

- development of concepts and theories underlying the skills and values being taught;
- opportunities for students to perform lawyering tasks with appropriate feedback and self-evaluation; and
- reflective evaluation of the students' performance by a qualified assessor.

The task force proposed that each law school undertake a study to determine which of the skills and values described in its Statement were taught in its curriculum and develop a coherent agenda of skills instruction extending beyond legal analysis and reasoning, legal research, writing and litigation. Law schools should be encouraged to develop or expand instruction in such areas as problem solving, factual investigation, communication, counselling, negotiation and litigation. The task force considered that methods were available to teach such skills that previously had only been considered learnable through later experience and legal practice.

The Statement prepared by the task force identified the following ten fundamental lawyering skills (American Bar Association, 1992: 138-140):

1. problem solving
2. legal analysis and reasoning
3. legal research
4. factual investigation
5. communication (oral and written)
6. counselling clients
7. negotiation
8. understanding litigation and alternative dispute resolution procedures
9. organisation and management of legal work and
10. recognising and resolving ethical dilemmas.

In the United States these skills have found a relatively secure place in the law school curriculum although not for the most part as elements of the compulsory core of the curriculum. That generally small core is still largely defined by reference to principal areas of knowledge. (Professional responsibility is the only subject nationally required for all law students.) However, the elective portion of the curriculum develops lawyering skills, including the more professional (or vocational), often through a range of courses based upon clinical experience and education.

The absence of formal vocational training (including apprenticeship), separate from law school education, makes conflict between the vocational and academic functions of legal education more acute in the United States than in many other countries. This tension, however, is by no means peculiar to United States legal education.

England and Wales

Although legal education and training received passing attention in the Benson (Royal Commission on Legal Service, 1979) and Marre reports (General Council of the Bar and The Law Society, 1988), the principal post-Ormrod (Ormrod: 1971) review of legal education and training was that undertaken by the Lord Chancellor's Advisory Committee on Legal Education and Conduct (ACLEC) shortly after the MacCrate report. ACLEC took as its starting point, in identifying the general aims of legal education and training, Ormrod's analysis of the skill needs of practising lawyers. In the light of the changing shape of legal services and higher education, it offered a general statement, "necessarily superficial", of what legal education and training should aim to achieve in England (The Lord Chancellor's Advisory Committee on Legal Education and Conduct, 1996: para 2.8) —

Intellectual integrity and independence of mind. This requires a high degree of self-motivation, an ability to think critically for oneself beyond conventional attitudes and understanding and to undertake self-directed learning; to be 'reflective', in the sense of being self-aware and self-critical; to be committed to truthfulness, to be open to other viewpoints, to be able to formulate and evaluate alternative possibilities, and to give comprehensible reasons for what one is doing or saying. These abilities and other transferable intellectual skills are usually developed by *degree-level education*.

Core knowledge. This means a proper knowledge of the general principles, nature and development of law and of the analytical and conceptual skills required by lawyers. These abilities are normally developed through a *degree in law* or the equivalent.

Contextual knowledge. This involves an appreciation of the law's social, economic, political, philosophical, moral and cultural contexts. This appreciation may be acquired in part by the study of legal subjects in a law degree in their relevant contexts, or by taking a non-law or mixed degree which provides these perspectives.

Legal values. This means a commitment to the rule of law, to justice, fairness and high ethical standards, to acquiring and improving professional skills, to representing clients without fear or favour, to promoting equality of opportunity, and to ensuring that adequate legal services are provided to those who cannot afford to pay for them. These values are acquired not only throughout the legal education process but also over time through socialisation within the legal professions.

Professional skills. This means learning to act like a lawyer, and involves a combination of knowing how to conduct oneself in various practice settings, and also carrying out those forms of practice. These skills are normally acquired through vocational course and in-service training.

ACLEC tested English arrangements against this standard. It identified as strengths of contemporary arrangements the firm basis in current degree courses for “pluralism, variety, flexibility, and diversity, as well as intellectual rigour through the teaching of core and contextual knowledge” (The Lord Chancellor’s Advisory Committee on Legal Education and Conduct, 1996: para 2.8). However, the committee considered that there were serious structural weaknesses in the rigid division between the academic and vocational stages and the failure to treat legal education and training as a continuum. This division encouraged the separation between theory and practice, between “academic” knowledge and “professional” expertise, and between the “study of the substantive and adjectival law [which] ... has resulted in the relative neglect by law schools of subjects such as civil and criminal procedure and professional ethics, and in some academic courses being regarded as too far removed from reality” (The Lord Chancellor’s Advisory Committee on Legal Education and Conduct, 1996: para 2.11). This has led to “an unnecessary compartmentalisation” of the vocational and academic aspects of legal education.

Scotland

In Scotland intending lawyers complete the LLB degree before proceeding to common professional training for both solicitors and advocates through the Diploma in Legal Practice. In 2000, a committee established by the professional bodies proposed a series of objectives for the LLB degree in Scotland. They specified nine “areas of performance” (or skills) expected of those seeking qualification as a lawyer in Scotland. The first category is termed ‘subject-specific abilities’—

- knowledge and understanding of the principal features of the legal system
- legal and ethical values
- application and problem-solving ability and
- familiarity with the sources of law and capacity to conduct research.

The committee’s second category comprised the generally transferable intellectual skills of analysis, synthesis, critical judgment and evaluation, and independence and ability to learn. The third category was described as key personal skills, of communication and literacy, personal management, numeracy, information technology and teamwork (Scottish Legal Education, 2000).

This general principled statement of broad skills and attributes also identified personal qualities of integrity, independence of mind and outlook, core areas of knowledge (including contextual knowledge), and legal and ethical values. As with the ACLEC statement, it did not place the same emphasis as the United States reviews upon the development of professional skills although the Scottish statement shares an awareness of the importance of wider technical skills albeit of a general transferable kind such as communication, literacy, numeracy, information technology and teamwork.

The place of values in legal education and training

Each of the reviews of legal education mentioned above stressed the importance of inculcating and nurturing appropriate values during education.

ACLEC considered that changes in firm structure, levels of competition and the complexity of legal work require countervailing measures to reinforce ethical values. It considered that enhanced external regulation of professional practice was an inadequate substitute for personal and professional values and standards that should be internalised “from the earliest stages of ... education and training” (The Lord Chancellor’s Advisory Committee on Legal Education and Conduct, 1996: 19). ACLEC stated that “students must be made aware of the values that legal solutions carry, and of the ethical and humanitarian dimensions of law as an instrument which affects the quality of life” (The Lord Chancellor’s Advisory Committee on Legal Education and Conduct, 1996: 19, citing Cranston, 1995: 32). This requires more than familiarisation with professional codes of conduct but includes advertence to the wider social and political obligations of the profession to society as a whole, its obligation to protect the rights of minorities within society and the welfare of the disadvantaged (The Lord Chancellor’s Advisory Committee on Legal Education and Conduct, 1996: 20). One way of ensuring this is through the profession itself reflecting the social and cultural diversity of its society and its active promotion of equality of opportunity in legal education and training (The Lord Chancellor’s Advisory Committee on Legal Education and Conduct, 1996: 4) —

This means a commitment to the rule of law, to justice, fairness and high ethical standards, to acquiring and improving professional skills, to representing clients without fear or favour, to promoting equality of opportunity, and to ensuring that adequate legal services are provided to those who cannot afford to pay for them.

Similarly, the Scottish review listed as one of the objectives of the LLB degree, under the heading “Legal and ethical values” the objective that “[a] student should demonstrate a well-informed knowledge and understanding of the social, economic, moral and ethical contexts of law and a commitment to the application of legal and ethical standards in his or her conduct and activities” (Scottish Legal Education: 2000). On its face, ACLEC’s prescription extends beyond support for development of values through free and open inquiry to advocacy of a legal education program inscribed with particular value commitments (Brownsword, 1999: 31).

Likewise, in the United States the MacCrate Report identified four ‘fundamental values of the profession’ American Bar Association, 1992: 140-141): the provision of competent representation; striving to promote justice, fairness and morality; striving to improve the profession; and professional self-development. MacCrate thought that law schools should play an important role in developing students’ skill of recognising and resolving ethical dilemmas and placing these issues in an organised conceptual framework. This requires law schools to stress that examination of these fundamental values of the profession is as important in preparing for professional practice as acquisition of substantive knowledge.

The British and North American statements are not in radically different terms. Each is directed to values formation at the law school stage although undoubtedly the ACLEC prescription is intended also for the vocational stage of training. It is possible to construct from them a simple typology of the personal attributes, ethical capacities and values that call for development and nurture in the process of legal education and training —

- *Ethical sensitivity*: the ability to recognise and resolve ethical dilemmas that arise in professional work.
- *Legal values to which the profession has a particular responsibility*: eg, ‘a commitment to the rule of law, to justice [and] fairness’ (ACLEC) and ‘striving to promote justice, fairness and morality’ (MacCrate).
- *Social responsibility for the provision of legal services*: ‘to ensuring that adequate legal services are provided to those who cannot afford to pay for them’ (ACLEC); ‘the provision of competent representation’ (MacCrate).

The abilities, values and attributes in these categories are generally stated (or assumed) in the reviews to be acquired not only throughout the legal education process but also through socialisation within work settings.

Australia

The principal modern review of Australian legal education was that undertaken by a committee of legal educators appointed by the Commonwealth government, published in 1987 (the Pearce Report). Its focus was upon quality and efficiency at the level of each institution rather than systematic goals and orientation. However, the report suggested “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” (Pearce, Campbell and Harding, 1987: 149). It also suggested that law schools should give greater attention to the means of providing more small group teaching, and that class sizes should be monitored closely and each law school should adopt a policy that ensures that teaching resources are directed to those areas most in need. The report also

‘encouraged a culture of continuous self-improvement’ in which law schools examined their aims, their performance and looked to how they might improve themselves. This prepared law schools for the post-Dawkins environment and ‘left them in charge of the process of change’ (Sampford and Blencowe, 1998: 6, quoting McInnis and Marginson, 1994: 244).

At the same time, the Pearce Report itself represented the changing emphasis in federal government policy to higher education, particularly a concern with the more efficient use of resources, and a greater concern with legal education from “the consumers’ perspective” (Pearce, Campbell and Harding, 1987: chapter 4, and Lancaster, 1993: 48).

A follow-up assessment of the impact of the Pearce Report upon Australian law schools was published in 1994 (McInnes and Marginson, 1994). This report

found (McInnes and Marginson, 1994 at 155) that all law school surveyed had “embraced aspects of theory, reflection and the law in action” and that, consistent with an increased focus on skills acquisition across universities, law schools were paying more attention to skills teaching. It further found (McInnes and Marginson, 1994: vii-viii) that

the impact of the Pearce Report was considerable, although no greater than concurrent factors such as the 1988 ‘Dawkins revolution’ in higher education. Some of the Report’s proposals directly contributed to improvements. There was a discernible and mostly strong response in those schools where the Committee had identified major weaknesses. ... [I]t generated critical reflection on the nature and content of courses and a commitment to skill development and quality teaching. It also encouraged small group teaching (although many schools report that deteriorating student:staff ratios have undermined this). It drew attention to the achievements of the modernising ‘second wave’ law schools.

In other respects the Report was less successful. Its opposition to new law schools, and the proposed limitations on Masters’ courses, were overturned by events. It failed to achieve a lasting improvement in recurrent resources: law remains significantly underfunded. ... The report failed to really grasp the value of diversity between law school, although the discussion it generated and the model it favoured contributed to the post-1987 innovations in law.

Perhaps most important, the Pearce Report generated a climate of debate, discussion, critical thinking, self-evaluation and continuous improvement which has served law schools well since 1987 – especially given that such an approach has become mandatory throughout higher education.

In 2000, as part of its review of the federal civil justice system, the Australian Law Reform Commission examined educational changes necessary to give effect to its reform proposals for civil litigation. It sympathetically reviewed developments in United States and Australian law schools which extend the range of generic professional skills during the academic stage of legal education and urged the abandonment of the Priestley Committee’s “solitary preoccupation with the detailed content of numerous bodies of substantive law” (Australian Law Reform Commission, 2000: 139, 117-121, 138-142; Australian Law Reform Commission, 1999: 40-50). It also criticised the Priestley Committee’s 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, process-driven and teamwork reliant than had hitherto been the case. Further, it was critical of the way in which the Priestley Committee, without any discussion of whether it was necessary or desirable to do so, had assumed a rigid divide between law school education and professional legal training (see page 1 above), in which law schools teach “legal rules” and professional legal training teaches practice or skills (see Australian Law Reform Commission, 2000: 138-142). It 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” (Australian Law Reform Commission, 1999: 46, para 3.23). The Commission (2000: 140, para 2.85) recommended that

... properly conceived and executed, professional skills training should not be a narrow technical or vocational exercise ... rather it should be fully informed by

theory, devoted to the refinement of the high order intellectual skills of students, and calculated to inculcate a sense of ethical propriety, and professional and social responsibility.

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” (Australian Law Reform Commission, 2000: 142, para 2.89). It further recommended that:

- a regime for ensuring that “all university law schools engage in an ongoing quality assurance auditing process, which includes an independent review of academic programs at least once every five years” (ALRC, 2000: 144, para 2.95);
- admitting authorities “should render practical legal training requirements sufficiently flexible to permit a diversity of approaches and delivery modes” (ALRC, 2000:150, para 2.114); and
- the relevant government department “should give serious consideration to commissioning another national discipline review of legal education in Australia” (ALRC, 2000: 145, para 2.100).

It was this latter recommendation that provided the impetus for this project.

This Project: Terms of Reference and Methods

As mentioned in the AUTC Project Brief: the objectives of this project were to identify, describe and evaluate:

- 1) the ways in which the processes of curriculum development and review have been varied and enhanced to take account of changing circumstances;
- 2) the extent to which the methods of teaching and assessment have been reviewed and revised in response to changing circumstances;
- 3) the degree of awareness by students of expected learning outcomes and intended graduate attributes, and links between these and the curriculum and teaching and learning methods in the courses;
- 4) the impact of globalisation and the new communication and information technologies on teaching and learning;
- 5) the role of professional experience and its management within the curriculum;
- 6) graduate employability and employer/industry satisfaction; and
- 7) the impact of the growth in double and combined degrees and the changing balance of postgraduate to undergraduate programs.

Less importantly, the project was required to:

- 8) highlight examples of ‘best practice’ in teaching and learning in law

Methodology

Initially it was envisaged that the primary research method would be a written questionnaire of Australian law deans (see Johnstone and Redmond, 2002). The first few months were spent developing and piloting this survey document. It became quickly apparent, however, that this method was not likely to elicit the information sought, as the questionnaire was of excessive length, and likely to result in a low response rate. With the approval of the project's Steering Committee, the project's Director and Senior Research Officer, the authors of this report, generated a threefold design for the project, comprising:

- a) law school visits - to interview deans/heads of school and two to three key members of staff and to conduct focus groups with law teachers, about curriculum design and teaching and learning;
- b) a written survey of penultimate year law students to obtain information about their social profile, their reasons for choosing to study Law, their career destinations, their expectations of their Law degree, their evaluation of their skills and competencies, and their perceptions of the quality of teaching at their Law school. This was supplemented with interviews and focus group discussions with students to tease out particular themes.
- c) telephone interviews with employers of law graduates to find out what sets of qualities – skills, knowledge and/or competencies – employers looked for in Law graduates; whether they thought legal education and training is producing the type of Law graduates they are looking for (and furthermore, whether this mattered to them); and how they incorporated their knowledge and expectations of legal education into their recruitment practices, if at all.

The project's threefold design had a dual purpose – to enable the project team to meet the objectives listed above and to introduce a validity check within the data collection process. The latter process – partial triangulation - recommends that data be collected from more than one source and/or using multiple methods informed by the same research paradigm to increase the probability of collecting valid data.

The Law school visits

In February 2001, law schools were formally invited to participate in this project. Law deans and heads of school were formally requested to complete and return a consent form in which they were asked to agree to (a) have their law school visited by a member of the project team and (b) to have penultimate year law students at their law school surveyed during class time. Twenty-six of the 28 law schools in Australia consented to both and one law school consented to the former (this law school did not yet have penultimate law students to consent to the student survey).

Only one law school declined to participate in the project. The Monash Law Faculty declined, on the bases that: it could not justify participating; the interview schedule to be used during law school visits would require a week's work in preparation; the project team would not be able to obtain any useful information

in the short time allocated to visit each law school; the Faculty was being reviewed, and as the review of the Faculty included surveys of students, it would not be fair on students to survey them again.

Law school visits were conducted during the months of May and June 2001, during which an average of one day was spent at each law school by a member of the project team. In every law school but two the Dean and/or Head of School was interviewed. As for the other key members of the law teaching staff identified for interviews, either the Dean nominated participants or law staff self-selected; the project team did not select interview participants.

A structured interview schedule was used to interview staff at each law school, either together or separately, comprising 36 questions. This interview schedule is included as Appendix 1. By and large, the interview schedule was used to facilitate a structured discussion about curriculum design, teaching and learning, the link between the two, and the context within which they take place at each law school. At a few law schools, there was insufficient time to cover all 36 questions. Most law schools also supplemented their answers by providing written documentation detailing student assessment policies, subject outlines, and other such documents. Law deans and heads of school were also subsequently sent a written questionnaire, asking them to supply factual details about their curriculum and teaching practices, and statistics about their law staff and student body. A copy of this questionnaire is included as Appendix 2. Only half the participating law schools – 14 – returned completed questionnaires.

Focus groups with law teaching staff were usually conducted during the lunch hour of the law school visit – in the staff room or equivalent venue. Because of the timing of the visit, it was not always possible to conduct focus groups at every law school – in the end, focus groups were *not* conducted at ten law schools. Where a law school had more than one campus, focus groups were held at every campus. Participation in the focus group was voluntary. Law teachers at each law school were invited to participate in these lunchtime focus groups, via the Dean/Head of School, who was asked to post or email a notice about the content and timing of the focus group to all law teaching staff at their school. The number of attendees at each focus group ranged from two to thirty-five. Focus groups usually lasted between 45-60 minutes and at each focus group, three groups of questions were put to focus group participants to generate a discussion:

1. **Teaching and learning**
 - (a) What are you trying to do when you teach? How do you understand your role as teacher? What do you want students to be doing when you “teach” them?
 - (b) How do different teaching methods inhibit and/or encourage learning?
 - (c) How do different assessment methods inhibit and/or encourage learning?
2. **Overall changes in teaching**
 - (a) Has your approach to teaching changed?

- (b) If not, why not? If so, how has your teaching changed most since you first became law teachers, if at all?

3. Factors that inhibit or promote good teaching and curriculum design

- (a) Have the conditions under which you teach changed?
 (b) Which factors (*at school, university, government policy or any other level*) encourage or inhibit your efforts at effective teaching?
 (c) How do you best facilitate student learning within the constraints you have identified?

At the end of the focus group, participants were asked to complete a short questionnaire about their teaching and assessment practices and materials used in their teaching of undergraduate and/or postgraduate law students (whichever was relevant), as well as to nominate law teachers whom they thought in model teaching practices (The aim of the last question was to follow up such teaching practices with nominees; however, because of a lack of time to complete this project, these follow-up interviews had to be abandoned). The questionnaire is included as Appendix 3. Only about one-third of the focus group attendees had the time to complete the questionnaire. The questionnaire's worth was also later deemed to be of little worth and furthermore, it was difficult to obtain representative findings. As such, the results from the questionnaire do not feature in this report.

The Survey of students

As mentioned above, 26 law schools consented to have their penultimate year law students surveyed during class time (one participating law school did not yet have penultimate year law students); however, five law schools were slow to respond to the call to participate in this study and hence missed the deadline for the student survey, which was conducted in the week commencing 13 May at most law schools (at three law schools, the survey was conducted prior to, or after, this week). Furthermore, by the time the five law schools consented to participate in the study, their students had entered either their exam period or holidays and hence could only be contacted by post. A postal survey had been conducted with students at one law school with mainly external students, with little success – the response rate was extremely low. It was therefore decided, with the consent of the project's Steering Committee, to abandon a postal survey of students of students from the five late joining law schools. Completed surveys had been received from 21 law schools.

The student survey was conducted during class time. The classes chosen were nominated by law schools; law schools were instructed to nominate the most widely taken subjects by penultimate year law students. The administration of the survey was undertaken by a student at each law school, who was either nominated by the law school or known to one of the project's Research Assistants. The written questionnaire students were required to complete in class is included in Appendix 4.

The survey yielded a poor response rate because classes are not always well attended – a theme that will be discussed in other chapters. The final response rate was 33%.

Focus groups and interviews were also conducted with a select number of law students, in part to enable students from the five late joining law schools to take part in the project, and in part to make sense of some of the findings from the student survey. These focus groups and interviews also allowed law students to discuss their attitudes to legal education, much in the same way their teachers had been invited to do during law school visits. This thereby allowed for partial triangulation. For this reason, similar questions as posed to law teachers in the focus groups during the law school visits were also posed to law students. The questions, however, were modified to accommodate the different position held by the student group in the legal education process. The following groups of questions were put to students:

1. **Teaching and learning**
 - (a) What do you think your teachers are trying to do when they teach? How do you understand their role?
 - (b) How do you think different teaching methods inhibit and/or encourage learning?
 - (d) How do you think different assessment methods inhibit and/or encourage learning?

2. **Factors that inhibit or promote good teaching and learning**
 - (a) Which factors (*at school, university, government policy or any other level*) encourage or inhibit your efforts at effective teaching?
 - (b) How do you think your learning can best be facilitated?

In total, 67 law students were either interviewed or participated in focus groups, with interviewees forming a larger proportion of the respondent group than focus group participants. The vast majority of interviews were conducted by telephone. The first focus group was conducted at an annual meeting organised by law students – the Australian Legal Education Forum. Subsequent focus groups were held at two law schools. A lack of time and funding prevented more students from participating in these interviews and focus groups; however, given the aim of this method was not to obtain a representative finding, this was not seen to be a major concern.

Employers' interviews

The aim of the employers' interviews was similarly not about obtaining representative findings from employers. Rather it was to give employers of law graduates an opportunity to participate in the project – again, for the purposes of partial triangulation and to meet the objectives set by the AUTC.

Potential employers of law graduates around Australia were identified using Law Society lists and referrals from the project's Steering Committee and other colleagues. While some Law Societies were happy to release the entire list of

solicitors on their roll, not all Law Societies were in this position. Full lists of solicitors on the roll could only be obtained for four of the eight states and territories; the accredited specialist list was the only list that could be obtained from Law Society websites at the remaining states and territories.

Over 500 people were contacted to: (a) find out if the firm/organisation/legal department being called had ever employed law graduates; (b) to find out who in the firm/organisation/legal department was responsible for selecting candidates for posts and; (c) to find out who among them would be willing to participate in the interviews. A list of 50 to 60 willing participants were found, from within private legal practice (in city, suburban and country practices), the public sector and from private industry, commerce and finance. Participants occupied positions at differing levels of their firms'/organisations' hierarchy and included both lawyers and human resource personnel. In the end, 53 individuals participated in interviews. With more time and greater funding this number could have been boosted; however, given that representative findings were not one of the project's aims, the small number of participants was also not considered to be a major concern.

Participants were interviewed by telephone by one of two people in the project team using a structured interview schedule. Interviews lasted 30 to 60 minutes. Some interviewees were interviewed more than once, at their request, sometimes because of time constraints and other times to give them the opportunity to consult with their colleagues and/or their documents before providing responses.

A structured interview schedule was used to interview employers.

Structure of this report

Chapter 2 of this report describes broad developments in the LLB and outlines different law schools' visions of the LLB curriculum – their aims, rationale and foci. It describes the extent to which law schools have sought to “differentiate” themselves from other law schools, particularly their immediate competitors.

Chapter 3 describes the combined and double-degree programs and the Graduate entry LLB programs (including the Juris Doctor (JD) degree).

Chapter 4 describes key features of LLB curricula, including:

- The compulsory subjects - varied approaches to common requirements?
- The elective subject offerings – the number, scope, specialisations, and variations between schools.

Chapter 5 complements chapter 4 by considering how ethics, legal skills and legal theory have been incorporated into the LLB by the different Australian law schools

Chapter 6 describes postgraduate curricula, including:

- The different visions of postgraduate offerings, and the development of postgraduate coursework programs in law over the past 15 years;
- Divergences in programs offered and student enrolment and completion—graduate certificates, graduate diplomas, LLM by coursework and SJDs
- Research degrees – offerings, enrolments and completions.

Chapter 7 describes the influence of globalisation and information technology on law curricula.

Chapter 8 describes methods law schools have adopted for reviewing, monitoring and developing the undergraduate and graduate curricula, and gives examples of how law curricula have been shaped by university requirements.

Chapter 9 describes:

- The mechanisms law schools use to find out employers' needs and perceptions of law programs;
- Employer expectations of, and satisfaction with, legal education

Chapter 10 focuses solely on students' views and describes their expectations of, and satisfaction with, the LLB, as well as their assessment of specific components of the LLB.

Chapter 11 provides a brief overview of “good teaching” and the scholarship of teaching, as well as provide a broad overview of law teaching.

Chapter 12 describes broad developments in teaching and learning in law schools and changes in law schools' approaches to teaching and learning since 1987.

Chapter 13 describes the factors that law teachers identified as inhibiting good teaching.

Chapter 14 describes teaching and learning policies and practices in law schools.

Chapter 15 describes changes in the specification of learning objectives, and developments in assessment in law schools.

Chapter 16 documents changes in teaching methods, teaching materials and the use of information technology in teaching.

Chapter 17 describes the processes law schools use to support and manage teaching and learning.

The final chapter presents an overview of the report.

To ensure consistency in terminology in this report, we have adopted the following glossary:

- “subject” refers to individual subjects within a program
- “program” refers to a degree program
- “LLB program” refers to all degree programs resulting in the award of a Bachelor of Laws (LLB), and unless otherwise specified, includes combined degree programs, graduate entry and fee-paying students
- “undergraduate” refers to students who have yet to complete an undergraduate degree of any kind;
- “graduate” refers to students who have been awarded a degree in a discipline other than law
- “postgraduate” refers to students who have already fulfilled the requirements of the Bachelor of Laws or equivalent program
- “research higher degrees” includes Masters by Thesis/M Phil
- “doctoral coursework programs” to refer to doctoral level programs of which a significant component is constituted by coursework (SJD programs)

Most of this report concerns itself with the LLB, unless specified otherwise.

CHAPTER TWO

DEVELOPMENT AND DIVERSITY?

This chapter gives a broad overview of developments in the undergraduate law curricula of the Australian law schools, principally by examining individual law school claims of distinctiveness, and whether, and how, undergraduate law curricula have developed.

The chapter begins with a brief discussion of the different visions of the LLB curriculum taken by Australian law schools, and describes the extent to which, and the manner in which, law schools have sought to distinguish themselves from other law schools in the same region, and nationally. It then tracks the major developments in law schools' undergraduate curricula over the past 10 to 15 years, with a particular interest in whether and how law school undergraduate degree programs have developed in response to the project objectives mentioned in chapter 1. Later chapters will examine in greater detail the combined degree programs, the balance between compulsory and elective subjects, and the way in which ethics, legal theory and legal skills have been incorporated into LLB programs.

Different visions of the LLB curriculum – aims, rationales and foci of the LLB degree.

In chapter 1 we provided a brief overview of developments in Australian legal education in the past 15 years or so, and an outline of the major debates about the purposes, and broad aims of, legal education, not only in Australia but in the United States and United Kingdom. A notable feature of these debates is the perennial issue of how law schools reconcile the twin foci of “close historic connections to professional practice” and “its current location in a university environment” (Brand, 1999: 109). As Brand (1999: 109) succinctly asks:

should law schools be driven by market requirements or more by idealistic educational values? ... This may be a false dichotomy. It might be, and probably ought to be, possible both to respond to the demands associated with being a service provider in a marketplace and to keep faith with the objectives of a broad and informed educational ideal.

Not surprisingly, this is a theme that features heavily in this report.

How, then, have Australian law schools moved away from the traditional approach to legal education (see page 1 above) that characterised the majority of law schools in the 1970s and early 1980s? How do law schools describe their overall aims, and their niches in the Australian legal education system? Our discussions with law schools indicated that many law schools reported distinguishing themselves according to one or more of the following factors:

- an emphasis on teaching arrangements, particularly small group teaching (factor 1)
- a small student intake (factor 2)

- a scholarly approach to the development of the curriculum and teaching and learning strategies (factor 3)
- an emphasis on the quality of pastoral care afforded to students (factor 4)
- a strength in information technology or multi-media approaches to teaching and learning (factor 5)
- external programs in law (factor 6)
- an orientation towards other particular kinds of students (for example, graduate entry to programs, mature-age students, a more diverse range of students, or equitable student entry programs) (factor 7)
- fee-paying, accelerated graduate entry program (for example JD Programs) (factor 8)
- entry to the LLB program restricted to graduates in another discipline, or at least to students who had already completed at least a year of study in another discipline (factor 9);
- a professional law school/an orientation to the profession (factor 10)
- a focus on servicing the local community, whether this be a regional concern, or a focus on certain geographical areas of the larger cities (particularly important for regional law schools, but also a focus for some third wave law schools) (factor 11)
- a focus on public law (factor 12)
- the international profile of the school, specialist international law subjects, and/or international staff and student exchanges (factor 13)
- a focus on particular areas of law and/or legal practice (for example, corporate and/or commercial law, international law) (factor 14)
- an emphasis on social justice (or an aspect of social justice) (factor 15)
- an emphasis on the context within which legal rules operate (factor 16)
- a focus on para-legal services (factor 17)
- an emphasis on breadth and choice in electives (factor 18)
- the organisation of curriculum around broader conceptual fields than the traditional subject configurations (factor 19)
- other distinguishing approaches to the configuration or sequencing of subjects (factor 20)
- a critical approach to law (factor 21)
- an emphasis on (interdisciplinary) legal theory (factor 22)
- a commitment to full integration of law programs with another discipline (factor 23)
- a specialisation in comparative law and comparative approaches to law (factor 24)
- a commitment to the university intellectual tradition of inquiry for its own sake (factor 25)
- a focus on ethics (factor 26)
- a focus on legal skills in the curriculum (factor 27)
- a clinical legal education program providing students with the option of working in a legal service (factor 28)
- a requirement for students to gain unremunerated work experience in some form of legal practice (factor 29)
- an integration of practical legal training into the curriculum (factor 30)
- high quality of student intake/high achieving students (factor 31)

- a commitment to developing a sense of service in students (factor 32)
- a commitment to equitable access to the profession (factor 33)
- postgraduate coursework programs (factor 34)
- higher degree research programs (factor 35)
- a focus on being a national law school (factor 36)
- a law school structured around international best practice (factor 37)
- staffing by full-time academic staff, without significant non-academic workloads (factor 38)
- intensive, semester long subjects with at least four hours a week class contact (factor 39)
- a focus on indigenous students (factor 40)
- the way in which students are selected for the LLB program (factor 41).

All law schools claimed a number of these characteristics in order to distinguish themselves from other law schools. We illustrate this in three ways: (i) by mapping the areas in which law schools claim to have a special focus, emphasis or strength; (ii) by charting law schools' priorities in seeking to promote a range of graduate attributes; and (iii) illustrations through a series of short case studies.

Table 2.1 below summarises the factors that each law school claimed distinguished it from other law schools, either within its own city or state, or nationally. Law schools are randomly ordered in this table.

Table 2.1
Factors that each law schools claimed were its distinguishing features

1A	15	16	18	22	27	28				
2A	1	6	16	22	35					
3A	1	10	18	31						
4A	5	10	11	27	30					
5A	10	13	30	34	35					
6A	4	10	11	24	27					
7A	1	9	27							
8A	1	10	14	27						
9A	6	10	14	27	29					
10A	1	10	26	41						
1B	19	20	21	22	23	27	35			
2B	6	7								
3B	5	11	13	17	28	29				
4B	4	5	7	13	18	23	27	35		
5B	1	2	3	4	11	16	22	27	29	35
6B	10	11	35							
7B	1	10	15	16	18	25				
8B	1	7	23	37	38	39				
9B	12	13	34	35	36					
10B	5	8	13	24	31	34				
1C	10	11	16	21	22	27	30	32	33	
2C	7	11	27	28						
3C	3	5	6	10	16	27				

4C	1	2	4	14	24	27				
5C	6	11	17	33						
6C	1	10	13	16	20	24	34			
7C	4	7	30	40						

This table illustrates how diverse are the factors which law schools claim to differentiate themselves from other law schools. Few factors are claimed by more than half a dozen law schools, and the most notable of these are an emphasis on smaller group teaching, an orientation to the profession, a focus on legal skills and strong postgraduate coursework programs. The manner in which law schools differentiate themselves is examined in greater detail later in this chapter.

Table 2.2 summarises law schools' responses to a written survey question: "With reference to your LLB program, what importance does your law school attach to the following aims?" The table lists the aims that law schools were asked to comment about. The aims were drawn from the various aims of legal education canvassed in the various reports outlined in chapter 1. Possible responses were "1=extremely important", "2=very important", "3=important", "4=only moderately important" and "5=not at all important". Only 11 law schools responded to these aims. Law schools responses to each aim have been aggregated, to present a picture of the collective aims of 11 law schools, and the variances in relation to each of the specific aims.

Table 2.2
The importance law schools attach to particular aims of legal education

Aim	Priority given to aim by law schools				
	1	2	3	4	5
(a) Students should learn the basic principles covering the major areas of law required in legal practice	7	4			
(b) Students should learn when, how and where to look for principles of law relevant to issues they will be called upon to resolve in legal practice	9	2			
(c) Students should learn to express themselves logically, clearly and coherently in their written work	9	2			
(d) Students should learn to express themselves logically, clearly and coherently in oral presentations	8	3			
(e) Students should learn to be able to respond to new developments in law	6	5			
(f) Students should be taught to perform practitioner skills such as interviewing, drafting, advocacy and witness examination.	3	3	1	4	
(g) Students should be taught to provide legally accurate and practical advice in relation to quite complex legal problems	3	3	4	1	
(h) Students should learn fundamental skills in information technology that are necessary for legal practice	5	1	5		
(i) Students should learn about and be able to research foreign legal systems	1	1	5	4	
(j) Students should learn about the legal dimensions of E-commerce, cyberlaw and related fields	1	1	4*	5	
(k) Students should be prepared for international commercial legal practice	1	1	2*	6	1
(l) Students should be prepared for international public legal			4	6	1

practice					
(m) Students should be taught legal theory (or jurisprudence)		6	5		
(n) Students should learn critically to evaluate the way in which a certain law or proposed law might operate	4*	6	1		
(o) Students should learn how to conduct an ethical legal practice	6	4	1		
(p) Students should learn to take responsibility for their own legal education, including their further education once they leave university	6	3	2		
(q) Students should develop an awareness of the ethos of the profession, its way of thinking, and its role in the society in which it operates	3	4	3	1	
(r) Students should learn to conduct empirical research on the way in which a particular area of law operates in practice		2	5	1	3
(s) Students should learn to develop sound law reform proposals		3*	5	2	1
(t) Students should learn to use the principles and techniques of the legal system to pursue social justice goals		6	2	3	

Note: This table covers responses from 11 law schools. Some law schools indicated that an aim fell between two ratings. We have coded these responses against the higher of the higher rating, and marked the table with an * in each instance.

Table 2.2 suggests that law schools have a strong commitment to teaching LLB students the basic principles covering the major areas of law, how to look for relevant legal principles, and how to respond to new developments in law; clear and logical written and oral expression; ethical legal practice; and to fostering student responsibility for learning. Relatively important are the ability to provide accurate legal advice to a legal problem, and legal theory and critical evaluation of the operation of law. These Law schools appeared to be strongly divided about the importance of practical legal skills, the importance of developing an ethos of the profession, and the law reform and social justice aspirations. They, furthermore, generally considered comparative and international law to be relatively unimportant, and did not place importance on teaching issues to do with law and information technology. In some of these law schools the teaching of information technology skills was considered to be very important, and an equal number considered the issue to be of moderate importance.

Table 2.3 summarises, for each of the 11 law schools that responded, the aims that were regarded as “extremely important”, “very important”, “important” and “only moderately important”. Aims that do not appear in the table were regarded by the law school as “not at all important”. Law schools are randomly ordered in the table below.

Table 2.3
The importance individual law schools attach to particular aims of legal education

Law school	Extremely important	Very important	Important	Only moderately important
1	a, b, c, d, e, g, h, o, p	n, q	i, m, s, t	f, j, k, l, r
2	b, c, p,	A, d, e, h, o, s, t	g, i, j, l, m, n, q, r, s,	f, k
3	a, b, c, d, f, g, h, n, o, p, q	e, i, j, k, m,		l, s, t
4	a, b, c, d, e, f, g, h, k, n, o, p	m, q, t	i, j, l, r, s	
5	c, d, h	a, b, e, f, m, n, o, p, q, r, s, t, u	g, i, j, k, l	
6		a, b, c, d, d, e, n	h, m, o, p	f, g, i, j, q, t,
7	a, b, c, d	e, f, g, n, o, p, r	h, m, q, t	i, j, k, l, s
8	b, c, d, e, n, o, p	a, m, q, t	g, h, r, s	f, I, j, k, l
9	a, b, c, d, e, f, q	g, m, n, o, p, t	h, j, s	i, k, l
10	a, b, c, d, e, h, i, n*, o, p, q	f, g, m, s*, t	j*, k*, l, r	
11	a, b, e, o	c, d, n	f, g, h, i, m, p, q, r, s	

Note: This table covers responses from 11 law schools. Some law schools indicated that an aim fell between two ratings. We have coded these responses against the higher of the higher rating, and marked the table with an *.

The diversity in approaches between Australian law schools can also be plotted through a series of case studies that illustrate the different ways in which law schools conceive of their overall mission, and claim a distinctive approach to legal education.

Before we do this, we note that many, if not most, of the second and third wave law schools claimed to have deliberately set out to offer an alternative forms of education to the once traditional model of legal education offered by the first wave law schools (see chapter 1). One interviewee, who had worked in two second wave and a first wave law school, observed that:

most of the [second wave] law schools that were formed in the seventies were formed really as a juxtaposition to [the traditional, first wave, black-letter law trade school law schools] where you learned your rules, and learned them well. And you did do jurisprudence. It was a compulsory element in the curriculum, but it came as a kind of end piece, rather than as an integrated thing. And so the schools that were established in the seventies really had an eye to some of the developments in America, the Socratic method of teaching, problem-based learning, in an interactive way, and the schools' thinking were founded on the ethic of Socratic teaching, where students were given readings and they would read and they would come in and the classes would be interactive.

Another interviewee suggested that

there are a lot of law schools in Australia and I don't think it makes any sense for law schools to replicate each other. Obviously to the extent that we're training

lawyers for legal practice, which is one part of what we do, there's a common core that everybody has to do. But putting that aside, I think it makes a lot of sense for particular law schools to have special strengths and to play to those strengths. And I think the smart law schools are doing that. ... In a competitive market you have to distinguish yourself in a way so that you are recognisable and attractive to a certain cohort of students.

During law school visits, for example, one law school emphasised that it "expressly" set out to distinguish itself from the other law schools (particularly the first wave law school) in the same state. Another increased its profile in commercial law in the late 1990s in response to the founding of a new law school in the same city, which had a commercial law focus.

It is really to stake a claim that we're out there, just as good as anyone else – if not better – in the commercial law area, so don't think you have to go to the [the other law school in the State] if you want to be a commercial lawyer.

Further, for most schools, the concern is with distinguishing themselves within their local (city or state) market, rather than nationally. As one Dean noted:

There's the local market and then there's the broader Australian market. Now frankly one's not concerned with the broader Australian market here, save in so far as an institution we try to maintain standards and put ourselves academically, in terms of general teaching and research, in the forefront of the group of Australian law schools. Everyone's trying to do as well as they can. Everyone's trying to have as high a reputation as one can. That's the context in which one competes nationally it seems to me. You're simply trying to develop a reputation and that might involve developing certain research strengths and, of course, winning a reputation in terms of teaching. But it's not to attract a national market so much. It might be for recruiting staff, but for the most part one's not looking to attract students from any other state (except perhaps some of the larger law schools, who are trying to lure the highest achieving students from interstate). But putting that aside, the differentiation for the most part is local. The real issue is competition within the state, or at least the metropolitan area.

Some law schools have very consciously established a niche for themselves over the past decade. An illustration is provided by one second wave Law School, which since 1994 has carefully differentiated itself by developing its integrated skills and graduate attributes program, its external program, its online delivery of its teaching programs, and in its staff members distinguishing themselves as "legal education scholars". The school had recently benchmarked itself:

and it identified a lot of those things we've been talking about as our particular strengths and is marking us out as being ahead of the pack in those areas. That's not to say that we spend a lot of time looking over our shoulders at what other people are doing, but [we have] position[ed] ourselves to make the program distinctive in a number of ways, and to attract our students. I suppose it's worth noting that the demand for our programs, particularly over the last three years, has just been going up and up. We have no problem whatsoever attracting high-quality students into our undergraduate program.

And its not just positioning and distinguishing, it is all pedagogically driven. .. We are not just inventing diversities. ...

I think that it's fair to say that there is a serious scholarly basis which underlies what we are doing.

For other second wave law schools, their distinctive features largely entailed a description of a long-sustained approach to legal education.

Case Study 2.1

This second wave law school sees itself as involved in a range of projects in legal education. These include

- (a) the professional project (for example, the capacities of thinking like a lawyer, applying generally transferable intellectual skills into a legal context, and preparing students for variety of work that a lawyer does);
- (b) the university intellectual tradition of inquiry for its own sake;
- (c) ensuring that students do more than simply study legal rules for their own sake – students should be aware of social context within which the rules operate and the intellectual pedigree of rules, and the forces that shape the law.
- (d) a social justice orientation that law should be in service of the disadvantaged, and that the curriculum should demonstrate a sensitivity to that.

A further point of distinctiveness is in the elective programs offered in the LLB program. The school claims to have a very large choice of electives and greater number of contact hours than in other law schools. A final point of perceived distinctiveness is the school's commitment to small group teaching, and to high quality teaching.

One law school considered itself to be in

a fortunate position in that we haven't had to [develop distinctive features] in any artificial way or manufacture our specialties because ... the focus here has always been on public law and international law, the government-related aspects of law and even our Commercial Law Centre, for example, has a special focus on government-related commercial matters. So of course we have strengths in other areas and we're [currently] pursuing a specialty in intellectual property law, but that has a very big public law component as well.

The school was also positioning itself as “the national law school”.

Many of the third wave law schools deliberately sought to develop their own particular vision of legal education, usually in response to what was perceived as the “traditional” model of legal education (see again chapter 1 and Goldring, Sampford and Simmonds, 1998).

Case Study 2.2

A third wave law school was set up “to offer something better” than the traditional model of legal education. Its LLB program seeks to move away from the traditional model on at least four fronts. First, the School requires students studying law to study another discipline, and to do it in a linked way, to think across interdisciplinary boundaries and to

apply the insights from each discipline to the other; the school seeks to fully integrate the two degrees in the combined programs.

Second, the School seeks to “make the law side of things more practical”. The undergraduate curriculum emphasises legal skills. At present, a group work based “Offices” program in each year of the LLB program is the vehicle to integrate skills into the curriculum and give students the opportunity to practice them. The school also offers those students in the later years of their LLB degree a range of clinical legal education programs.

Third, students are required to engage with legal theory throughout the degree program, starting with a compulsory legal theory subject in first year, and a compulsory jurisprudence subject and a joint legal theory subject in fourth year. In addition, individual substantive law subjects are infused with legal theory.

Fourth, the law school has “re-examined the logic behind the configuration of the undergraduate program”. It has moved away from the nineteenth century subject categories traditionally used by law schools, and has organised the curriculum around larger conceptual fields – not contract, tort and property, but configurations such as law and obligations, or law and institutions. For example, the first year of the LLB program concentrates on law and the obligations it creates (where does law come from?, and how does it create obligations upon individuals?), and covers contracts, torts, restitution, and equity. The second year is organised around institutions – trusts, corporations, partnerships, and government. The third year third covers property, and criminal law, evidence and procedure. In fifth year students undertake elective subjects and a final professional conduct subject, *Issues in Legal Practice*.

This law school claims that its LLB program requires students to master different modes of reasoning, different disciplinary techniques, different skills, and different levels of operation, from the theoretical to the practical.

In a similar vein, when one third wave law school founded, its first student handbook outlined its approach as follows:

The key to success of a law school is how its students learn. Their flexibility, skill and professional ability depend on how they develop their own learning skills. Learning within a profession is a lifelong process. The University can provide for students the grounding they will need for the rest of their lives. A legal education which does not develop independence and flexibility in law students is doing a disservice to the law, as well as betraying its intellectual role within the University. Where legal education consists simply of transmitted wisdom and acceptance of the *status quo* in the law, the result is lawyers who are not only unthinkingly conservative, but who lack the flexibility and independence with which a University education should equip them.

Legal education in a university should equip students with a critical and questioning attitude, with broad perspectives and with the skills and knowledge required for whatever career they may choose. Teaching methods, so far as is possible, should encourage individual research and reading and discourage passive listening. Most students learn more effectively by doing; by participating in some activity which forces them to think about the material they are studying and practice their learning and other appropriate skills. The law may be seen as an abstract body of principles to be analysed, but it is also important in our society in other ways. If students are to

understand fully law, they must appreciate that it is not just a body of abstract principles. An appreciation of the practical dimension of law is vital, both professionally and for a full understanding of the law.

An interviewee from this law school commented that the school was founded,

with a vision of doing something different – a law school with a small intake, where students were involved in interdisciplinary study, where they were exposed to a different curriculum which was based on inter-disciplinary material, with compulsory skills subjects, and where there was an emphasis on student-centred learning and student responsibility for learning which at the time had not been implemented in other law schools. Generic and legal skills, and our student placement ... We are still trying to do it with more students and less resources.

Based in a regional city, the school considered that it had “responsibilities to the local community”.

An interviewee from a law school that was founded in the late 80s mentioned,

it was thought that our school should be structured around what we identified as Australian and, to the extent I and my colleagues were aware of it, international best practice. We identified Australian best practice in the same way as the Pearce Report, and international best practice models were based on overseas law schools where staff had previously taught. Australian best practice was important because we wanted to ensure that the school stressed the virtues of full-time academic staff without significant non-academic workloads, teaching on a semester basis, intensive courses with significant contact hours in the range of around four hours per subject/course/unit, and as much as possible, to teach smaller groups if not small groups, recognising we didn't have, and had never been promised, funding at [that level].

From McGill [Law School in Montreal] we borrowed the idea of the integrated degree approach, which is to say over the five years of our integrated degree programs our students would do something significant from each program - Law and the other program - each and every year, so that the law wouldn't be 'built on' at the end of the program in the other degree, or vice versa.

This school also distinguished itself from other schools in its state by offering students a clinical elective, and “good teaching and learning and a good relationship with our students”.

Other third wave law schools found particular areas in which they were able to claim distinctiveness, especially when compared with first wave law schools.

Case Study 2.3

One third wave law school has positioned itself as a corporate commercial law school, with a focus on skills training. The school offers an integrated skills program, where different skills are introduced early in the program, and then developed later in the program. There are four core subjects (Communication, Information Technology, Values, Organisations) and these subjects are offered early in the degree program. “Within a

rigorous intellectual framework for looking at the substantive law, we aim to show students how that applies in a corporate commercial environment.” The corporate commercial focus is operationalised through the types of electives that are offered to students in their later years (there are specialist corporate commercial streams), and the way that the substantive subjects are taught. For example, the law of contract is taught, not by introducing theories of contract, but by considering how a corporation would draft a contract, and what, in a commercial environment, is needed in a contract. A further point of differentiation is that the LLM and LLB programs are taught in a trimester system, and in small classes of ten students.

Other law schools have also tried to distinguish themselves from the other schools in their state through emphasising their commercial law focus, but for one law school this was only one part of what it saw to be its larger focus on flexibility.

We first of all have the commercial law focus that not all law schools have. Secondly we have the complete distance education program, or the off-campus program. We see that as a major advantage because our on-campus students also have the advantage of using the materials for the off-campus students and we know that in many universities where they haven't got an off-campus program, the materials that are available to the students are not that comprehensive and we think that it's a major advantage of our program. ... We provide the opportunity for students that cannot otherwise get into the legal profession ... to join the legal profession, and some of our very best graduates nowadays come from that program. We've got neurosurgeons in that program, we've got dentists, we've got doctors, we've got architects, we've got secretaries, we cover almost every single possible career that you can think of, ... [O]ur system is very flexible. Even if the unit is not available on this campus, if we don't teach it in the on-campus mode, an on-campus student can take any number of off-campus units. So we don't make students enrol in the on-campus mode. It's completely, entirely up to them also to enrol in the off-campus mode. ...

[T]hen in the third instance, we concentrate on practical legal skills and also on dispute resolution components, plus we have as part of our program what we call the professional experience. This is all part of our flexible and profession-focussed approach.

Furthermore, at this law school, the practical legal skills and dispute resolution components are included in different compulsory subjects, and, in addition, students must gain 21 days of unremunerated work experience in some form of legal practice.

Another law school that also claims to place a very strong focus on commercial law, particularly corporations law and taxation, also claims to have a very strong skills focus in its LLB program. The commercial law focus has “paid off” because

we have got a good graduate employment success rate. But that is also linked to the skills focus because the sort of feedback that we get from employers is that our students can hit the ground running quite well.

The school has also developed its international and comparative focus. The school also has a relatively small student intake, which means that it can offer students small class sizes.

Case Study 2.4

One law school differentiates itself by its clinical program. It introduces students to basic legal skills in the core program, and then offers students the option of an LLB coupled with a *Diploma in Legal Practice*, which qualifies them for admission as a solicitor. “The Law School ethos is that the practical training to become a lawyer is a central part of the whole academic experience of doing a law degree.” It also claims, that as a small law school, it is able to offer its students “excellent” pastoral care, and, with its location in a provincial city, has a strong regional focus.

Another law school distinguishes itself by its clinical program in conjunction with its small business legal centre, and its placement program. Other distinguishing features include:

a global perspective, because the university already has some reasonable exchange agreements in place with other institutions. ... Our senior staff [have] good links and networks with international universities, particularly in Asia and in Europe. ...we have about 17 different languages covered by our staff and our students speak about, at last count, 48 different languages, and what traditionally might have been seen as a disadvantage, I think in areas with high migrant populations, we’re trying to turn into an advantage.

This school is also trying to develop a distinctive approach to information technology .

In a similar vein to some law schools already mentioned, one law school distinguishes itself from its local competitor through its focus on

practical legal and generic skills leading into practical legal training as part of the degree structure itself. ... [The] school is very conscious of wanting to align itself with the practising profession. It sees itself as a school whose function is to prepare students to become practising lawyers.

Two of this law school’s ten expressed goals are:

- To maintain and develop a high quality Bachelor of Laws and Legal Practice programme, which provides a broad legal education, integrates practical legal training with the teaching of substantive law, and allows graduates to pursue a variety of careers in the legal profession and in other sectors.
- To promote equity in access to legal education and to the legal profession.

Furthermore, this school is committed to providing its students with practical legal training, enabling them to enter the profession upon graduation - it saw this as an “access and equity” issue - and is additionally committed to doing this “on a HECS-liable basis”. At the same time, the school recognises that not all students wanted to become practising lawyers, and sees itself as giving these students “the broader skills that make a law degree useful. ... We don’t think that the two are mutually exclusive.” The school also prides itself on developing critical analysis in its students, and considers that one of its strengths is legal theory.

We want our students to be at the same time being both problem solvers and critical thinkers, and having an understanding of the place of law in society. And I think trying to inculcate a sense of service into them and also a sense of the privilege that a law degree gives them. The privilege extends to their access to the various power structures and the ability to work within those power structures and affect change.

This school has a strong commitment to students from local state high schools, which “tend to be the less advantaged areas” and “which were otherwise un[der]represented in law schools. It would be fair to say that this school has not directed a lot of energy to trying to convince students from the elite private schools that they should come here.” Finally the school houses the University’s Criminal Justice Program, and teaches law subjects in the Commerce Faculty. Both these activities broaden the types of elective subjects available to LLB students.

One law school founded in the late 90s attempts to distinguish itself in a number of ways. It has adopted a small group approach (less than 40 students in a class). The LLB program “has a basic focus on law and ethics. ... It includes formal instruction in the foundation of moral and ethical concepts influencing approaches to life as well as to the practice of law.” The ethics focus is reflected in a number of compulsory subjects. The program also emphasises “practical legal learning” and “the concepts of duty, social function and service to others.” The LLB curriculum includes the subject *Remedies* in the core program. The school’s final point of distinction is the way students are selected for the LLB program. Entrance is based not only on school leaving scores, but also on an interview. This approach is influenced by the professional focus of the school, and the concerns expressed by members of the local profession that they were unable to acquire, and keep, good, well-rounded graduates. The school thought that these interviews revealed the perception among employers that many first wave law schools attracted school-leavers with high grades “but who weren’t necessarily committed to not only studying law, but to practising law, and who were not necessarily selected according to whether or not they were well rounded and had something more than just a commitment to go to university”. This school thinks [but admits to having no proof] that graduates from first wave law schools are often unhappy in legal practice, and quickly leave. As such, the selection process this third wave law school adopts is designed to attract students “who are motivated and focused, and who are aware of what they want to do, and not just school-leavers with high grades”.

One third wave law school reported to being committed to smaller group teaching and to the development of professional legal skills, as well as to broader academic skills.

Most of all, however, we see ourselves also as being a law school committed to the region. ... We see ourselves to some extent as an equity law school serving students who are perhaps more economically disadvantaged than the general range of law students. Students who may come from non-English-speaking backgrounds. ... So we see ourselves as involving a commitment to the people of our region, and to the students that come from our region and it’s almost a privilege to have young students who are the first person in the entire family to be involved in tertiary education. It’s quite a thrill. ... So I think we’ve got that level of commitment.

I suppose where we see ourselves going in the future...to develop stronger links with our communities. We see ourselves as supporting our communities more directly. We've started with a number of things ... for example we do work with [two local] Legal Centres. We have the links with Public Interest Advocacy; we have strong links with the [local] Law Society.

So we see the opportunities there to develop very strong community support and links. We like to think that maybe that will provide us with something which may distinguish us from just another law school trying to do the best they can because ... we want to see ourselves as being part of the community, that we are providing decent and important services to our community.

Another regional law school founded in the early 1990s, originally considered itself to be "ahead of the pack" in that it required all students to complete compulsory legal skills units. Since then the school has developed two distinctive features, which were both a response to the law school's geographical location, and the expansion of the law school in conjunction with other fields of study.

We have developed a series of elective units that are very much a response to our geographical location, so that we have got Indigenous People and the Legal System, Indigenous People and Property Law. We do work with ATSIC and encourage people to take complimentary programs through our degree program and also, although it's not part of our undergraduate program, the Centre for Southeast-Asian Law was established at this university, and accordingly we've had input on matters associated with Southeast-Asian law. So we have introduced Law, Society and Malaysia, we offer intensive programs in Indonesian Law; we are offering Indonesian Commercial Law this year as well.

One law school was established "not only to run an LLB degree". The school also offers "uniquely the only Australian paralegal program, which has 1000 students and a Bachelor of Legal and Justice Studies program". The school aims "to address the needs of people working in the legal industry or who want to work in the legal industry but not as practising barristers and solicitors". So the school "is not just another law school". It was established to teach principally in the paralegal area, but "to have a high quality law degree coming out of that program". The establishment of the paralegal program predated the establishment of the law school, the acquisition of the law library and the appointment of the professoriate. So the most distinctive feature of the school,

is in the paralegal and justice area and the fact that we were providing education and training to people that in the past simply had no access to that from anywhere else in the country. So that was and still is the most distinguishing feature of this law school. This is the only law school in the country where the law students do not make up the majority of students in the school.

We have the smallest number of law graduates, turning only in the order of 30 to 35 or so out per year, and we have the largest number of paralegal graduates. And they become an important source of students moving into the law degree. The very best paralegal students tend to come onto our law degree.

This school thinks that its second differentiating feature is that it services a regional area.

One of the themes for the establishment of a law degree [here], which apparently had been debated for many years, was the notion of training rural lawyers, because in the past there had been difficulty in ... regional areas ... in getting students to study law, and to practice law in the bush. Everyone wanted to practise in the city where the big serious money was. And so there has always been that bit of pressure from local practitioners to set up a law program and hopefully attract students to study law in a regional university but then come back and practise in the regional areas.

We've certainly met that demand but the problem with that theory is that the students who come to study law [in regional law schools] don't necessarily want to go and practise [in a very small town], they want to practise in [regional or capital cities], so you tend to swamp the local market with good quality graduates but only a certain number of those will be absorbed in the area. And we haven't done the studies to really see whether our graduates therefore end up in other regional areas.

To reflect this small regional town focus, the school originally made family law a compulsory subject in its LLB program, "to reflect the fact that a lot of regional practitioners would certainly be working in the area of family law, "and it reflected a bit on our values". The school subsequently dropped this requirement.

This school also has the highest number of women students in the country:

The last time the Centre for Legal Education did their survey we had the highest proportion of female students in the country. It was around 65%. Our paralegal course from time to time has had female students in the order of 90% and it's because of the interconnectedness between the two programs that we get this high percentage of female students coming on. It might also have something to do with the fact that we are regional university, because I think there's still a bit of that old bias where the sons get sent away and the daughters get to go to the local university. I can't prove that one either but I think there's a little bit of that around still.

One law school reported that it also thought its student intake distinguishes it from other law schools, but in this case because of its increasing number of external enrolments

One of the things that is special about this law school is that it is internal and external. Over the years for various reasons, we have acquired more and more external students. We've now reached a stage where over 80 per cent of our student load is made up of external students. ... Our perception is that there is a very large market for an external LLB, and we've been tapping into that – mainly mature-age graduate entry students who want to study law externally and part-time and these students are from cities all over Australia, but they don't attend their local law school because work and family commitments prevent them attending classes. They prefer the external mode of studying because it gives them greater flexibility.

Another law school also has a particular commitment to part-time and mature age students. It, furthermore, also offers a specialist LLB in Australian Indigenous Studies, "tailored to the needs of the Aboriginal and Torres Strait Islander communities". It has recently offered a Masters of Law and Legal Practice program, which is a graduate entry LLB program with a full professional legal training component.

Like some of the third wave law schools, one second wave school always saw itself,

emphasising inter-disciplinarity, law in context, including consideration of legal theory. But our principal emphases would be inter-disciplinarity and law in context.

So it's looking at a legal problem in a variety of ways, sitting it in its social and historical context especially. Any law school worth its salt today is really emphasising law in context and including theoretical perspectives. It's the nature of an academic school these days, where you've got career academics. [We have also] had small-group teaching as our mode of teaching from the first.

Similarly, another law school saw the principal difference between itself and the other law schools in the same city as "teaching law in context and not merely in a formalistic way". It has always taught semesterised subjects and has organised its LLB program to ensure that there is considerable space for students to take elective subjects. "We have a range of electives in contextual areas." It has also always offered students the opportunity to gain clinical experience in a legal service; however, as the Head of School noted:

over time we've become more orthodox in our orientation and the challenge is to maintain that link to context that students have here at law, which is a strong subsidiary orientation in the school, with the increased professional demands and the increased demands we have from students to be connected with the world of work. They want to be well positioned to succeed in law and gain employment.

While the older, first wave law schools did in fact point out distinguishing features, they tended not to see the need to distinguish themselves from other law schools. For example, two interviewees from a first wave law school, the oldest by over 40 years in the state, observed that:

Largely because this is the oldest law school in the state, because ... we [have] had very strong establishment connections, [and because] we had a program running and the tradition had developed, ... I don't think that we had ever consciously looked at other law schools and attempted to differentiate. In fact I would say that if we do anything, we aim to have a broad, professionally-oriented LLB and I don't think that there has ever been a significant movement within the school to customise it or give a special focus as a result.

The efforts to distinguish really has happened [at one law school in the state]. Our model is what was basically followed by [the third law school in the state] when they were set up. Certainly with regard to the LLB we don't try to distinguish ourselves.

Nevertheless this school is distinct from other law schools because of its graduate program and higher degree research program, which includes a JD Program, the Masters of Applied Law, "which is a specialist postgraduate degree program for non-lawyers", and a large PhD program, "which now has over 50 students now enrolled, and we like to think of ourselves as a national leader in PhD work".

Another first wave law school

has always arrogantly proceeded on the basis that as the older established law school, and the largest of the law schools in [this city], we have a reputation and a market position to maintain. ... We have the reputation. But to the extent that we've tried to differentiate ourselves, it's on the basis of the introduction of smaller groups. The fact also that we have a broader range of electives, the fact that we also maintain a strong orientation towards the profession in some respects. We continue with a full course in Procedure. We offer commercial practice. We have a curriculum which to some extent I think we'd say differentiates us from the other law schools. Now, they wouldn't say that, but we would say that. And you come back to the first preference intake. We've done that, and that's not, I'm sure, because we are objectively so much better. It is because we are so much better established, longer established.

An interviewee from a third first wave law school mentioned that it was,

very conscious of what [the special attributes of the law school were], but we are not trying to 'position' ourselves, as would be the case with other states and territories with more than one university. We have a focus which has to be national, with an international reputation, with outstanding research. Even though we are one of the smallest, our focus has to be as an outstanding, small university, and we have developed relationships with a group of comparative universities which are not Australian, because we feel that if we start to benchmark as small we will do so with small universities. So we have been working with law schools like Dalhousie in Canada and Otago in New Zealand. ... Locally we know that we have to produce great graduates for the local market, but we also know that many of our students leave and go elsewhere, so we have to be competitive, at least nationally.

Another first wave School "had positioned itself" in the late 1980s by making its LLB a graduate degree, and by its policy of selecting students on the basis of their university, rather than school, achievement. "The selection issue impacts upon the way you teach – the maturity and diversity of your students." These decisions were reversed by the university in 2002. It was also distinctive because "it tried to deal with legal skills in a scholarly way, closely connected with substantive subjects". Also distinctive was its "early" move to small group teaching.

Case Study 2.5

One first wave law school, lists the distinguishing features of its LLB program as being "the ability of the students in the program", and the "internationalisation" of the LLB program. As to the former, "all the measures suggest that they are at least as good as any other in the country and by international standards they rate very highly", and the challenge for the law school is to aim to "design ... the curriculum for students of that ability, not ... a curriculum which our students might find unchallenging or tedious".

The internationalist focus was built around "specialist subjects on other legal systems, China, Japan and Indonesia, for example", in the LLB elective program; subjects which examined how particular types of transactions are dealt with by different legal systems, particularly in Asia; and the "introduction, from year one, of a strong element of a comparative approach into all core subjects" so that students "see Australian law in the context of a wider array of legal systems". The first year legal theory subject, *History and Philosophy of Law I*, includes material on international law, although taught in a legal theory context. Further components of internationalisation include the relatively high

proportion (12 to 15 per cent) of overseas students in the LLB program, and the development, over the past decade, of international exchange programs for LLB students. Another point of differentiation is the school's large graduate program, including a JD program, and specialist Graduate Diploma and LLM programs, which attracts national and international students.

Another first wave law school distinguishes itself primarily through emphasising “both an education that has strong professional values, and also an education that had very strong and very vigorous theoretical content”; its “international comparative focus”; and some of the key subjects in its curriculum. In relation to the first point of distinction, “any great law school sees these two [strong professional values and vigorous theoretical content] as being essential, and sees them as being in dynamic interaction”. Especially at the undergraduate level:

you're really laying the foundations for people's understanding of law and how they are going to approach it, and there's ... a really golden and essential opportunity to have people realise that many of the decisions on the surface of the law are driven by factors and considerations that lie deep in the law and one really has to pay attention to the deep factors or you're going to be a pretty superficial lawyer at the end of the day. ... It's important that one has that theory-practice interaction going, right from the very start of the curriculum.

In relation to its second distinguishing factor, “members of the faculty are intensively engaged internationally and comparatively”.

To be a top law school ... almost inevitably, you need to have an international law profile. Top universities overseas want to have exchange agreements with us. We have colleagues who are travelling internationally, going to conferences, publishing internationally, so we have an ‘international reputation’, which is a grossly over-used phrase in academia, but it is meaningful for the top three or four law schools within Australia. And that flows over into our teaching. We have a lot of international visitors who come here to teach with us and we go overseas and our students go overseas.

The school also requires all LLB students to complete subjects in International Law (half Public International Law and half Private International Law). Finally, “we have maintained a distinct and separate Equity subject. At a number of law schools they've merged equity into other subjects. ... [T]hat's a mistake, because it's such a dynamic area of the Common Law and it crosses many other subject fields.”

As this discussion has shown, many Australian law schools in recent times have sought to emphasise their differences, particularly in relation to their local competitors. The one notable exception is a third wave law school, that does not think it is able to distinguish itself in any way:

We basically have only just enough staff to be able offer everything that we need to offer, and indeed we have some leakage with some of the distance programs ... some of the optional subjects are offered in other institutions. ... But certainly we haven't had the resources to really try to say: ‘Hey we do something in a particularly unique or different way.’ We'd rather say: ‘Well, we're now the only

ones ... in this part of the world.' The establishment of the Native Title Centre will give us a first real new and different string to the bow and we've got funding for postgraduate scholarships guaranteed already from a variety of different private institutions. So that will mean that we'll be able to broaden things up a bit and have an area of specialisation that is a little different to some of the other institutions and that may be a way of attracting particular postgraduate students.

While first wave law schools are generally in the fortunate position of being able to rely upon their longevity and well-established reputations, they nevertheless were able to point to some recent changes that they thought emphasised their strengths and which distinguished them from their more recently established rivals. Second wave law schools also were keen to distinguish themselves. It was many of the third wave law schools, however, that most clearly sought to explain that what they had to offer was different, and better, than the traditional model of legal education.

Most significant developments in the LLB program

As the previous section of this chapter illustrates, the last 15 years have seen significant developments in LLB programs. The nature of the changes, and the immediate forces and mechanisms promoting change, differ among the law schools.

Some (first, second and third wave) law schools reported a significant degree of stability in their LLB programs during the past decade, largely because they initiated major changes during the late 1980s or before, and have spent the past decade developing or refining their approach to legal education.

For example, one first wave law school conducted a comprehensive review of its LLB curriculum in the late 80s, which established a new model of teaching and curricula in the LLB program (including small group teaching in the foundation first year subjects, a compulsory first year legal theory subjects, and skills development throughout the curriculum) that has since been subject to a continuous process of review. The only major curriculum changes these subsequent reviews generated, however, was the semesterisation of some subjects in 1997 and changes to the range of electives on offer.

Another first wave law school also reviewed its curriculum in the late 80s "in response to the Pearce Report, which had provided very positive feedback". In that review the school

reconsidered the structure of our degrees and started with a preference for the combined degree model....we actively discouraged students from doing the LLB on its own. ... We semesterised most of our subjects. An interesting outcome was the grouping our elective subjects.

The reviewers also decided that all the subjects required for admission should be made compulsory within the LLB curriculum, and because the law school is a "national law school" in the sense that it attracts students from other states, the compulsory curriculum has accommodate subjects required for admission in other Australian jurisdictions. The uniform admission requirements, in the form of the

Priestley requirements in 1992, made this process much easier for the law school. There have been very few developments since 1990, apart from the semesterisation of most subjects, and a slight reduction in the number of electives students are required to complete. In 2002, the school was being reviewed again.

A second wave law school reported that its LLB program has been remarkably stable, because the school believes “it was based on a well-rounded curriculum, and a rounded engagement with law in a wider context”. One minor change involved adding one subject (Company Law and Business Associations) to its list of compulsory subjects in response to the Priestley 11 requirements. Another was the incorporation of the subject *Law, Lawyers and Society* (particularly the professional conduct aspects) into the clinic at the local Legal Centre. A third change was the reduction of the number of electives LLB students are required to be complete – it dropped from 11 to 8 electives in 1998. A new curriculum review process is underway at the time of writing.

One law school has reviewed its curriculum three times since the late 80s. The first important curriculum change over this period had been the introduction of a compulsory year-long first year subject, *Law in Context*, in the early 1990s. This subject introduced “first-year students to the non-doctrinal study of law in the first year, so they didn’t get deluded”. The second major change was the semesterisation of all subjects after a major review at the end of the 90s. Furthermore, a non-Priestley subject, *International Law*, was made a compulsory subject; *Law in Context* was replaced by a semester-long first year subject, *Lawyers, Justice and Ethics*, “where we excised some of the context material, like law and economics, and brought in the ethical dimension, and also a heavy skills component”. Finally, the school introduced a “summer session”.

It’s not a big program but it has six or seven subjects per year and it attracts students who work part-time, students who have fallen behind, students who want to accelerate, and they’ll pick up one or two subjects over the summer.

The only curriculum changes one second wave school experienced in the last 15 years had been a reworking of its compulsory subjects, partly in response to identified problems in the compulsory program, and partly in response to the Priestley requirements. It had also semesterised most of its subjects. From the 1980s, the School had had a compulsory first-year full year *History and Philosophy of Law* subject. It became apparent that this subject was too difficult for entry-level law students, and so since 1999 the subject was converted into a one semester compulsory first year *Jurisprudence* subject, “which is an introduction to ways of legal thinking”. It is now followed by a second semester first year subject that integrates Torts and Legal History. The other revision of the curriculum, “the biggest change”, has been rethinking “the structure and sequence of the compulsory core” subjects. The school introduced a half semester compulsory final year half semester subject in *Legal Ethics*, and made *Trusts and Administrative Law*, previously offered as electives, as compulsory second semester of *Property* and *Constitutional Law* respectively.

One reason for the apparent stability of law school curricula in the last decade is that the major changes in Australian legal education were introduced just before

or during the establishment of third wave law schools. As such, these schools could differentiate themselves from the outset. As for many second wave schools, they are still, by and large, implementing their original vision.

Where changes have come about, they have been in response to resource issues.

So, for example, one law school is still working on model set up when the school was founded 10 years ago, although a recent review of the program has recommended a significant change to the level of integration in the LLB program. As originally conceived, integration involved the law school offering tailored, jointly taught courses to students in combined degrees. The review found that integration required excessive resources (time and energy) from the school. Integration also restricted the school's flexibility in terms of the range of degrees they could offer, because for each joint degree program, a fourth year joint theory subject specific to that combined degree program had to be developed and taught jointly by a member of the law school and a member of the other school. As the joint degree programs expanded, the resourcing of the law school meant that the average number of students taking each joint theory subject would decrease, while the number of staff would remain the same. The school does not have the resources to continue on this path. The review recommended that the fourth year joint theory subject be replaced with a requirement that students do a compulsory interdisciplinary elective.

One law school founded in the late 80s reported that the only major developments since establishment have been the introduction of a part-time LLB program, the introduction of a compulsory research and writing subject, an honours program, the introduction of an Aboriginal pre-law program, and the introduction of a clinical program.

Another law school reported that its most important development since its foundation in the early 90s was the development of an external, "off campus" program in 1993, and

the special reaccreditation process we went through last year. It is part of the university policy to have quality control over our programs and what we convened an advisory panel consisting of people from the profession, as well as [one external academic member] ...we relied on them to give us some advise as to the structure of our program and have restructured our whole LLB program according to their advice.

As a result of this process, the school reaffirmed its commercial law focus but provided students with a bit more flexibility by allowing students to choose their commercial law electives, rather than forcing them to complete specific compulsory commercial law subjects.

One law school began its life in the early 90s with half of its students as external enrolments. Now over 80 per cent are external students, mainly enrolled in a part-time graduate LLB. Its other major development has been to enhance its elective program; when the school began, most of its subjects were compulsory.

Another law school that was founded a decade ago originally offered its LLB program to graduates only. A few years later it opened the LLB program to

school-leavers, and introduced combined degree programs. It has always had a commercial law focus and this has been maintained. One major change, in response to university policy, was to reduce the number of subjects in the LLB

At that point the way in which the school decided it was going to be able to comply with these requirements was essentially to drop the electives, and so the degree became at that point of time prescribed. ... But in the last two years we have been undergoing a few changes, in the sense that there will be some element of choice put back into the curriculum.

This school is the midst of considering changes to the structure of the subjects that give effect to its commercial law focus.

One regional law school that was originally a college of a university in another state, established a law school in its own region in the early 1990s. "In some ways [the law school] was at the head of the pack then, because we introduced compulsory skills units." The school had also moved away from the narrow and conservative program that it had been required to teach before it became an independent law school, and developed a series of electives that were a response to the school's geographical position, focusing in particular upon indigenous law and South-East Asian law. But since then, "some but not a lot of changes have occurred. I don't think we have responded much to change, frankly", largely due to internal university politics. The major developments have included the introduction of new combined degree programs, and new electives in indigenous law and South-East Asian law; all subjects have been semesterised. "But there have also been significant negative developments", most notably a reduction in staff numbers, and the amalgamation of the law school into a large faculty in the late 90s "that had a negative impact upon staff morale".

Other law schools experienced significant recent changes in their LLB curricula during the past ten years. For example, until the late 1990s, one law school's curriculum had not been comprehensively reviewed since 1937, "and the curriculum had grown topsy, was somewhat irrational, there were gaps and sequencing problems ... in the LLB, so there was feeling within the school that we would need to do something about it". A major curriculum review took place in 1998-1999, prompted by four factors. The most important of these was a change in the admission rules in the state in 1995 "which really did allow us to liberalise the law programs significantly".

Before 1995, the Barristers' Admission Rules had 20 nominated subjects that had to be studied for admission as a barrister. The Solicitors' Admission Rules had 19. But they weren't all the same subjects and so in effect the number of nominated subjects was 22. Although [those subjects] were not made compulsory for the LLB, there was a very strong professional orientation in this law school and it meant that most students actually studied the 22 areas in the LLB, which gave them something like two electives, two real electives, where they could do what they wanted. That meant that most of the teaching resources in the school were going into satisfying the [required] 22 areas. When the Priestley rules came in and dropped it back to 11, we had some initial resistance in the profession. They were saying that even though the admission rules are saying 11 areas of knowledge, we're going to demand the old 19 required for solicitors, under the Solicitors Admission Rules. But what happened of course is that over time the firms saw that other firms weren't requiring, say,

Succession or Securities or Tax, and eventually they just dropped it back. So the change in the admission rules led to a liberalising of the LLB curriculum in this state to a significant extent – and we breathed a sigh of relief.

Two other factors that led to this curriculum review were, first, a university Academic Board Review of the school

which made a number of recommendations about curriculum and that picked up some of the Pearce recommendations, but it sensibly saw that there had been difficulties implementing those in [this state] in particular, because of the state of the admission rules at that point.

A third factor that really did enable us to undertake root-and-branch curriculum reform ... was that the university as a whole decided to unitise and standardise all degree programs in the university. The demands placed on us in unitising and standardising the LLB, demanded a significantly shortened LLB and therefore we had to think from the ground up. ... The unitising process actually gave us a very good reason for being able to make some radical changes to the LLB and push it through the school.

Apart from offering students more elective subjects, the major change coming out of the review was a move to smaller group teaching (less than 40 in a class) in first semester first year classes, the teaching of the first year legal method subject together with *Torts*, and the inclusion of legal skills components in the compulsory subjects. At the time of writing, the school was embarking upon work “to identify , map and embed” graduate attributes into the LLB program.

A second wave law school that was founded in the late 70s did not review its LLB curriculum at all until the early 90s, when a major two-year review was undertaken. In the mid-90s the review’s recommendations were phased in. The review responded, at least in part, to the Pearce Committee’s criticisms of the school’s curriculum “being a bit narrow and vocational in focus”, and so the school put “great emphasis on theoretical and critical perspectives”. At the same time the uniform academic admission requirements came into force, and the school, which had previously been restricted by the stringent and detailed admission requirements of the state professional admission authority, “also took the opportunity to revisit the core of the curriculum”.

So we cut the core down and included the 11 areas in the uniform admission requirements within the core curriculum but we built some other things around that, which we thought were essential to have in a classic LLB. So in terms then of choice, there was more room for choice in terms of elective units in second, third and fourth year. In first year we had some non-law components, which we got rid of, but having got rid of them, we opened up new opportunities to undertake them by way of electives, non-law electives.

The review also looked at teaching and learning issues.

We also took the opportunity to look at all of our assessment methods and I think we decided that there needed to be a greater range of assessment methods, tailored to learning outcomes and we moved away from the predominant emphasis that there was at that time on the use of examinations. Probably about that time we started to

think about teaching methodology, not necessarily in a really serious way, but there were people doing things at the edges in terms of utilising technology. I don't think it was a major thing in terms of the review but it certainly started to get on the agenda at that point.

The 1991-1992 review pointed out that this school needed to decide whether to continue with its external program, and that if it did, to ensure that it was up to the standard of its other activities. It also included recommendations about the structure of the first year program – that included a new *Law in Context* subject, to replace the old requirement that students study non-law subjects. This subject was designed to ensure that students' understanding of the broader contextual issues were situated in the context of the law, and “so rather than them just going off and doing non-law electives, we tried to broaden the perspective of the law students by doing these subjects”.

The first year program was revisited in a subsequent smaller review in late 90s to “develop a more integrated first year” curriculum, and to develop its focus on the “practical side of legal education”. While the first review included a working group on skills, and the review included a survey that catalogued the skills being taught in the school,

essentially at that point when we looked at it, it all seemed too hard to actually do something in a very substantive way in terms of teaching and curriculum. But we got over that hurdle and got very much into it in very substantial and substantive ways [in the later review in 1999].

We thought we could do better with what we were offering the first years. We picked up on a lot of the research that has been done about the diversity of student entry, and it also coincided with a major drive to embed graduate capabilities, as we now call them, but they're skills essentially. So we looked again at an integrated first-year program in terms of content and in terms of skills development of a diverse student body, so that, hopefully, at the end of first year we could say that not only do they have these foundations in terms of content knowledge, but they also have these foundations in terms of development of skilled behaviour, across a range of skills that we've identified as important.

Now, graduate capabilities are driving the curriculum. The new first year regime was implemented in 2000, and since then there have been ongoing curriculum reviews “to build on this new platform of skilled behaviour, ... in an incremental fashion to build up the skills profile of our graduates”.

In between the two reviews, there were also significant developments in the school's use of information technology, beginning in the postgraduate program, with university funding to convert the LLM coursework program on-line. “Then the university got interested in on-line delivery”, and, with the help of another university-based grant, “we started to develop online delivery in the undergraduate program in a very serious way”. This development found its way into the second review (of the first year program), so that the review looked at

what ideal would we want from our students in a first-year context in terms of content and skills and incorporating the IT skills which are so fundamental and to make the best use of online delivery.

These developments were motivated by the large external cohort of students, 110 in first year, so that “flexibility of delivery” was paramount. Just after the first review, a staff member reviewed the school’s external program, and recommended a number of changes to the program.

And the view was taken that we had to do things to try and make sure that the external program was at least equivalent in terms of the service that it was providing to what the internal students were receiving. ... So we took the decision to stay in the external program, then we reviewed it, then we started to try and upgrade the external program and then of course online delivery came along, and that obviously has great benefits for external delivery.

One law school believes that it is a good example of a small, but growing, band of law schools in which there is a conscious corporate effort to develop an “integrated, holistic program”.

Traditionally the units were ‘owned’ by lecturers. Ten years ago it was a matter for the lecturers, or the tutors, to just get on with it and you had a curriculum and they just taught to the curriculum. Whereas now I think we actually operate in a very systematic way, as a group. It’s an integrated, holistic program, and developed as a school. That’s the only way we can do it if we’re going to map the integrated, incremental development of graduate capabilities across the curriculum then we have to be assured that something is taught at a particular point in some way that we can rely on.

One first wave law school reported that, since the late 1980s, the school had “changed the way we teach and our curriculum very radically”. Comparing the current law school with the law school of the 1980s is “like describing two completely different situations”. In the 1980s

the Law School had a reputation, which was mostly deserved, of being a very conventional black-letter-law law school that taught law in a very conventional way without very much contextual matter – and without very much incorporation of skills and procedures – on the basis of a kind of lecture format, where the lecturer was the ‘sage on the stage’ and the students were the recipients of his wisdom. And most of the lecturers were indeed men. Since [then], that has completely turned around. When the Pearce Report came out, we were at that time embarking on a process of curriculum change and since then we’ve had at least one more major curriculum change and a radical restructuring of the way in which we teach, into small-group teaching. And so that now I think we do what we traditionally did well, in other words we produce people who are competent at the skills that lawyers need to have. But we teach law very much in context. We teach law very much from a critical and theoretical perspective and we incorporate skills and clinical issues into our teaching.

This school “had poured resources into ensuring that most of our subjects were taught in smaller classes”, of 35 to 45 students. The school had also recruited staff “more widely” in the late 1980s, so now “we have a great variety of backgrounds and approaches to law, which was a very important aspect of the diversification of legal education” that the school believes had occurred from the late 1980s. The result was that a “more contextual approach” was taken in most law subjects

taught in the undergraduate program, and a conscious effort was made “to introduce legal theory into the teaching of the compulsory subjects”.

Another first wave law school reported that its most significant changes to its curriculum were in 1987, with the requirement that the LLB program could only be taken as “part of a double degree”, so that it essentially became a graduate degree, and entry to the LLB program was based, not on school results, but on university results in the other degree program. The university has unilaterally determined, based on the findings of a panel reviewing the law school in 2001, that in 2003 selection once again will be made upon the basis of school results, and also decreed that the law school offer a stand alone LLB program.

The second major set of changes in this school, which came into effect in 1999, were the semesterisation of all of the LLB program subjects, a shift to small group teaching, and the introduction in the LLB of legal skills subjects, which “focus on the practical and applied dimension of law”, but are not intended to be professional legal training subjects. Most importantly, the 1999 reforms included

a change in, and really a very significant change from our perspective, in delivery, so that we changed our delivery from the lecture-tutorial format to essentially an emphasis on student-centred learning and teaching in small groups and seminars, so that essentially we lost tutorials.

The school considers that its existing lecture/tutorial format simply involved

the reflection back of material provided in a lecture and simply the application of that information. What we wanted to do was emphasise that it was for students to actively learn the material themselves and problem solving would be part of that.

The school has “four point” and “two point” semester long subjects. In the four point subjects, students receive four hours of “teaching”, or “facilitated learning”. To make teaching as cost effective as possible, all students in a subject have a one-hour large group lecture each week, and then each student has a two-hour seminar in groups of no more than 30 students, with very detailed study guides. The final hour is “structured, but not face-to-face, teaching” in the form of a lecture guide in the subject materials. Two point subjects comprise a one-hour lecture and a one-hour seminar, or, more usually, a two-hour seminar each week.

Similar changes have taken place at a third first wave law school. In the late 80s, the law school made a decision to concentrate its student intake on school leavers, and to require school leavers studying law to enrol in a combined degree program. “This significantly influenced the shape of the law degree.” A second change, over time, was the “increased competitiveness of entry into the law school, whether it be straight from school, from partially completed university degrees, or from graduates. It is extremely difficult to get into this law school, and the cut off entrance score is very high”. The third change, which was introduced in 1998, was an “instructional change – the adoption of smaller group teaching” in all first year subjects and some subjects in second year. All seven subjects are now taught in groups of 35 to 45. The original plan was for all compulsory and most elective subjects to be taught in small groups, but budgetary issues have stymied this aim.

A law school that was established in the mid-1990s “inherited a paralegal program that was already established, [and had] to try to blend the paralegal objectives and the fact that we had a new market with the second degree, to establish a law degree in a regional area”. The school initially offered a three-year graduate LLB program, “but we did have a pathway for our paralegal students directly into that program if they had achieved excellence in the graduate course”. Subsequently, the school has introduced double degree programs and began to attract high quality high school leavers into the program. From 2003 the school will be offering its law program externally. The change in strategy from a graduate LLB program to combined degree programs, and external students, came about because

the number of students entering the graduate programs started to taper off. In a regional area like this, you fairly quickly fish out the pond, and that is why many regional universities end up offering their programs externally. We assumed, I think rightly, at the beginning that if we set up a law degree, given the high entry mark and the high demand for law programs right around the country, that we would be swamped with applications of a very high order. Well that was true initially, but you can't sustain that. The fact that city universities have very, very high demand in law programs does not mean that that translates into high demand in regional areas. That was something we had to learn and we've adjusted accordingly but at the same time we've managed to maintain our entry standards, which is an interesting development.

Similarly, a law School that began its life as a department of legal studies in 1992 decided to offer an LLB program that was focused on teaching “law in context”, and the school initially decided only to admit graduates to its LLB program. But since 1992, the school had changed in three substantial ways. First, about four years ago the school, under pressure from the university, the school decided to admit school leavers to its LLB program. Second, the number of LLB students increased dramatically, and the number of students in the Legal Studies program declined:

What's happened over the last several years is that the BA has been radically slimmed down and the number of EFTSUs for the BA degree has been radically cut down and so our number of Legal Studies students is about a third of what of what it was at its height. That means our overall number of students is somewhat down but it has been, to a large extent, balanced, not quite up to where it was but to a large extent balanced by the growth in numbers of the LLB. So about half our students would come from our LLB, if not more.

Third, the school over a period of time, moved towards “the inculcation of legal skills.” As the Head of School noted,

At a certain point ... we did in fact become a law school [rather than a legal studies department]. ... We've now branded ourselves from last year for external representational purposes, and we've become a law school and so we are more professionally oriented, far more so than we were when we began our existence as an LLB provider. So yes, we've become more like the other law schools and the task then is to maintain ourselves as a law school with a difference.

First and second wave law schools did not have a monopoly on change during the 1990s. Some third wave schools did rethink their approaches, and in some cases, introduced major revisions to their curricula. One example is a law that was founded in the early 1990s, that made a decision in 1999 to undertake a comprehensive review of its LLB curriculum, and introduce significant changes. The most important of these was “the incorporation of practical legal training into the degree structure itself, so that we changed from a Bachelor of Laws degree to a Bachelor of Laws and Legal Practice”. Students completing this program could be admitted to practice upon graduation. The school went through a process of extensive negotiations with the local professional admission board in order to ensure that these changes were effective. It also made more of an effort to “integrate and formalise legal and generic skills teaching into the LLB portion of the degree” which preceded the specialist practical legal training subjects. To bring about the integration of practical legal training in the LLB program, the school reduced the relative weighting of its compulsory subjects and increased the weighting of electives. It also semesterised subjects in the LLB program, and made sure that its first year subjects were properly integrated and co-ordinated. Like many other law schools, it also experienced a significant increase (15 to 25 per cent) in student enrolments in the period from 1997.

For some third wave law schools change has been traumatic, and driven by factors external to the law school. One law school founded in the early 1990s had the intention to confine its annual student intake to 65 students to enable the school to offer students the opportunity to integrate their study of the substantive law with a clinical legal education program (which would result in students receiving an LLB degree with a Diploma in Legal Practice). The clinical program relied heavily on legal practitioners in the local community, and the school was concerned to moderate the demands placed on practitioners. It was soon apparent, however, that the vision of a boutique law school was not financially viable, because of the relative funding model (mentioned in Chapter 1). As a regional law school in a university that does not permit undergraduate student fees, the options for increasing income are confined to increasing undergraduate numbers. With the trebling of the size of the student body, on average only 55 students (about one-third of the LLB cohort) now undertake the clinical or diploma program together with the LLB program. The remaining students undertake the straight LLB program alone. The increase in student numbers has also had a significant impact upon teaching and learning in the law school. Class sizes have been dramatically increased, skills components removed from core subjects, and seminar teaching in the core program replaced by large lecture groups.

One third wave law school reduced the number of compulsory subjects that it offered in the late 90s, and reduced the number of classroom contact hours in most subjects in 2001. “In both of those situations, although a lot of the debate raised questions of educational quality issues, their initiation was to a substantial extent driven by responding to limited resources.” When the school was founded in the early 90s, it enrolled 75 students. For the first five years the school maintained these numbers, but then student numbers increased to 150 in 1999, and in 2001 the school had enrolled 180 students. “So we have doubled our student intake in about five years, without additional resources”. The school is

still committed to its founding vision but “we’re trying to do it with more students and less resources”.

From 1999 to 2001, this school formed a committee of law school staff, supplemented by an external academic, to review its LLB program. This was

the first real opportunity to critically evaluate, in a comprehensive way, the aims, structure, methodology and content of the LLB degree programs. ... The Review ... examined and evaluated all Faculty systems, policies, structures and content in the LLB program ... and identified areas of concern and issues to be addressed and ... developed appropriate strategies to deal with these.

The recommendations of the review covered the first year program, the compulsory subjects, the integration of all Priestly subject matter requirements into the compulsory program, the elective program, the honours degree, the development of skills and values throughout the degree program, and teaching and learning issues, including significant attention to assessment.

One regional law school began its life as “a feeder law school” for another law school in the state, until it became an independent law school approximately ten years ago. It is significantly under-resourced by its university (it did not, for example, receive any start up funding from its university) and has struggled in the face of increasing student numbers, increased casualisation of staff, and the development of its law program in another provincial city. The second campus program, however, has been very successful with a 20 per cent increase in enrolments annually, and with a rising entry score. Over the past seven years “we’ve doubled in size, opened a second campus, widened our elective program, which lots of people haven’t yet done”.

In 2001, one law school became the amalgam of two law schools, both formed in the 1990s and operating at three campuses within a “network university”. From 2001, the university abandoned its network structure and became a single university, and a single law school was formed, operating on three campuses. The law school offers a single LLB degree, and a variety of double-degree programs available across the three campuses. This restructuring has “preoccupied law school staff for two years, and the program is still being bedded down”. The process involved “a significant curriculum revision process”, which has had to reconcile issues such as different approaches to the incorporation of the Priestley requirements, and “different ways of dealing with subject matter”. The restructure “involved a curriculum revision about what we taught, and how we taught it”. This involved dealing with complex multiple campus matters such as having students in combined degree programs travel between campuses, and some campuses not having enough teaching rooms to cater for over 50 students in a class. The restructure, however, has also resulted in some interesting new electives in the LLB program, including *International Criminal Law*, an employment law program with a local legal centre, and an elective involving a placement and a research project with a public interest advocacy centre.

So there have been items of that kind happening over a period of time, often responding to changes in the environment, initially through the introduction of new electives. In many ways these developments are at the forefront of change, because

they recognise where the needs are, where the developments in law are, and how we need to respond to it.

A law school founded in the late 90s has since developed and stabilised its LLB program, as well as developed combined programs. Furthermore, in 2001, it introduced a JD program “to attract high quality students”.

A law school that was very recently is developing a clinical legal education program, with the assistance of some external bodies, “which will provide students with the capacity to interact with the law in a real life situation”. This program is being established around a small business legal centre, which has been introduced as a result of “the density of multi-ethnic small businesses in this particular region”. The school has also worked hard to get its students involved in “doing things that even some more mature law schools don’t”, such as participating in international competitions, and establishing international exchange programs with Chinese and Malaysian universities. The school is also arranging for students to do “instructing in courts, with the assistance of local practitioners. We’re also involved in ... doing research on public interest law matters with one of the major private firms involved in public interest actions”.

Another significant change for some law schools has been their change in status from autonomous single school faculties to one of many schools within a larger faculty. For a law school that was placed within the university’s Business and Law Faculty, one major consequence of this action was that key decisions (the size of the student body, teaching and learning policies etc) became faculty decisions, and not simply school decisions. Another law school “downgraded from a faculty to a school” reported that that decision-making occurs at the faculty level “and the school no longer has the control it had over educational issues”.

We no longer have control over our own budget and complete discretion about how we spend our money. We met our budget targets, we didn’t cause any grief in the university and we brought high levels of university-quality students into a university that often doesn’t have a very good quality intake in other disciplines. But nowadays we find ourselves no longer a faculty, just a school in a division where the school barrier itself is not clearly defined, where the budgets are not clearly defined and where we can’t be certain that the money that’s designated for law students actually finds its way into the law students’ hands.

The problem you get in the divisional structure is where you have a one-line budget to a divisional theme, if they’ve got a basket case in one of their schools and a highly thriving school in another part of their division, there’s a dreadful risk that the school that’s thriving will subsidise the school that’s a basket case. And that’s exactly how the money doesn’t get to the discipline areas, because they’re solving another problem with, say, law student money. And that’s a serious, serious issue. That’s why autonomy to law faculties is really important. Because if somebody else has got a problem well that’s their problem. It might be a selfish approach but it’s one that recognises the fact that our law school students are paying triple levels of HECS compared with some of these other disciplines that in fact cost far more to teach. So the cross-subsidisation of student fees is just appalling in universities.

So the most critical effect on structural issues is the capacity of a content or discipline expert to deal with the latest innovations in curricula, or the latest changes in curricula, and put in place systems that work for that discipline in that university. When I'm talking about law, I have a very strong view that law should be controlled by lawyers, by academic lawyers, not by somebody else from another discipline who doesn't have a clue of the values. So every time we make a decision that any academic lawyer would see as such an obvious decision, you suddenly find you've got to write a 20-page report to justify it to some person who's ignorant of our discipline. And that's where bureaucracy comes into place. And that's where you waste a huge amount of time on such models.

Another former autonomous law school that in the late 1990s became part of a larger "mega-faculty" reported a significant negative impact upon staff morale.

It also had an adverse effect on the process [of curriculum development and teaching and learning] because they were fairly tightly monitored when we were a separate law school, but when we were amalgamated it all just seemed to fall apart and the processes that were set in place were not very good.

In the past year or so the Head of School has tried to isolate the Law School again to some extent by securing for it a greater autonomy, independent budget and things like that. And that's starting to have some effect, because we have got little bits of control again over our destiny, and that is an improvement. But I think in the last few years people have been pre-occupied with administrative issues rather than academic issues.

Another staff member expressed the consequences of amalgamation vividly:

probably a less formal development that has been significant and extremely important, [was the] the solar plexus punch that we took with the drastic reorganisation that was brought about by financial constraints. We had to downsize in terms of staff, we lost administrative staff, we were made a school, rather than having our own autonomy as a faculty, and this inevitably had influences on staff morale, student morale, and so on.

Another interviewee thought his school's change in status from school to faculty created difficulties in their relationship with the profession and with students:

When we were a faculty, the Law Society would have a meeting with us and if the Law Society wanted something done, or the students wanted something done, [we] could say, "It's done. Consider it done". We now have no authority to do that. So why should the Law Society waste its time having meetings with us? Why should students waste their time having meetings with us, when we sit around and talk about: "Oh yes, yes. We'll do this; we'll do that", when we actually have to say to them: "Okay, that's really good, but now I'll just have to take that for approval to somebody else"? [Also] the university is very scared of setting up different rules for different schools, so while the Law School has had a different way of running things in the past, something that was very popular with students, something that was very popular with the Law Society, within the new faculty structure, with the school being subsumed within that, we have to kowtow to the commonality of other rules, which may not suit what we've done in the past.

Contrary to the experiences of the schools above, one law school that lost its status as a single school faculty in the mid-90s – it became a school within the Faculty of Business, Economics and Law – reported that it has retained a lot of autonomy over teaching, learning and curriculum issues.

Also against the trend, was the experience of one law school that from 1997 to 2001 was part of a larger faculty, which, in the words of one interviewee,

was less than optimal. [But] We have been given our faculty back, but I think it was quite ridiculous really. ... I cannot understand how law schools allow themselves, not only to cross subsidise other schools, but to be subsumed under these mega-faculty structures, because really at the end of the day there are some responsibilities which we have to our profession and with that extra shareholder it means that there are certain decisions that we should make.

Summary

This chapter describes the ways in which Australian law schools have sought to emphasise their distinctive features, and provides an overview of developments in Australian law schools during the past fifteen years.

It also describes the major developments in legal education over the past twenty years or so, and, as will be explored in subsequent chapters, many, if not most, of the significant changes came about in the late 1980s to mid- to late- 1990s. There now appears to be a diversification of legal education, with law schools differentiating their offerings, and focusing their programs on different aspects of legal education. The chapter shows that law schools have gone to considerable efforts to emphasise their individual distinctiveness, particularly in relation to their immediate competitors. In general, it is clear that most first and second wave Australian law schools have reinvented themselves in the past fifteen years, and the third wave law schools have been careful to “offer something new”. Most of the efforts to differentiate have taken place in the LLB program, although five law schools have developed Juris Doctor (JD) and similar programs aimed at graduates wishing to change careers. Some law schools have focused on particular areas of law (such as commercial law or international law), and many have developed their teaching of generic and professional legal skills. Others have rethought their approaches to teaching, and, for example, have put resources into reducing class sizes (see further chapter 11). Some have expressed a commitment to their local region. Others have developed their graduate and postgraduate coursework programs, and some have decided to upgrade their higher degree research programs.

Law school curricula have been regularly reviewed since the late 1980s. For some law schools, the past 15 years has been a period of great stability, affected only by issues such as the introduction of the Priestley requirements, or the semesterisation of subjects. Some of the new Law Schools introduced their curricula upon inception, and the period since then has largely been a process of refining the curriculum. Some schools with ambitious programs have had to wind back on important initiatives in the face of inadequate resources to support their educational vision. There has been a significant trend towards skills teaching in law schools, including infiltration of professional legal training into the

undergraduate programs of some law schools. At the same time most law schools now place a stronger emphasis on legal theory and ethics teaching.

CHAPTER THREE

THE STRUCTURE OF LAW PROGRAMS

In chapter 1, we reviewed the debates about the orientation of undergraduate law programs, including the tension between the law degree as a professional qualification, and its need to justify itself as worthy of a place in the academy. In chapter 2 we noted pattern of law schools of distinguishing themselves from their immediate competitors. As chapter 2 suggests, to some extent law school responses to both of these issues have been addressed by the overall structure of the LLB program, particularly where it is taught, and studied, in conjunction with programs in other disciplines – either as combined or double-degree programs; or where it is offered to students who have already completed an undergraduate degree in another discipline. Indeed, one possible indicator of the development of a more diversified and interdisciplinary approach to legal education is the proliferation of combined and double-degree offerings, and of graduate LLB programs, in the past decade.

Indeed, a feature of the past 30 years of legal education in Australia has been the development, indeed proliferation, of combined or double-degree programs, and, to a lesser extent, the growth of graduate LLB programs. This chapter is concerned with:

- the growth of double-degree programs;
- the aims of such programs;
- the types of degree programs that are combined with LLB programs;
- student enrolment in the various combined degree programs, and in “straight” LLB programs;
- the extent to which LLB programs are integrated with their partner programs;
- the growth of graduate LLB programs, Juris Doctor (JD) programs and other accelerated degree programs for graduate students; and
- honours programs.

More detailed discussions of the content of LLB programs may be found in chapters 4 and 5.

Expansion and diversification of combined programs

Whereas 20 years ago, most of the existing law schools would have offered no more than half a dozen combined degree programs at most, usually Arts/Law, Commerce/Law, Science/Law and a perhaps a few others, by 2002 some law schools were offering as many as 27 combined degree programs. For example, one law school in 1989 only offered a graduate entry LLB program. It now also offers a “school leavers” stand-alone LLB program, a part-time LLB program, a specialist LLB for indigenous students, and 11 combined degree programs. Even smallish law schools are offering a dozen or more combined degree programs.

There has been a sustained increase in the number of combined programs during the 1990s. For example, one law school began with a core of a graduate entry LLB program and four combined programs (Arts, Economics, Commerce and

Science) and by 2002, this has gradually expanded to 10 – more specific programs in Business/Laws, Finance/Laws; Information Science/Laws; Bachelor of Forensic Science/LLB; Bachelor of Social Science/LLB; Arts Communication Studies/LLB) have been added. This law school also offers a Diploma in Legal Practice/LLB program. It is currently developing together with School of Aboriginal Studies a Bachelor of Aboriginal Studies/LLB program because it has a special entry program for Indigenous students, and special strengths in aspects of Aboriginal Law. One very small regional law school began in the early 1990s with a “straight LLB program” and “the standard double-degree programs in Arts, Business and Economics”. By 2002 it had combined programs in Science/Law, Jurisprudence/Law, and Information Technology/Law. It also offers interdisciplinary programs in Criminal Justice and Legal Studies. A law school that began in 1993 with a graduate LLB program has, in less than 10 years, gradually developed 22 double degree programs, all available to school leavers. The law school that has been the product of a recent unification of two law schools across three campuses currently offers 27 double degree programs.

But it depends on how you count [the combined programs]. If you count Arts/Law as one program, it gives you one answer. But if you count Arts/Law as 12 programs, because they can choose any one of 12 majors, then it becomes 12 programs.

But not all law schools have followed this trend. A first wave law school still offers five combined degree programs – Arts/Law, Commerce/Law, Economics/Law, Science/Law and Asian Studies/Law.

Most law schools keep a close control over the expansion of their combined degree programs, and negotiate the details of each combined program with the other school and with the university. An exception to this is a law school that has a more flexible approach and offers new students the opportunity to combine any degrees in the university; there are no restrictions on the degree programs that can be combined with a law degree. This is possible, claimed the law school, because the law program is small. The University Senate has established a broad framework for combining degree programs, which informs students as to the number of core subjects that must be included in each degree, and the number of required electives they have to complete in a combined program. The combined programs in this law school are not, however, integrated, although in electives students can tailor assignments to areas of interest in the other program. The Dean of this school estimates that there are about 30 combined degree programs, although in the school’s response to the written questionnaire administered by the project team only 11 were itemised.

At another law school, students who have completed a year of a degree in another discipline can enrol in an LLB and “you can combine the law degree with any degree”. The law school’s handbook outlines 20 possible “approved non-law degrees” that can be combined with the LLB, but in practice there were only seven participating Faculties, covering eight combined degree programs.

Other law schools have expressly rejected this “anything with law” model. A law school reported that its university Senate had expressed great interest in its law

school adopting this model, but the law school resisted it, and saw benefit in negotiating the appropriate program and subject sequence with the other school. A further reason for rejecting the model was that the school was committed to ensuring that combined degree programs could be completed within five years, and this, they thought, could not be ensured in a generic combined program, controlled by the university rather than the school.

Table 3.1 below summarises the combined degree programs on offer at Australian law schools.

Table 3.1
Combined Degree Programs offered by Australian law schools

Description of Degree Program	Number of law schools offering Program
LLB alone (4 years)	16 and 1 from 2003
LLB for graduates or graduands (3 years)	All
LLB in combination with any degree offering from another School	2
Bachelor of Jurisprudence/LLB	2
Bachelor of Justice and Society/LLB	1
Bachelor of Legal and Justice Studies/LLB	1
Bachelor of Arts (Justice Studies)/LLB	1
LLB/ Legal Practice	2
Bachelor of Arts/LLB	All
Bachelor of Arts (Languages)/LLB	1
Bachelor of Arts (Communication Studies)/LLB	1
Bachelor of Arts (International Studies)/LLB	2
Bachelor of International Studies/LLB	2
Bachelor of International Studies in Asian Studies/LLB	1
Bachelor of Arts (Asian and International Studies)/LLB	1
Bachelor of Arts (Asian Studies)/LLB	2
Bachelor of Asian Studies/LLB	2
Bachelor of Arts/LLB Law and Japanese Studies	1
Bachelor of International Studies in European Studies/LLB	1
Bachelor of International Studies in Globalisation/LLB	1
Bachelor of International Studies in Languages/LLB	1
Bachelor of Arts (Psychology)/LLB	1
Bachelor of Arts (Criminology and Criminal Justice)/LLB	1
Bachelor of Human Movement Science/LLB	1
Bachelor of Sports Administration/LLB	1
Bachelor of Sports Media/LLB	1
Bachelor of Media Production/LLB	1
Bachelor of Media Studies/LLB	1
Bachelor of Arts (Media and Communication)/LLB	1
Bachelor of Arts (Media and Culture)/LLB	1
Bachelor of Creative Industries/LLB	1
Bachelor of Communication/LLB	1
Bachelor of Communications (Advertising)/LLB	1
Bachelor of Communications (Journalism)/LLB	1
Bachelor of Communications (Media)/LLB	1

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Bachelor of Communications (Publication and Writing)/LLB	1
Bachelor of Communications (Public Relations)/LLB	1
Bachelor of Arts in Communications (Information)/LLB	1
Bachelor of Arts in Communications (Journalism)/LLB	1
Bachelor of Arts in Communications (Media Arts and Production)/LLB	1
Bachelor of Arts in Communications (Public Communication)/LLB	1
Bachelor of Arts in Communications (Social Inquiry)/LLB	1
Bachelor of Arts in Communications (Writing and Contemporary Culture)/LLB	1
Bachelor of Journalism/LLB	4
Bachelor of Psychology/LLB	2
Bachelor of Applied Psychology/LLB	2
Bachelor of Health Science/LLB	1
Bachelor of Medical Science/LLB	3
B Behavioural Sciences/LLB	3
Bachelor of Social Science/LLB	5
Bachelor of Social Work/LLB	2
Bachelor of Public Policy/LLB	1
Bachelor of Public Relations/LLB	1
Bachelor of Aboriginal and Torres Strait Islander Studies/LLB	1
Bachelor of Indigenous Studies/LLB	2
Bachelor of Architecture/LLB	2
Bachelor of Town Planning/LLB	1
Bachelor of International Business /LLB	1
Bachelor of Business/LLB	6
Bachelor of Business (Management)/LLB	3
Bachelor of Business and Economics/LLB	1
Bachelor of Business (Accountancy and Organisations)/LLB	1
Bachelor of Business (Human Resource Management and Industrial Relations)/LLB	1
Bachelor of Business (Accounting)/LLB	2
Bachelor of Business (Marketing)/LLB	1
Bachelor of Business (Economic Commerce)/LLB	1
Bachelor of Business (Economics and Finance)/LLB	1
Bachelor of Business (Financial Mathematics)/LLB	1
Bachelor of Business (Information Systems)/LLB	1
Bachelor of Business (Applied Economics)/LLB	1
Bachelor of Business (Tourism Management)/LLB	1
Bachelor of Management/LLB	1
Bachelor of Business Administration/LLB	2
Bachelor of Information Management/LLB	1
Bachelor of Commerce /LLB	All except one law school
Bachelor of Commerce in Actuarial Studies/LLB	2
Bachelor of Actuarial Studies/LLB	1
Bachelor of Commerce in Business Strategy & Economic Management /LLB	1
Bachelor of Commerce in Economic History/LLB	1
Bachelor of Commerce in Econometrics/LLB	1
Bachelor of Commerce in Finance/LLB	1
Bachelor of Commerce in Financial Economics/LLB	1
Bachelor of Commerce in Human Resource Management/LLB	1

LEARNING OUTCOMES AND CURRICULUM DEVELOPMENT IN LAW

Bachelor of Commerce in Industrial Relations/LLB	1
Bachelor of Commerce (Accounting and Finance)/LLB	1
Bachelor of Commerce (Politics and Public Policy)/LLB	1
Bachelor of Commerce in Information Systems/LLB	1
Bachelor of Commerce in International Business/LLB	1
Bachelor of Commerce in Management/LLB	1
Bachelor of Commerce in Marketing/LLB	1
Bachelor of Marketing Communication/LLB	1
Bachelor of Commerce in Economics/LLB	1
Bachelor of Tourism/LLB	2
Bachelor of Economics/LLB	15
Bachelor of Applied Economics/LLB	1
Bachelor of Economics (Social Sciences)/LLB	1
Bachelor of Accounting/LLB	1
Bachelor of Finance/LLB	2
Bachelor of Commerce in Finance/LLB	1
Bachelor of Banking in Finance/LLB	1
Bachelor of Applied Finance/LLB	1
Bachelor of Financial Administration/LLB	1
Bachelor of Engineering/LLB	6
Bachelor of Engineering Science/LLB	1
Bachelor of Engineering in Civil Engineering/LLB	1
Bachelor of Engineering in Environmental Engineering/LLB	1
Bachelor of Property and Construction/LLB	1
Bachelor of Electronics and Communications Engineering/LLB	1
Bachelor of Science/LLB	21
Bachelor of Applied Science/LLB	2
Bachelor of Computer Science/LLB	4
Bachelor of Science in Computer Science/LLB	2
Bachelor of Computer Engineering/LLB	1
Bachelor of Science in Information Technology/LLB	1
Diploma of Information Technology Professional Practice/LLB	1
Bachelor of E-Commerce/LLB	1
Bachelor of Mathematics & Computer Sciences/LLB	1
Bachelor of Mathematics/LLB	1
Bachelor of Science (Environmental Science)/LLB	1
Bachelor of Environmental Science/LLB	1
Bachelor of Natural Resources/LLB	1
Bachelor of Health Sciences/LLB	1
Bachelor of Science (Forensic)/LLB	1
Bachelor of Biotechnology/LLB	2
Bachelor of Fine Arts/LLB	1
Bachelor of Art Theory/LLB	1
Bachelor of Contemporary Music/LLB	1
Bachelor of Arts (Theatre Theory and Practice)/LLB	1
Bachelor of Music/LLB	1
Bachelor of Creative Arts/LLB	2
Bachelor of Information Technology/LLB	7
Bachelor of Information Science/LLB	1
Bachelor of Information Technology and Communications/LLB	1
LLB/Bachelor of Environmental Planning – Law, Urban and Regional Planning	1
Bachelor of Environmental Management/LLB	1

Bachelor of Environmental Studies/LLB	1
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Table 3.1 illustrates the extraordinary range of combined degree programs available in Australian universities. While all law schools offer the Bachelor of Arts/LLB degrees, all but one the Bachelor of Commerce/LLB degrees, and the majority the Bachelor of Science/LLB and Bachelor of Economics /LLB programs, most of the other offerings are highly specialised, and offered only at only a few (often only one) law school.

Despite the wide range of combined degree offerings outlined in Table 3.1, the development of new combined offerings continues apace. Many, if not most, law schools indicated that they had introduced new combined degree programs in the past two or so years (for example, one law school introduced three or four in this period), and many were in the process of negotiating new combined programs at the time of law school visits.

Even within law schools there was a strong debate about whether there could be too many combined programs in a law school. Some Deans and Heads were opposed to a proliferation of combined degrees. Some interviewees commented that the proliferation of programs led to practical difficulties. “Even though we offer three streams in the first year [introduction to law subject] I still find people saying that they can only attend at one time because of their commitments in their other degree.” Some interviewees believed strongly that there should be a clear educational focus to a combined degree program, and that it should not just be the result of student demand. Other law schools considered that their current combined degree programs were sufficient.

Some law school interviewees said that they started “with the view that we are happy to combine with anything as far as possible”. The Head of School of one of the larger law schools which already had a wide range of programs commented that while there must be a “natural stop” to the proliferation of combined degree programs, the head of school was prepared to consider further programs “if students will be getting a fine legal education and combining it with something else”. Some schools reported that they had not (yet) proceeded with some proposed combined programs (for example Bachelor of Taxation/Law) because they were concerned that the partner program merely offered “more law and was not interdisciplinary. The whole idea of combined degree is to give students another perspective, and wholly different set of skills.”

Why develop combined degree programs?

Why do law schools develop new combined degree programs? One interviewee expressed both the educational and vocational benefits as follows:

I think educationally there is great deal of advantage in learning another discipline or methodology and seeing how its fits with Law. Law is an incredibly sophisticated and technical discipline, and it creates very harsh and sharp minds, but sometimes with a certain narrowness to them too. Having another discipline would ensure that [students who started their law degree fresh from school] and who might finish in four years and go out at age 21 did not do so with a narrow and inexperienced world view ... There is great advantage in a life-long learning sense to explore some other

areas. Certainly some of our students have found that their experience in another degree has made them more saleable to employers. One example is one of our students who did Science/Law, and who is now a patent attorney. Her background in plants and biology made her incredibly attractive to her employer in Sydney, because she could demonstrate the link between her legal knowledge and substantive knowledge in another discipline. I find more and more that these links can be made.

Another observed that it was very important that

law students and law graduates had another discipline dimension and the opportunity to explore another discipline to enliven their law studies and to give them a broader basis for their studying practice of the law.

One interviewee suggested that the real benefit of the combined degree programs is the level of maturity students reach after committing themselves to five years of study. “It is this that employers find to be important.”

Often motivations for introducing new programs are pragmatic and market-focused. Some interviewees speculated that the proliferation of combined degree programs was largely a marketing exercise by law schools and collaborating faculties, designed to attract students to the particular offering. One interviewee cited the following example:

This university has always offered either a BA or a BSc in Psychology, and it's very strong in Psychology. But in order to attract students – we're all trying to attract 17- and 18-year-olds, making a decision in the middle of their [final school] year – the university has introduced a Bachelor of Psychology (Honours), a four-year honours degree. Well when you look at the requirements for the Bachelor of Psychology (Honours), it's very similar to those for a BA in Psychology. And the same with the Bachelor of Business Administration. It's a specialised B.Com, which itself is a specialised B.Ec. So that what's driving the proliferation of combined degrees, I think, is not us but the other parts of the university trying to make their offerings more attractive to 17- and 18-year-old school leavers.

Most law schools, however, were adamant that they had no difficulty filling up their quotas of students, so that they did not develop combined programs specifically to attract students.

One interviewee explained the origins of a new combined degree program as being the result of a number of students entering the graduate LLB program after completing a Communication Studies degree at the same university. The law school subsequently began negotiations with the Communication Studies department to put together a program that might attract people into a combined program. Other combined degree programs were motivated by indications from students that they were aware that particular combined degrees were available at other institutions, which put pressure on the law school to develop combined programs to keep these students.

Another explanation given was that law schools were simply responding to the more particular programs offered by partner schools. For example, one interviewee explained that the school had started with Economics/Law and Commerce/Law, but as Commerce and Economics expanded their degree

programs, the law school responded by looking at ways it could offer corresponding combined programs. Similar to a remark reported earlier, one interviewee mentioned that at her law school

It depends who you count. ... If you're just looking at the combination with a degree, we've got four really, because we've got Bachelor of Law/Bachelor of Arts, Bachelor of Law/Bachelor of Science, Bachelor of Law/Bachelor of Engineering and Bachelor of Law/Bachelor of Business. But within the Bachelor of Law/Bachelor of Business we've got about 10 different orientations or specialisations. So in practice we've got probably four combinations; in reality then there are actually 12 combinations.

In the opinion of one Dean, students study law

it takes a combined degree, not as a straight degree, to get a well-rounded education. ... The combined degrees cover a broad range of issues. [Our law school] always talks about its flexibility with respect to its other degrees. I think it's probably less so now that you have with named degrees. The most flexible has always been the BA/LLB, no matter what anyone says. As soon as you have named degrees you lock into patterns of study that are required to achieve the named degree. But having said that, we do have a very wide range of combined degrees and the students like them very much. They like the named degrees, which is a bit of a shame, and we've been responsive to that as other law schools have. So they end up with a broad double degree, as they will in most places these days, but with that emphasis on law in context.

Student enrolment in combined degree programs

Despite the wide range of offerings, some law schools reported that the most popular combined program was Arts/Law. For example, one law school reported that just over 40 per cent of its students were enrolled in Arts/Law, a total of 40 per cent in three programs in the Commerce Faculty, and 10 per cent in Science/Law. The more specialised the combined offering, the lower the student intake. Students are sometimes reluctant to undertake programs prescribing a high number of compulsory subjects (for example Forensic Science/Law). Many combined programs, such as Fine Arts/Law had very small enrolments, but were attractive to the partner school (i.e. Arts) because it meant that the partner school was able to attract students with better university entrance scores. "Others are keen to combine with us, because our students are usually their best students."

Table 3.2 summarises statistics on student enrolments collected by the Centre for Legal Education, for the years 1995-1999.

Table 3.2
Total national enrolments in combined degree programs

Year	LLB		BA/LLB		BEc/LLB		Bcom/LLB		BSc/LLB		BBus/LLB		Other	
	Nos	efts	Nos	efts	Nos	Efts	Nos	efts	Nos	efts	Nos	efts	Nos	efts
1996	6722	n/a	5242	n/a	788	n/a	3496	n/a	1321	n/a	n/a	n/a	1789	n/a
1997	8162	6635	5934	5278	571	568	3081	3056	1333	1303	1019	991	1490	1451
1998	9131	7117	5788	5576	499	477	3420	3391	1359	1340	1146	1106	2419	2162
1999	9661	7448	6207	5903	599	579	3926	3813	1296	1267	1213	1157	2084	1896
Total	33676	21200	23171	16757	2457	1624	13923	10260	5309	3910	3378	3254	7782	5509

A notable development through the 1990s has been the emergence of graduate LLB programs, typically offering a three year full-time LLB program for students with an undergraduate degree in another discipline. One second wave law school originally offered a graduate LLB as its only program, and, although it has now added 11 combined degree programs, it currently takes 70 students into its part-time graduate LLB program. Many law schools reported a high demand for graduate LLB places, as people sought to change careers into law.

Almost all law schools now offer a graduate LLB program, usually a three-year program. For example, one law school only permits graduate students to enrol for a stand-alone LLB program, and such students comprised less than 10 per cent of its LLB enrolments. Another law school now offers a three-year mature age and graduate entry LLB program, and a two-year “fast-track” LLB for graduates in other disciplines and mature age students. This program includes two summer semesters. Other law schools went further, and offered a Juris Doctor (JD) for fee-paying students (see below).

A Retreat from combined degrees?

Despite the proliferation of combined degree offerings, as described above, the trend towards students undertaking combined degrees (is slowing down and may even be in the process of reversing. Table 3.2 shows that the majority of law schools do, in fact, offer a four-year stand alone LLB degree – only eight law schools did not offer such a program. Further, interviewees from one law school indicated that, in practice, the school only permits school leavers to enrol in a combined degree. Some schools clearly were uncomfortable with offering these programs. Another law school, for example, now offers a four year LLB to school leavers, but

does not promote the single degree to school leavers, but there’s nothing to stop them doing it. Probably the biggest numbers in the four year degree are mature-age people who have worked out what they want to do and they just want to do that degree. But for school leavers we’ve generally found that if you can do a double degree in five years you’re better off to do that fifth year, to get two degrees, two career paths, and a broader view of the world.

It should also be noted, however, that most four year stand-alone LLB programs have not entirely abandoned the notion that law should be studied in conjunction with at least one other discipline. For example, one law school offers a four-year “school leavers” LLB program, which incorporates “non-law” subjects in first year, and additional electives or non-law subjects to make up a four year full-time program.

Some law schools reported an unusually high demand for the four-year stand-alone LLB program. One regional law school, which admitted that its “demographic must be a little unusual”, reported that in addition to mature age students pursuing a graduate LLB, they had had

a relatively high number of students who just want to do a law degree on its own, not do a combined degree. Which doesn’t affect practice at other institutions as I understand it. Over time that gradually is diminishing, but the number of straight

law students as opposed to combined degree law students is still greater, which I really don't know why. It's preferable from the university's point of view, and our point of view, if they take a bit more time to get through their degree and we try and encourage them to do so, but there's still a lot that's just doing the law degree on its own. I suspect it's probably driven by HECS pressures and the like.

In fact, while this experience was not common to all law schools, it was not unusual. The factors motivating this trend away from combined degrees are illustrated by the following examples of law schools that have abandoned the requirement that students study law in conjunction with a degree in another discipline.

Case Study 3.1

A law school that started offering the LLB in the early 1990s, originally offered it as a graduate entry LLB program; it only admitted students who had either qualified from another degree or who were at least two thirds of a way through another degree at the university. In addition, students with at least a "B" average were permitted to transfer to the LLB program from the Bachelor of Legal Studies. In the late 1990s,

we moved also to recruiting students straight out of high schools, but it is still true that more of our students have a graduate standing than come straight out of high school. ... The overwhelming proportion of school leavers do a combined degree.

Now, because of the focus on competition, the Vice-Chancellor simply decided that we should take school leavers, because it is well known that entrants into law have a very high [tertiary entry] score, which has no relationship to anything but demand. And so it was felt that by having this high-class professional degree open to school leavers with a high [tertiary entry] score, that would enhance the profile of the institution vis-à-vis that of others. And then we started going back to people doing the straight law degree. And I have noticed that a number of places are now offering this again, including new places, for the same reason that I have mentioned.

Case Study 3.2

Another law school in 1986/87 decided that it would only offer its LLB in a combined program. This was motivated, to a large extent, by the demographic composition of its student intake – about 80 per cent of its first year intake had been drawn from three private schools in the city. Consequently, from 1987, all students had to enrol in a double-degree program, and a student could only graduate with an LLB degree if s/he had already completed another degree program. Students for the LLB program were selected according to their performance in their other degree program, and not on their school leaving results. Given this, the LLB was considered to technically be a graduate degree. From 2003, the law school will be offering a "stand alone" LLB degree; however, it will no longer select students according to their performance in another degree, but

rather according to their school leaving results. Both of these decisions were imposed upon the law school, following an external review of the law school in 2001; Interviewees from this law school indicated that they were unhappy about these two changes as they thought they would have equity implications.

we're pretty disappointed that the university has seen fit to undo what we see as distinctive and really pedagogically important aspects of our degree. Both aspects of them. Selection from university [is very important]. You get a more even playing field because everyone's got the same library, everyone's got the same teachers, and so on. [We also think it is important for law to be taught] with other disciplines of knowledge. So we're pretty disappointed about that. And the university has absolutely refused any discussion. It just will not discuss it with us. I'm a bit surprised at it too because I don't think it would improve our competitiveness within the state.

Commentators argue that this shift away from away from graduate entry and combined degree programs is symptomatic of increasing consumerism in legal education, as law schools compete for school leavers (Brand, 1999: 124). One interviewee suggested that the trend back to school leaver entry and stand alone LLBs would have a significant impact on the legal profession itself:

So I see that in itself as being likely to exercise quite a potentially negative effect upon, the profile of legal education but also the profile of the profession, because if you're sending out people at the age of 21, to give advice to people about their marriage breakdowns or whatever, what does that mean? They don't have, with all due respect, the understanding that's acquired through using the methods and perspectives of other disciplines, and they just lack experience of graduates who've done all sorts of other things. It's a very enriching experience, both in the classroom and I think also in terms of what it means when they're actually out there. So that's just one manifestation of what I see happening.

It also changes things in terms of the nature of pedagogy, because you can't expect them to just go and learn independently. They can't do that if they haven't learnt, haven't acquired those skills. And so we find, and indeed I think other law schools have found too, that one has to spend more time with the face-to-face teaching and support and so on because they just haven't learnt the things that they really should have learnt in the latter years of secondary school.

Now it's not a wholesale move from one to the other, but it's a very subtle and insidious move, because there is this cohort of really very immature students and I just don't think that that's appropriate. I'm much more in favour of the North American approach wherefore a graduate-entry program. You do get quite a different type of person in terms of maturity. So I do worry about what impact that's going to have ultimately.

Integrating combined degree programs

All law schools reported that the development of combined degree programs was a demanding exercise. Some interviewees observed that "it takes a lot of mutual adjustment to create and operate a combined program, ... and the extent of the adjustment becomes more and more demanding the further apart, conceptually, the subjects are". Some law schools stated bluntly that they were "usually the

non-negotiable faculty – we say every student has to do this, and too bad if you don't like it". One school reported that it "gave the other schools a template and they had to adjust their programs around it". Some law schools' combined degree programs take six years to complete because neither school is prepared to concede enough subjects to squeeze the program into five years. Even seven year combined programs were debated, although as one head of school noted

we do think hard about whether we should commit a student to a seven year program. Is there anything to be gained by a combined degree? It might better for the student to enrol in two successive degrees.

Law schools commented that developing a combined program was often extremely difficult with disciplines such as the Sciences, which have many hours of practical work in laboratories, making it difficult to schedule interlocking programs. While many combined programs (particularly in Engineering) stretched to six years, some law schools had a firm policy of trying to keep combined programs to five years. For the whole process to be worthwhile, there had to be a significant student enrolment in the combined program.

So, for example, the Engineering/Law combination is the toughest to really operate, and my sense is there comes a time where the number of students who are going to benefit from it are just not worth the administrative hassles of trying to create it and run it. Because you get into problems of having to have timetables that fit together decently, and if you have a lab-based discipline, that suddenly becomes very much more difficult, and so my own sense is that I'm not unhappy with the number of combined programs we have and not particularly eager to extend. Because after all, the most you get out of it, is the saving of one year in a student's program. ... It's not as though that year's wasted, because of the enrichment in the other program the student gets. They do extra subjects. And so one really has to think about whether creating a combined program, reducing the length of the program by a year, is really worth it – worth it for the student experience, worth it for the education that you're going to be providing, or worth jumping through a lot of hoops for not much benefit.

Some law schools over the years had developed inconsistent requirements for each combined degree program.

Each of our combined degrees had separate rules and different requirements. [There were] different amounts of work being done in different years [of the law component of the combined degree program] and in different semesters. For example in final year, students might take six subjects in first semester, and five in second.

In 2000, one law school developed

a standard pattern for combined degrees is that when you combine them you take one year off - from the student's point of view you take one year off the single degree requirements. So a three-year Arts degree with a four-year law degree, when combined, becomes two years of Arts and three years of Law. And that applies across the board; Economics/Law; Commerce/Law; Asian Studies/Law. So that standardization, together with semesterisation, meant that the shape of our degree was transformed.

One of the issues examined in this study was whether, and how, law schools integrate their undergraduate law program with the undergraduate program in the second discipline. Most law schools indicated that they offered combined rather than integrated degrees. One law school, for example, in line with the practice in its university, indicated that it takes the “bolt-on” approach.

The model I prefer is designing ... programs and creating something that is actually bigger than the parts thereof, and I think that pedagogically it makes more sense. But unfortunately I think the understanding of that pedagogically in this and a number of other universities are quite crude and it's all just simply to bolt the things together.

One interviewee's faculty dealt with the partner school

closely when we're arranging the combined degree. ... We work closely with the other degree when we are setting up the combined degree and after that we don't do much, until next time there is a curriculum review.

One Head of School observed that his law school developed combined degrees by negotiating with partner schools so that students could

take subjects in the other program. So in that sense we combine them, but there is no other specific way in which we combine the degrees.

At another law school:

Obviously the syllabus is predetermined and in the first year they do two law subjects and a certain number of other subjects, and as time goes on law occupies more and more of their time and the other subject fades out I think after the third year. And as necessary, there no doubt is contact between Deans and Associate Deans and so on, but it's really the acquisition of two degrees in two disciplines. There's nothing joint about it in the sense of overlapping subjects or anything like that.

As one law Dean noted: “we leave it to the student to experience the task of integration”. The main reason given for not attempting integration was the difficulty involved in integrating two degree programs, and the resources required to do so, especially when the school offered a number of combined programs. One Dean confessed that “it was difficult to see what the integrating mechanisms would be”. For those reasons “it works well to let students be the integrating agents. If you give them the skills in both domains, they have to draw their own conclusions, and have to develop their own integrative measures.”

An interviewee at one law school observed that:

we have electives that entitle students to do research papers in particular areas. ... Now if a student came to us with a proposal whereby they said, “Look I want to combine this area of law in relation to studies that I've done elsewhere or am doing in my combined degree” I don't think we'd have a problem with that. But frankly there have been no discussions that I'm aware of in seeking to push students towards that.

In some law schools interviewees stated that the possibility of integration was thwarted by law students being taught Law on a separate campus to that housing the partner programs. One law school, for example, faces significant logistical issues as its combined degree programs develop

because of the fact that the cognate degrees to which the students in combined programs will be doing, will be a different physical location, and rather than have them shuffling on a constant basis between here and the city or if they happen to be doing their program at [campus A, B or C] or wherever else, between quite geographically dispersed campuses... This is one of the interesting management issues for next year, managing 13 combined degrees across two campuses with different sequencing arrangements for different combinations. ... I hope over time to move to slightly more creative arrangements in terms of combined degrees than what we've currently got. And I think it will also allow for smoother sequencing for students, rather than what we've found already is that static model creates for students, then we're not getting enough law or even sometimes the standard expectation in other programs, as compared to law, might be quite different and that's also the enter of students into the programs.

Similarly, at another law school, students enrolled in Arts/Law

had to choose what major they do in Arts, and then they have different majors on different campuses and they have had to choose what subjects they do in each major and they found it terribly difficult.

This school offered 27 possible combined degree programs and this tended to overwhelm students.

They know they've been accepted for their Arts-Law, Social Science-Law or Communications-Law, but within Arts they've got 12 majors and in Social Science they've got another four and in Communications another five, and they find it overwhelming.

The school is starting to streamline it a little bit because although there's no technical extra cost in the sense that you've got programs running anyway, the university is saying, 'Look if you've got practically no demand for that and you should not proceed to offer it'. So although we've had a couple of enthusiastic Music-Law students we're probably not getting enough enquiries to maintain that as a current offering.

The School found the process of administering these combined degree programs extremely complex. Just timetabling the seminars involved was very difficult.

In terms of what subjects they do and how you have to plan them, you've got 12 separate programs depending which major they do if you really want to do it properly just to make sure, well really you should make sure that none of the subjects for any of those 12 clash with any of the Law subjects. But you can only do that with a computer. You can't do that manually... That's where the seminar program becomes crucial because you've got so many permutations and creations that unless you've got a variety of times they can attend, some of them would find it impossible to work through their other degree. We've got a Saturday program as

well, which gives them – if you're really desperate you've got evenings and Saturdays so that people can use those.

At other law schools integration was impeded by too much flexibility in the structure of the LLB program.

One of our difficulties is that ... we've allowed students great flexibility in what subjects they do and this is having consequences that seemingly no one student is doing the same courses at the same time as anyone else. There's a core structure but it seems to be that in a lot of our classes the class, for example, is meant to be second year subject but some of us have got first year students in it and third and fourth year students in that one course. That created hassles for integration because we've got timetabling issues. How do you timetable when you don't know that predominantly all that class will be second years, they'll all be doing these other three subjects. But I'm sure that will be sorted out as time goes along.

One law school emphasised that it was careful to ensure that its students received two degrees – one in law and one in the partner discipline, rather than an integrated or combined degree, which might be interpreted as, for example, as a Law component in an Arts degree, or a Commerce component in a Law degree. Its LLB programs were

not integrated. They are double degree programs. They are not combined degrees. [Students] get two degrees, and [they] meet the requirements of two degrees with some cross-crediting taking place, but they are deliberately not combined degrees. ...[It] is a very important distinction, especially if you're looking at the marketability of our graduates overseas ... whether they have a law degree as distinct from a law component of a combined degree program.

It appears that here the interviewee is confusing a formal integration of two programs (so that a student does not receive two degrees) with a close co-ordination of programs (see below).

One law school gave the following as its reasons for not integrating the two programs:

the pattern of the two admitting authorities in [the state] has been not to distinguish the dual program and the single program LLB. They demand the one standard, and so we have consistently demanded that whether a student does the single LLB or one of the nine dual programs, that they comply with the same standards. So we have consistently resisted any attempt by other faculties to integrate with the LLB, simply because of the difficulty of administering so many different programs, but also because of the admitting authorities' demand that there be a single standard.

Even the process of negotiating the requirements of combined programs was difficult. In most law schools all combined programs had to be worked out with other schools or faculties. A lot of time and effort went into ensuring that students had a well-thought out academic program in two disciplines but without unduly overlapping courses in the different degree programs.

We've made arrangements at an administrative level about timetables, and some of them have to be fairly specific, both in terms of timetabling and in terms of

sequencing of subjects. Once we semesterised core subjects, you can't move them. You've got to do *Property* before *Equity*, for example, so nobody then is suffering in one semester or the other. And there's been a fair bit of accommodation between the various faculties to accommodate the needs of students from different schools. Commerce students have particular needs in their degrees to progress in a slightly different way and we accommodated that in terms of progression through the degree, in terms of timetabling and I think that depended on a fair amount of hard work and good will at the administrative level and that's been fairly successful.

Many law schools adopted the following model

We teach the two components quite separately, so it's typically a five year program – two years of the other, and three years of law. ... Typically they do – say its Arts/Law – Arts in first year and second year; third year it's a mix; and the fourth and fifth years will be just law.

Another law school reported that

there is not and has never really been, a high level of integration between the two degrees. ... In actual fact the reality is that they're studying two degrees side-by-side for the most part. In terms of the actual activities and learning objectives there's not integration but certainly from a program and procedures and timetabling and all that sort of point of view, there is a high level of integration and planning that goes into working and workload.

Most of the complaints that students have are, for example, 'I get higher marks for Commerce than for Law' or Arts or whatever the other discipline. So there are different cultures that they have to adapt to in terms of footnoting, formatting, special consideration, different policy frameworks, and gradually over time that's been accommodated on a more uniform sort of basis and gradually Australian universities are moving closer together.

But there are still significant differences between the ways that different faculties do different things. So by coming across different cultures, it's setting up a winner and a loser in terms of preferred models of doing things. That isn't particularly healthy. Never has been. And I would think that the biggest complaint over time that I've had as a person who's involved with teaching and learning processes in the faculty, has been: law is harder than X.

There are opportunities for students at points in their degree to bring things together. Because we do emphasise inter-disciplinary perspectives in a lot of our law subjects, that opens up opportunities for students for example to bring in what they've learnt about sociology or criminology when we're talking about the operation of criminal laws and what their impact might be on particular sectors of society. That's just as an example.

A lot of teachers do ask their students to bring to bear the discipline learning from their other degree, and that does become part of the learning experience, for people to bring to bear their other disciplines. The way we structure our curriculum does open some enhanced possibilities for students to bring that in. But I don't know that when we approach that and value that in a very sort of general way, that there are not specific connections. You could work on drawing in, for example, some scientific perspectives. That great, but five out of the 150 students that you are teaching might be doing a science degree and the others are doing eight other different law degree

combinations. So it's hard. You can't generalise about that but certainly you can pick up on that to some extent.

We've been having some discussions with two different faculties about the possibility of joint Honours projects for double degree students. And we haven't moved on this yet but everyone is supportive in principle.

The other thing is students will get usually a number of opportunities during the course of their law degree to frame their own research topics, whether it be in the context of an Honours thesis or whether it be in the context of a research paper within another subject. And that, I've certainly found from experience, is an occasion when students will draw on what they've enjoyed or learned about their other program. So there are opportunities for students. So I think there are lots of opportunities. We don't particularly direct that sort of substantive integration.

At certain law schools, synthesis between the two degrees is managed through assessment, such that, for example, one of the research project subjects is aimed at science students, "where they can have a science supervisor and a law supervisor if they want to do a particular project that has a strong science base. But it is a legal research project." Further, students often bring "the insights they have gained from their other disciplines into some of their senior electives". Some of the electives "have a very broad focus so they provide good opportunities for considering law in a broader area – for example *Information Technology, States and Nations, Public Law* and *Law and Religion*."

One law school is beginning to integrate its LLB program with the partner program

more than we have in the past. So for example now we are looking in the combined degree with Science, of having groups of subjects which include law and science subjects, so that students can choose subjects relevant to them from that group. In other words, cross listing of subjects. That is one way that we are trying to make degrees more integrated. Before [we began to think carefully about integration], it was really law some other bits. Now we are saying that if you are trying to produce a science/law graduate, what are the skills that the individual should have? That is the real focus. So now we are beginning to say: 'they should have some lab skills, they should have some policy skills, some ethics. So we are beginning to think, not in terms of law with other things, but genuinely to teach them together. We tend to be a bit better with commerce/law because you are nearer to the law subjects, which were similar in the two programs. You're always very conscious that that they are going into two lines of practice and now it might be a multi-practice, a multiple discipline practice. But now I think it is a matter of trying to do it with some others as well.'

Another law school reported that, from its inception in 1989, it has attempted to integrate its combined degree programs so that over each of the five years of the combined degree program "our students would do something significant from each program – law and the other program – so that law wouldn't be built on, at the end of the other program" and vice versa. The school also makes provision for some jointly supervised honours projects, but not many students take up these options.

One of the consequences of this trend to parallel rather than integrated combined degree structures is that law schools do not provide a genuinely interdisciplinary program of study. And there seemingly are resource based factors motivating this decision. One law school that did make a very serious attempt to integrate its combined degree programs, has recently had to dilute these efforts because of resource constraints. The approach it takes to facilitate integration is as follows. First, both degrees are taught in parallel, rather than cramming of one degree into the early years, and the other degree into the later years. Second, in the law degree students may be given integration specific assignments to do: for example, law assignments in law and economics, law and psychology, law and Japanese studies in contracts. As the number of combined programs has grown, this has become more difficult, as subject convenors have had increasing difficulty in finding integration specific assignments. Third, students also undertake a fourth year joint theory subject specific to that joint program, taught by a member of the law school and a member of the other school. This initiative resulted in excellent interdisciplinary legal theory subjects, and the school believed that students developed a strong sense of cohesion and identity from the level of integration of each program. The joint theory subject was the only point in the degree where students in a particular combined program came together as a group, and were taught material traversing their two disciplinary choices. Finally, in their final year students undertake a jointly supervised research project that is weighted heavily in counting towards honours. This approach to integration has been initiated by the law school, but other schools have been keen to be involved because it, once again, enables other schools to attract students with higher entrance scores; however, even the schools with high entrance scores have professed to have seen the benefit of integration.

In a 2001/2002 review of this school, a decision was reluctantly made to reduce parts of its integration program. The aim now is to maintain “the law school’s commitment to interdisciplinary teaching and learning, but to do so in a different way, and a way that is within the control and responsibility of the law school rather than trying to co-ordinate with other schools”. This had proven to be a problem in some integrated programs “because the synergies were not there, or the resource commitment was not there from other schools, and sometimes it was simply an administrative nightmare”. The law school will continue to be involved with schools who are still prepared to be involved in integration, but in short, while one combined degree program retains the old approach to integration, the proposed approach for the other combined degree programs is to “repatriate interdisciplinarity into the law school”. The principles of integration will be applied differently to the various combined degree programs, and some of the integration mechanisms, in particular having a joint theory subject for each integration, and a joint research project, will be altered, and done inside the law school. Others combined programs have retained the joint research projects, and retain the joint theory subjects, but do not make it compulsory to undertake the latter. In other programs, students are expected, but not required, to undertake a joint research project. In all other combined programs, rather than study a specific joint theory subject in fourth year, students are now required to study at least one 'law in context' elective as part of their degree. Furthermore, students are not required, but are permitted by arrangement, to undertake an integrated research

project. In all law subjects, there will no longer be an expectation of integrated assignments.

Honours

No law school has an honours program requiring an additional year of study. The combined degree usually takes five years (sometimes six years) to complete, and many students undertake an honours year in their other degree. In most law schools, students may obtain an honours degree in Law only on the basis of excellence in overall performance.

Furthermore, most law schools have abandoned the requirement that students intending to graduate with honours complete honours dissertations, because of the burdens of supervision on staff time. One school that does require students to complete an honours dissertation has had to draw resources away from the elective program in order to ensure that honours students are properly supervised. This has resulted in bigger classes in elective subjects. “This is a big commitment for a small school.” At another law school, students seeking an honours degree must undertake an honours paper in one of the year long subjects, *Public Companies*, *Advanced Tax*, or *Legal Theory*. At yet another law school, honours students must complete at least one substantial research paper at honours level in the elective program.

Other law schools have similar requirements. At one law school, students are required to undertake a 10,000 word honours thesis. A few years ago this honours requirement was semesterised.

We reduced the Honours research thesis component to a semester but it's preceded by another semester subject called *Research Methodology*. So in the first subject the students basically learn about different approaches to legal research, theoretical research and clinical research and so forth, and that's been good in itself. But it's also given a bit of space to start devising the topic that's going to be the subject of the paper in the second semester, so the supervision can start to be set up, the creation of a proposal can be part of the research methodology assessment, and part of the program in the first subject. So you could in some ways perceive it as a whole-year unit, but in fact it's two separate semesterised units. So that seems to work quite well.

One law school gives students the option of achieving an honours degree by completing a major assignment if they are not able to achieve honours through overall performance. Other law schools require students to complete particular subjects. At one law school it is *Legal Project A* or *Legal Research Project B*. They have to obtain a score of over 67.5 in this to secure an honours grading, in addition to a weighted average mark of over 67.5 for all subjects. The level of honours is determined by the actual scores for each of these. This system recently changed when the 2001 Review of the LLB program at this law school recommended that all honours students must complete a subject *Legal Research Project*, but that the level of honours be determined solely by the weighted average mark for all subjects. Another law school requires students intending to graduate with honours to complete the subject *Independent Legal Research*.

The absence of an honours year in the LLB program, and the lack of integration in combined degree programs in most combined degree programs, has been said to arguably inadequately prepare law graduates for higher degree research programs. As such Manderson (2000) recommends an interdisciplinary honours year

In which students undertake advanced study *conjointly* in law and their other degree. The program would draw on resources and require students to take honours courses in both disciplines, in addition to carrying out an honours thesis relevant to both fields. Such a program would introduce interested students to a wide range of theoretical and social issues in law; provide students with a real grounding in interdisciplinary research which is at the moment conspicuously lacking; and in addition attract students who might otherwise forego an honours program altogether. Above all, it would encourage future scholars to see their interest in law as related to their interest in economics, or literature, or sociology, or history, rather than alien to it. I am well aware that many law students believe that the life of the mind and the life of the law are mutually exclusive – it is a matter of closing that synaptic gap. An interdisciplinary honours program will this set the scene for closer collaborations between law and the social sciences and humanities generally.

Given the experiences of the law school reported above with the integrated combined program, Manderson's proposal might be unaffordable to many law schools in the current funding environment. The proposal is very important, however, and suggests that universities should seek ways of providing resources to develop integrated honours programs where full integration is not achievable.

Fee-paying LLB students

One of the elements of the tertiary education sector "reforms" of the late 1980s was a shift by the federal government away from providing 100 per cent funding to universities, forcing institutions into becoming more entrepreneurial, by attracting corporate sponsorship and students. This, moreover, has increasingly tempted schools and faculties to attract fee-paying students.

Consistent with developments across the tertiary education sector, most law schools are accepting fee paying overseas LLB students, and some are taking on fee-paying domestic LLB students. Whether law schools take on fee-paying domestic undergraduate students largely depends on whether it is the policy of the university to do so, and, if university policy does allow this, whether the law school can attract such students.

Some universities have a policy of not taking fee-paying students, although during interviews for this project, some Deans thought their university might possibly change its policy given the current climate. One stated that "from a funding point of view I would like to have the opportunity to have a cohort of fee-paying students, as an alternative source of funding". One law school that does not take local fee-paying students, does nonetheless charge fees to non-award students. Another law school has debated the issue, but there has been no decision to offer full fee-paying LLB program places. It has concentrated its revenue raising activities on its postgraduate coursework program, and on "alumni activities – private funding of particular teaching positions in the faculty". Another law school still is permitted by university policy to charge student fees for winter and

summer sessions. “The Board of Trustees has agreed that we ought to be able to offer additional sessions, which allow students to accelerate or catch up lost electives. They are fee paying.”

A handful of law schools, typically the large city-based well established law schools, are enrolling relatively large numbers of overseas and domestic fee-paying students. One such law school reported that about one third of its LLB students are full fee-paying. Of the approximately 140 full fee-paying students, 80 are Australian, and 60 are overseas students. This law school was quick to emphasise, however, that between a quarter and a third of these full fee-paying students are scholarship holders, where the scholarships might cover not only their tuition fees, but other expenses as well. These full fee-paying LLB students are quite distinct from students in the JD Program (see below), in that they are not eligible for the JD program because are not graduates in another discipline, nor do they have prior work experience. Full fee paying students are selected on the law school’s usual academic criteria for entry to the LLB program, and the School emphasises that it will not make offers of a place in the LLB program to students with an entry score of less than four points below that required for non-full fee-paying school leavers. The reason for the allocation of places for full fee-paying students is that:

We’ve got a limited number of government subsidised places and we’ve got very, very, very capable people who want to do law here but just on the ranking system may not succeed in getting one of those places, so the full-fee option is an alternative.

Another law school has introduced significant fee-paying programs, both in the LLB and in the graduate program, and uses this revenue source to “massively cross subsidise” the HECS-based LLB program.

There is no doubt that the payment we receive for HECS undergraduate students does not support the quality of education we provide and it’s the existence of the fee-paying students that allows us to offer that quality of education.

Interviewees from the school were quick to point out that that the academic entry score for fee-paying students was higher than that required for entry to the HECS-based LLB programs in some other law schools in the same city, and in other, nearby, cities. Recognising the pressures that might be imposed on staff by fee-paying students, the law school has a policy of not identifying fee-paying students.

We are very, very careful, for example, to run our programs so that teachers and the administrators don’t know who is a fee-paying and who is not a fee-paying student. There are kind of a variety of protections that one would very much want to build into the process to try to make sure that one doesn’t have distortions that would be inappropriate. And I, for example, won’t listen to arguments that because a particular class of students might be paying fees they should get a particular type or class of service. I just think that that is an inadmissible argument.

Another law school reported that it is

actively marketing from this year our [LLB] programs to fee-paying students, since we are allowed to take up to 25 percent fee-paying students into our programs. So that's a definite initiative. And then from next year we will also make enough summer units available so that students can complete our current LLB degree in two years.

And the way in which they will do this, it's not a distinct program like a JD, but the way in which we do this, they will take four units per semester, including summer, giving them 12 in Year One plus 12 in the second year, giving them 24 credit points after two years.

Now the only administrative arrangement is that we are going to make sure that there are four summer units available for them in Year One and four different summer units in Year Two. That's the only consideration. But apart from that, no one would even know that they are full-fee-paying students. They would sit with the other students in class, or do it in the off-campus mode.

We think that it is advantageous to offer it in this particular way so that you don't give the students special treatment just because they're full-fee-paying students, and we don't really want staff members when they mark their papers to know that they're full-fee-paying students. There's no discrimination in that sense whatsoever.

The main purpose [of moving to the full-fee paying option] is to generate fees. It's as simple as that. We are operating in an environment in a Faculty of Business and Law, where the other schools have far more options to offer full-fee-paying programs and generate especially international students coming in to do their programs and we have got a slight disadvantage there because our LLB program is simply not recognised in many other countries.

And therefore we need to concentrate on fee-generating activities like the two-year LLB degree. We always had a few places I think from the beginning of our school. There's always been a limited number of places available and if students can't get in through the ordinary ways, then we will always offer full-fee-paying students to a limited number.

Most law schools, however, would battle to take on many full fee-paying domestic students. One law school reported taking on full-fee paying students, "but not many". Another law school, from its foundation in 1993 until 1999, badged its external LLB as a postgraduate LLB program and introduced the LLB program to external students as a fee-paying program. Since 1999 it has been a HECS-based program. "We would like to offer a full fee-paying LLB but we have not done that because we are not sure about the market."

Yet another law school is permitted to take fee-paying students but rarely does so because its HECS funded places are not filled. Another such law school reported that it was permitted to take fee-paying students but

whether we'll have any students who will be drawn to them is another question. ... the Group of 8 universities might be able to draw in students but they divert resources from your core business. They create two-tiered structures; they create the impression that you can buy your way through a law degree if you haven't met the benchmarks in terms of entry. And I think all of those things create significant problems.

Shortly after the law school visits for this project, two law schools decided to allow their law schools to take fee-paying students. The first of these will take an extra intake of fee-paying students up to a quota of 25 per cent of the Schools HECS places – up to 100 students. The second is in the process of developing policies for fee-paying students, but is trying to ensure that the process changes the existing law student profile.

Juris Doctor (JD) Programs

During the past few years, a notable development has been the introduction of fee-paying Juris Doctor (JD) programs for graduate students seeking an accelerated law qualification.

Four law schools have introduced a JD program, and two others have introduced such programs in all but name. One of the reasons for introducing the JD programs was the possibility of revenue raising. But interviewees also gave other, academic, reasons for the introduction of these programs.

The first law school to offer a JD program had its first intake of students into the program in 1999. There was a dual motivation for offering the JD program – “a postgraduate degree that would qualify people for admission, and the chance to earn good fees”.

We saw a market demand, by people who are already graduated, and are in occupations and professions, for a graduate degree. Already [within our LLB program] there was a graduate entry quota, within the normal quota. You could have a graduate entry LLB or a school-leaving LLB.

And we felt that we could have a shorter form of the (I say bare bones but fully satisfying admission requirements) degree, that would be attractive to professionals already out there – and we were proved right there. And secondly, obviously, there’s this great pressure on us that the HECS revenue that we get simply does not pay to fund a decent level of education for the HECS students themselves, and we have been encouraged by the university, and by government in fact, to raise alternative sources of revenue. We saw this as an opportunity and we were proved right.

The consequence is that, to a significant extent, the JD cross subsidises teaching in the LLB and we have been able to move to small class sizes in the LLB as a result of that.

At this law school, all graduates, from any discipline, from national and international universities, are eligible to apply to the JD program. In each of 1999, 2000 and 2001 there were 58 students in the program, and in 2002 this figure increased to just under 80. Students in the program are mostly local students, although there are some overseas students in the program. The program can be taken full-time in two to three years, and part-time in five to eight years. Candidates must complete fifteen full and six half semester compulsory subjects, and six full semester elective subjects. The compulsory subjects closely mirror the undergraduate LLB subjects, but are taught in separate classes of under 40 students. Elective subjects may be taken at any time during the program to suit the student’s timetable and interests. Candidates can take up to four subjects in a

December/January summer semester, where subjects are taught intensively. The final year of the JD program can also be taken concurrently with the Graduate Diploma in Professional Legal Education and Training (see below).

Another law school's JD program was first taught in 2000. It was introduced, in the words of an interviewee:

to design and provide a course for a group of people that seemed to be neglected by the LLB program. These were people who were both graduates in another discipline and people with significant work experience in some other area. In other words, people who were looking for a career change who had an established career and the desire to change into law or at least qualify themselves with a law degree. The problem for them in the LLB was that it was very, very difficult to take themselves out of their existing career and devote the time involved with the academic year organised the way it was and these are people who, naturally of course, are older than ... the majority of our students, ... [who] are school leavers. [In the LLB] the earlier year subjects were ... designed for school leavers. Other aspects of the methods of teaching, not only pace, weren't ideal for this particular group. So we saw the need for a tailored program specifically designed to meet the needs of this group and the JD was the result.

This JD program is aimed at students who have a good degree in another discipline, and "who have significant professional experience of some kind". Prospective students are also interviewed so that a judgment can be made as to whether the person "is going to be able to do the degree at this level". The JD degree was intended for Australian students, but in fact is attracting international students. It is taught over two years, in six consecutive trimesters, for full-time students, and four years, in 12 consecutive trimesters, for part-time students. A student studies four subjects in a full-time trimester, in a program with subject configurations which differ from those on offer in the LLB program. Students can undertake two electives in the 24 subject program. In strong contrast to the JD offered at the law school that offered the first JD program, at this law school, the curriculum for the JD was designed

free from the weight of history, except for the obligation, of course, to meet the profession's own requirements. That enabled us to reconceive the structure, and we did pay some attention to the structure of the American JD in doing that. So our JD, for example, begins with *Evidence and Procedure*, as is often the case in the States. But ... we were able to think globally and say [that] law is now much more of a global challenge than it was 50 years ago when a lot of the LLB structures were being put in place. ... We were able to ask what is the significance of jurisdictional boundaries, for example, now? Of course they're still important, because law is geographically based, but look at the amount of law that is practiced across jurisdictional boundaries. What should a law curriculum now be saying about that? Should it be still saying conflict of laws is an optional extra ..., or should it be saying that you must assume that you will be dealing with matters across jurisdictional boundaries and you must know how to deal with that?

The aim is to have three highly qualified teachers in each JD subject, one of whom is responsible "for the curriculum design". The Program Director also tries to ensure that teachers in the different subjects work as a team across the trimester, and each teacher is expected to know what is being taught in the other

subjects in that trimester so that they “can integrate the material and break down the subject boundaries”. The aim is to attempt to do the same across the trimesters.

There are two intakes into the JD program, in January and September, and each intake comprises a maximum of 24 students. The school aims to provide a “interactive and participatory” program “in which the cohort of 24 highly motivated graduates are encouraged to extend their knowledge and experience in small group learning environments”.

Subjects in the JD program are completely separate from LLB subjects. An interviewee at Law School DB reported, however, that curriculum design in the JD has had a beneficial affect on the LLB program, in that as subjects have been completely redesigned for the JD program, staff who also teach those subjects in the LLB program have realised that they can restructure their LLB subjects by drawing on the lessons learned in the JD structure.

Another law school introduced its JD program in 2001 for mature-age students who had already completed another degree. Its model differs from the models at the previous two law schools in that its JD students attend classes in the undergraduate LLB program. Once they have completed the core subjects they are eligible to complete *postgraduate* electives. This model has been adopted because the law school does not have sufficient number of students to warrant teaching a separate program, “and, in any event, the LLB classes are very small”. The JD program has attracted a significant number of international students, and a number of mature age students. Because of their previous experience, these students do not need to undertake the four core subjects that the university requires to be undertaken in all undergraduate degree programs, and so these students go into program quickly begin with four law subjects, which they find difficult. To remedy this the school proposes to give these students an intensive week of teaching of what would normally be covered in the subject *Australian Legal System*, so that students have learned fundamental skills such as reading cases and statutory interpretation before they begin work in the substantive law subjects.

One law school started taking first intakes into its JD program as recently as 2002. Apart from the fact that it is a three year graduate degree, it differs from the LLB program in that it includes “a higher level of assessment research and achievement that is appropriate to postgraduate students”. In addition to completing subjects taught in the LLB program, JD students must undertake three further seminar subjects – *Law and Social Justice* (first year), *Integrated Legal Research* (second year) and compulsory *Advanced Research Project* (third year). The latter is a supervised 10,000-12,000 word project. Students must also attend an additional weekly seminar series.

Since 1998, one law school has offered a Masters of Law and Legal Practice, “the first national example of a truly Masters’ level entry path to the profession of law” and accredited by the state professional admission board. Entry to the program is confined to candidates with an undergraduate degree in a discipline other than law. The program can be completed in three and a half years full-time and five years part-time. It combines the core LLB curriculum, followed by six

postgraduate electives drawn from the LLM coursework program, plus eight professional legal training subjects. The latter include *Advocacy, Commercial and Estate Practice; Legal Skills and Professional Awareness; Litigation; Professional Experience; Property Transactions and Professional Conduct*. In 2002, 105 candidates enrolled in the program in semester 1, and 185 in semester 2. The program is fee-paying, and costs each student less than they would pay for an undergraduate or graduate degree.

While like the law school above, another law school does not offer a JD program, it does offer a fee-paying Masters program that includes many components of the LLB

The Masters of Legal Practice, which, like the [law school EC] model, combines three elements. It combines the compulsory units of the LLB, the Priestley 12 professional requirements, and six Masters units. And that is a fee-paying program. It's almost like a composite program.

Another law school mentioned that while it does not intend to offer a local JD program, it is considering developing a JD program aimed at off-shore students.

[I]t's much more saleable [off-shore] than an LLB is simply because there's much more name recognition in some areas, particularly Asia, where we have significant networks. The US JD-type qualification has the advantage that it's a post-graduate degree so you've got students that have got a background in another discipline already, and as long as you actually make sure you select on the basis of appropriate language standards. ... I think it is something that we're more looking at in terms of an off-shore, then to obviously provide the resources to augment the program on-shore. So I haven't got a necessarily ideological objection to it but I have got a problem with the way that some universities might use JDs because I think they do create two-tiered structures, they divert resources, they don't necessarily create the right impression, and some of the universities have even, you know, literally it's supposed to be a post-graduate degree but they take people in without degrees, on the basis of work experience or something like that.

One law school that takes a substantial number of fee-paying LLB students, nonetheless does not intend to introduce a JD program.

If you ask what's the Law School's position is, I'm not entirely certain because we haven't had a general discussion of that. My own position has been that I don't want to go there. My own feeling about legal education is one ... that has a conception of the broader rule of law and broader things within law. It seems to me that in fact that kind of education is not just a sideline, that in fact it's very, very important, even to making people who are going to be very fine lawyers throughout the entirety of their profession, because lawyers don't just apply the rules. They have a whole cluster of roles. Even in working with rules, they have to think creatively and imaginatively, and it helps ... to have some sense of the themes that are running through the law and the different trends, and the issues, sometimes the insoluble issues, that are raised by legal education. So it seems to me that the theoretical dimension of law schools is absolutely fundamental to even the task of developing good lawyers. You do not get good lawyers from just a simple black letter law education. You get very narrow and not terribly good lawyers. So I believe very strongly in that approach to legal education, and developing that broader sense of law, I think, needs time. And I think the attempt to jam a legal education into too narrow a compass, in fact things are

going to be sacrificed there and the things that are going to be sacrificed are some of the things I think are most important about legal education. So I have to say that I'm personally, I can understand why some people would want to offer those and why some people would want to take them, but it's not the type of legal education that I want to pour my energies into.

Other law schools have considered introducing a JD program, but have decided not to do so because they realised that they could not attract enough students to ensure that the program paid its way, and could earn enough to support the appointment of additional staff to teach in the program. Some schools felt that they did not have the resources to compete with the JD programs which were fast-tracked to completion in two years. Law schools concerned with developing their research output were not prepared to require existing staff to sacrifice research time for additional teaching in a JD program. In the words of one Dean of a third wave law school

Financially if could be persuaded that it was a cash cow, we would do it. My concern is that it would involve a lot of risk and effort.

Another law school that "did a lot of market research to make a decision whether or not to introduce a JD program", gave as its principal reason for not introducing a JD program that "at the end of the day we did not think we would be able to attract substantial numbers of fee-paying students into such a program, and it did not seem to be a viable option for us to follow". It offers graduate students in the LLB program the possibility of completing Masters Coursework electives, which would qualify them for a Graduate Certificate, which in turn could be converted to an LLB by coursework by undertaking further units.

One law school indicated that its students were strongly opposed to the introduction of a JD program, and that its staff were divided over the issue, but that what concluded the issue was doubts over whether there was enough of a market for a JD in the city in which this law school was located. It took full-fee-paying students, and barely filled quotas for those students. The city "was a small and diminishing market which is sufficiently served by two law schools". This law school did, however, believe that there was "a market for accelerated study" and was looking at that possibility, through the introduction of a summer semester program.

Another law school also made it clear that they were opposed, in principal, to fee-paying programs for local students.

There has been no push at all from [this] Law School to take on fee-paying domestic students. I think the Law School is probably quite comfortable with the idea that it doesn't. I think as a whole you would tend to find that people in this law school would be on the left wing of the political spectrum, almost to a person, and would probably oppose fee-paying for domestic students on an ideological basis. I have not heard anyone arguing that we ought to be charging fees.

A dean at another law school expressed his concerns in the following way.

I have a North American prejudice against running a law degree over less than three years, so it's not a school position, it's a personal position. Most of my teaching career was spent in North America, teaching graduate only three-year LLB programs. The view that was taken across Canada and the United States was that you needed all of three years if you were going to teach law to the level of sophistication one would hope very good law schools would attain. And that required time both for the students to undertake the work and also time for students to go away from the work, decompress as it were. I suppose that's personally why I haven't been taken especially by the JD idea to go out and pursue it.

The interviewee recognised that financial considerations might pressure the law school into considering full fee-paying programs, but in that instance "we could conceivably undertake full fee-paying students without undertaking the JD package".

Summary

This chapter outlines the different types of degree structures for students studying the LLB or its equivalent. It describes the way in which combined degree programs have proliferated during the past 30 years, as partner degree programs have been given a more focused structure. We show, in this chapter, how some law schools have developed a dozen or more combined degree programs (one as many as 27), and that in overall there are approximately 130 different combined degree programs. Most combined degree programs, however, can be described as "bolt on" programs, where there is little integration of the two degree programs. The exception to this is the one law school that since its inception a decade ago made a concerted effort to integrate its LLB program with its partner programs. Recently, however, the school has staged a minor retreat because of a shortage of resources.

Against this trend of law schools offering more and more combined degree programs, most law schools now offer stand alone LLB programs to school leavers. The primary motivation for this development appears to be market pressure.

Further, graduate entry programs (including JDs) have become increasingly popular, again illustrating the pressures on law schools to create a niche for their offerings and to exploit whatever market advantages they have.

At the same time we suspect that seeming differentiation among law schools, in fact, hide a strong logic towards uniformity within law schools. As one experienced observer of Australian legal education observed:

I do think that we have made enormous strides in Australia in terms of changes, both in terms of substance and in terms of pedagogy, and so that our curricula changed enormously from the seventies, became much richer, inclusive, much more attention to context and, well, inter-disciplinary as well I suppose.

All of that is enormously important and we have much better educated staff, and also our students too, because the idea of the joint degree became the norm. Many graduates did law so you didn't have [so many] school leavers going into law.

But all of that has changed, or is changing. From reading and talking to people and visiting institutions, we see a move away from this. We suddenly had an interest in diversity, but as we move more to the notion of competition and strict competition between institutions, that that actually means more standardisation. We become more similar. And so the things that are distinctive, as indeed with my own institution here, we have an international reputation in terms of socio-legal research. Well, “No we’re not to have that” we’re told by someone on high who knows nothing about law. We’re supposed to be doing commercial law!

Similarly, another Head of School remarked that:

I think what’s actually happened is that the differentiation of the market has actually contracted rather than expanded in the last couple of years because everybody buys the same technology. They all see as the major employers or as the major aspirations of students, the commercial law field or getting into a corporate law firm, so they orient themselves towards business. ... I mean all you end up with is a ‘Group of Eight’ wannabes.

As these quotes foreshadow, beneath the apparent diversification of legal education outlined in chapter 2, and the growth and proliferation of combined degree programs described in this chapter, are various pressures to uniformity. This issue will be explored further in later chapters.

In the next two chapters the report looks in more detail at the content of the LLB programs, including the compulsory (principally Priestley) subjects, the elective programs of law schools, and the way in which law schools incorporate legal ethics, legal theory and legal skills into their LLB programs.

CHAPTER FOUR

COMPULSORY AND ELECTIVE SUBJECTS IN THE LLB

As discussed in chapter 1, Australian law schools have to negotiate their way between the requirements of the legal profession, some of which are articulated by the professional admission bodies (most notably the “Priestley 11” subject areas), and the traditions of a broader university education. The previous chapters explored the broad developments in the LLB programs in Australian universities, including the various combined degree programs and the school-leaver and graduate stand-alone LLB programs. This chapter examines the detail of LLB programs, and considers:

- critical perspectives on the Priestley requirements;
- how law schools have structured their compulsory programs;
- the way in which law schools have incorporated the Priestley subject areas;
- whether schools have made subject areas other than those falling within the Priestley requirements part of the compulsory program;
- the rationales articulated by law schools for elective subjects;
- how law schools have developed and structured elective programs; and
- whether schools have offered students flexibility in the elective programs.

The compulsory subjects – varied approaches to common requirements?

A significant constraint on the development of undergraduate LLB programs, as identified by most law schools, are the areas of knowledge prescribed as essential by law admission bodies. These requirements have strongly guided the “core” or “compulsory” subjects in law schools’ LLB programs.

Chapter 1 explained the 11 prescribed “areas of knowledge” outlined in 1992 by the Consultative Committee of State and Territory Law Admitting Authorities, chaired by Mr Justice Priestley. These areas of knowledge (“the Priestley 11”) include contract, tort, real and personal property, equity (including trusts), criminal law and procedure, civil procedure, evidence, professional conduct (including basic trust accounting), administrative law, federal and state constitutional law, and company law. Students are required to have studied these areas successfully before they can be admitted to legal practice.

The Priestley requirements have not been without criticism. The Australian Law Reform Commission (1999: 46) compared the Priestley requirements to recommendations made in the United States’ McCrate Report (mentioned in chapter 1) and commented that:

It is notable that where the McCrate report focuses on providing law graduates with the high level professional skills and values they will need to operate in a dynamic work environment, and assumes that lawyers will keep abreast of the substantive law as an aspect of professional self-development, the equivalent Australian list – the ‘Priestley 11’ – focuses entirely on specifying areas of substantive law. In other

words, McCrate would orient legal education around what *lawyers need to be able to do*, while the Australian position is still anchored around *what lawyers need to know*.

The Commission also noted that it was difficult to agree on a set of “core” areas of substantive law (ALRC, 2000: 139), and that the body of substantive law “changes dramatically over time – sometimes in a very short time” (ALRC, 2000: 140).

While some law deans saw the Priestley requirements as a significant constraint on curriculum development, they did not see it as a major constraint. One law dean suggested that the Priestley requirements “just define the ‘what’ bit. The ‘how’ bit is our business.” The subjects covering the Priestley 11 took up as much as two thirds of the degree at most law schools, which made it a significant constraint in itself. Typical observations from law deans were that the Priestley requirements “are much too detailed and have too much in them”, and “don’t give you much room for manoeuvre”. One Dean remarked that

essentially Priestly talked about broad subject areas, so it does not restrain us too much at the time. But it is a product of a particular time, and I am concerned that it does not hamper educational input to design of the compulsories. It does constrain curriculum design, but most of the areas would need to be in there anyway. The good thing is that Priestley describes things in broad terms and areas. The constraint is that if a school is looking at a more innovative form of curriculum, where you are joining subject areas together ways different to the ways in which the Priestley descriptors are put, you have to be careful with innovation that you are not seen by the Admission Boards to be falling outside Priestley and not covering it. Admission Boards like to see things in little building blocks that they are used to. Law Schools are constrained by 20 to 30 year old notions of what is essential.

Other critics have argued that the “relatively unitary sub-disciplines” in law, such as contract, tort and criminal law, which form the basis of the Priestley requirements, have increasingly been infiltrated by a plethora of different systems of regulation that have developed largely independent of each other. This has made it increasingly difficult to maintain these insular subject areas, which are based on nineteenth and early twentieth century subject areas (see Sherr and Sugarman, 2000 and Collins, 1999).

Some interviewees argued that the Priestley requirements considerably shape the way in which students view the law and lawyering. A focus group participant suggested that

90 percent of [students] wouldn’t know what the Priestley 11 was to start with, but they know what’s compulsory, and that creates a sense within their minds like: so this is what law is about. This is a Bachelor of Laws degree and to become a lawyer it is necessarily constituted by these things. And in that sense I think that just cannot but help drive their sense of what law is about. And it is about substance, to them it’s not about critique and I think also it drives their sense of what it is you do with this thing. Because unlike so many other courses, we are defined by what it is that you come out with. And so in that sense I think that’s a really a boundary for them. And there’s no idea that you can be a lawyer in the sense of somebody who has a critical, good, substantive grasp of what law is. Even without having done the Priestley 11 or whatever it might be. So I think in that sense it actually has a really strong impact,

albeit indirect. That is, if we weren't driven by that, I think we would have a much different sense within the faculty and within the student body of what a lawyer is.

One Dean suggested that the Priestley requirements were a major inhibitor of differentiation between law school's LLB programs.

I think the Priestley 11 controls a great deal in the sense that it means that differentiation in subject offerings just doesn't happen. Not every law school keeps to the Priestley 11, I have to say, but we do, and ... we effectively have 12 compulsory subjects, of which one is *Jurisprudence*, and really the effect is 11 compulsories and then you must select one of the options which is a legal theory option, and that leaves six other option subjects that students can take.

We have, regrettably, to cover the Priestley subjects, and basically they have a significant impact on the way in which we structure what we teach. ... When I say regrettably, I say that because I think that the way in which those subjects are structured is imbedded in a view of law that is outdated.

Manderson (2000) argues that

the strictures ... enshrined [in the Priestley 11] provide little room for experimental or challenging [programs] except in elective [subjects]. Financial constraints are being experienced by every law school in the country, and the result is a clear trend towards less teachers and larger classes; the attempt to shoehorn the Admission's Board's detailed doctrinal expectation into the shortest time possible, and even fewer electives. ... There is less and less time in which to teach law students anything more than the basics. It is not, I think, facetious to remark that many law students go through the whole of their undergraduate education without ever realising just how interesting and intellectually satisfying the law can be. One very good reason why students may not be interested in pursuing postgraduate education is that they have been given so little idea as to what it is about or why they should.

He further argues that

given the current state of funding of law programs ... teachers will increasingly be required to teach "Priestley" [subjects] outside their own research specialisation, and the elective program of law faculties will shrink rather than expand; the move towards in-house PLT [Professional Legal Training] will only exacerbate these trends.

Another head of school suggested that the relationship between the compulsory subjects and the Priestley requirements was a concern for all law schools

The main issues are in the structure and sequence of your compulsory core. That is always going to be the major curriculum concern – repackaging them but still meeting the Priestley requirements for content.

A further criticism of the Priestley requirements was expressed in the context of combined degree programs.

It's not just the subject matter of the Priestley 11, but when it's taught because at the moment it's taught on a sequential basis over a period of years. Whereas if you've got a North American system where they're coming in as a second degree and they've got the opportunity to introduce the entire lot at the first year level, to do nothing else except law, in an introductory sort of way, so that they don't have to wait for three years before they get to property, for example. So it's not necessarily just the subject matter but when it's taught. And if there was that option of it being taught as a second degree that would inevitably change the structure with dramatic consequences.

We note, however, that in Queensland, the advent of the common admission Priestley requirements freed up the law curriculum in law schools in that state. As one interviewee remarked,

Queensland was quite rigid. For example when I did my law degree I had to do one extra unit just to cover all of the demands of the Solicitors and Barristers Board, so I did my degree without any elective choice and had to pick up something, another 10-point credit unit, just to cover everything that was prescribed for admission. Well now that that's been considerably lightened up.

In a similar vein, another law school in 1990 decided that all subjects required for admission to the profession should be made compulsory within its LLB program, so that there "were not any extra subjects that students would need to take to be admitted". The choice of compulsory subjects was affected by the school's national focus. Because it took students from other jurisdictions, especially Victoria, South Australia and Western Australia, it closely scrutinised the admission requirements in the different states and territories. The advent of the common Priestley 11 requirements made this task considerably easier, although the school still tests the quality of its compulsory subjects against the subjects offered by other leading law schools.

The degree of scrutiny by legal professional admission bodies appeared to vary between the different states and territories. In some states, legal admission bodies largely did not intervene. Law Schools needed to have *ex ante* approval by legal profession admission body for prospective changes to the LLB curriculum. This process was described by one Dean as "a dead hand on the curriculum", in that it is a "bit of a fetter", because it prompts law schools to ask themselves whether we really need to go through with this". This Dean did not deny that accrediting bodies have a legitimate role in specifying what is important, or that it was not difficult to get approval, "but even moderate change in compulsory area needs approval". In other states, law schools reported that they had spent a lot of time negotiating with their admission bodies to ensure that their interpretations of the Priestley 11 were acceptable. Certainly in the states where legal admission authorities closely scrutinise changes to the curriculum this presents significant disincentives for changes to the Priestley-related subjects.

While the Priestley 11 were a significant restriction on the scope of the LLB program, law schools have responded to these requirements in different ways.

1. There are notable differences amongst the configurations of compulsory subjects offered by law Schools, for example: 12 compulsory subjects; 13

semester-long compulsory subjects; 16, 17 and 20 core semester-long subjects; five full-year subjects and four semester long subjects; 21 semester long compulsory subjects (23 when two compulsory commerce-based subjects are introduced). Some law schools aim to keep compulsory subjects to a minimum, so that students have maximum choice in their electives, while others see the compulsory subjects as a way of emphasising the particular attributes and values of the law school. One law school requires students to do a compulsory international law subject. For a period in the 1990s, one law school required all students to take family law, because of the school's regional focus. As discussed in chapter 2 (and later in this chapter), one law school has made all of its LLB subjects (Priestley and non-Priestley) compulsory, in response to university policies (although it is currently trying to reintroduce some student choice of subjects into its LLB program).

2. In the majority of law schools each of the Priestley requirements is met in a discrete subject, and on occasion by splitting one Priestley area into two subjects, or covered two Priestley areas in one subject. This conservative model was not uniformly adopted by law schools. Some law schools covered some of the Priestley subject areas in a couple of subjects for each area. In other law schools, individual Priestley requirements were covered in a number of subjects. One law school has 16 compulsory subjects, and places special emphasis on public law, so that it covers the constitutional and administrative law requirements in three subjects, *Public Law*, *Federal Constitutional Law* and *Administrative Law*. Another law school teaches contract and tort, and some equity and restitution, in the two first-year semester long subjects, *Contracts and Civil Obligations*, and then follows this up in third year with *Torts and Accident Compensation*, and in fourth year with *Advanced Civil Obligations*. Yet another law school covers the Priestley 11 in 12 of its subjects, with most of the subject areas spread across two or three subjects. While few law schools retained a subject called *Equity*, in many other law schools equitable concepts and remedies were covered in the compulsory program but slotted into different subjects. For example, at one law school, the Priestley equity requirement was split between seven subjects. Another law school commented that, apart from two compulsory legal theory subjects,

all of the other compulsory subjects have some Priestley components in them but they are by no means of course confined to meeting the requirements of the Priestley 11. .. So we don't attempt to match the Priestley 11 with compulsory subjects. In many instances there is a degree of overlap between our compulsory subjects and components of the Priestley 11.

At one law school, a couple of the later year compulsory subjects were "linking subjects, partly covering Priestley requirements, partly not".

3. Law schools placed different emphases in the compulsory subjects. For example, one law school spends more time than other law schools on criminal law, seeing it as a vehicle to introduce the study of law in a social context. It also places above average emphasis on public law, property and equity and contract, because these are seen at the core of the curriculum. Another law school focuses more on torts and contracts, and on commercial property and land, rather than on public law areas such as constitutional law, or on theory.

“Our focus is more transactional than modular, to the extent we can make it so.” The compulsory subjects have been remodelled through a number of curriculum reviews. For example, in 1995 to 1996 the teachers in Torts and in Contracts wanted to have more of a melding of the two, “to fit more with commercial reality”.

One law school has redrawn the curriculum around conceptual fields, rather than following traditional categories. For example, equity and trusts in a conventional syllabus are taught together as one subject. At this law school, students are taught a little equity in first year, and then cover trusts in second year along with partnership and corporations, a little more in property, and a lot more in the fourth year subject *Advanced Civil Obligations*. In other words, the material is distributed differently, around different criteria (obligations or institutions) rather than looking at equity as a body of rules.

4. Some law schools do not deal with all of the Priestley requirements in core subjects, but rather give students the opportunity to meet those professional requirements in electives. For example, one law schools reported that

not all the Priestley 11 requirements are met within a compulsory subject, so that we have subjects like *Civil Procedure*, *Dispute Resolution and Legal Ethics*, and *Corporations Law*, which include components of the Priestley 11 but are not compulsory subjects.

Five other law schools do not offer *Ethics* in their compulsory programs, but three do offer the subject in their elective programs (see chapter 5). In its recent review of its LLB programs, one law school rejected the option that some Priestley areas be covered in electives rather than in compulsory subjects. By contrast, another law school offers three of the Priestley subject areas as electives – *Corporations Law*, *Evidence* and *Litigation and Disputes Management*.

We call them quasi-compulsories, semi-compulsories or closet compulsories. We don't force students to do [these subjects] because it's not our view that the legal education must automatically be geared towards admission to practice. We recognize that there are a large number of students who either have not intention of being in legal practice or may have that intention now but it will change. So we say, “If you want to be admitted for practice, you have to do those subjects.” Most students do them. That being the case, the range of what we call the real electives then becomes reduced.

5. Some Law Schools have included compulsory subjects not listed in the Priestley 11. Non-Priestley compulsory subjects include those reflecting a commercial, legal theory, international, ethics or skills focus (depending on the particular focus of the law school). Most law schools include an introductory subject covering legal institutions, and the fundamentals of case reading and statutory interpretation. In some half a dozen law schools this subject is taught in the context of a subject like tort or contract. At one law school, the subject is called *Legal Skills in Context*.

One of the most important curriculum developments across law schools since the late 1980s has been the recognition that the law curriculum should do more than cover legal rules (legal doctrine), and that students should engage with normative and/or empirical legal theory and legal skills in their compulsory program. Some law schools have considered certain non-Priestley subject areas to be important enough to be included in the compulsory curriculum. In this section of the report we provide a brief overview of elements of compulsory LLB programs that went beyond the Priestley 11 subject areas. In chapter 5 we examine in greater detail the infusion of legal ethics, legal theory and skills into the curriculum.

Increasingly law schools are requiring students to do “jurisprudence” or “legal theory” at an introductory level. For example, one law school, which has a skills and corporate and commercial focus, as a result of consultations with the legal profession, made jurisprudence a compulsory subject.

They wanted a traditional jurisprudence-type course in there – we have retained it and its called legal reasoning now, because it sounds better for students, more relevant.

The emphasis law schools give to legal theory is illustrated by these examples of how it features in the compulsory program: all first year students are required to complete two semester long subjects in *History and Philosophy of Law I and II*; all students undertake *Law and the Modern State* and *Introduction to Legal Theory* in first year, *Jurisprudence*, an Integration Legal Theory subject in fourth year and a combined legal research project in final year (but there have been some recent changes to these requirement); all students complete *Legal Theory* in their penultimate year; all combined degree students complete *The Philosophy of Law* in third year (graduate LLB students must do the subject in second year), and all students complete a compulsory *Legal Research and Writing* subject; all students take a compulsory *Legal Philosophy* subject that is scheduled in the final year of the straight LLB and combined degree programs; there is no compulsory legal theory subject, but students are required to take at least one subject from each of five groups of elective subjects (one of the five groups covers, amongst other areas, legal theory); students required to take *Introduction to Legal Reasoning*, which has recently been recast as a comparative subject; there are no non-Priestley compulsory subjects but students required to do two electives from a list of legal theory and comparative law subjects.

In many law schools, legal skills are incorporated into the compulsory subjects, as these examples illustrate: One law school has included four “skills” subjects (*Legal Skills I, II and III*, and *Legal Research*) in the compulsory program, in addition to the compulsory subjects *Legal Institutions* (introduction to legal method, legal history and legal theory), *Legal Research*, and *Law, Lawyers and Justice* (“what it means to be a lawyer, legal advocates, access to justice, legal aid issues and all those sorts of things”). Likewise, another law school requires students to complete compulsory legal skills subjects, *Legal Research Methods*, *Legal Research and Drafting*, *Interviewing and Negotiation Skills*, *Advocacy and Communication*, and *Lawyers and Legal Ethics*. The school also hopes that it will be able to require all students to take a clinical subject.

One law school has six compulsory skills subjects, while another requires students to complete two non-Priestley subjects (in addition to *Australian Legal System*), *Research and Writing*, and *Legal Practice and Transactions*. Students must also choose one “Legal Perspective” elective (these include *Jurisprudence* and similar subjects), and one elective that has at least 70 per cent of its assessment comprised of a scholarly piece of legal research.

As mentioned above, law schools also distinguish themselves by making compulsory subjects upon which the school places a special emphasis. One law school has five compulsory subjects that reflect its acknowledged specialisations in public law and international law.

We have three compulsory public law subjects, *Australian Public Law*, *Administrative Law*, and *Commonwealth Constitutional Law*, and we also, as I said earlier, have a compulsory international law subject. In addition, I think other compulsory courses that reflect our particular focus are compulsory *Legal Theory*, I mean that was a very conscious decision on the part of the faculty to ensure that all students have that exposure to broader theoretical perspectives.

Another law school requires students to complete a compulsory *International Law* subject (which is split equally between *Public International Law* and *Private International Law* (Conflicts of Laws) and must choose one “jurisprudence” subject from the list of electives.

Other law schools, that have a commercial law focus, and one such law school requires all students to take at least three “commercial law” electives, and one international commercial law elective. Another such law school requires Commerce/Law students to take a subject, *Taxation*, and Science/Law students to take *Environmental Law*.

One law school makes both *Remedies* and *Legal Research* compulsory subjects. At another both *Jurisprudence* and *Succession* are compulsory subjects. At yet another, all students are required to complete *Legal System* (a legal method and thought subject), and students must choose one of *Legal Theory* or *Law and Social Theory*, and must complete *Advanced Legal Research* and *Public Law*.

In some subjects, one law school has

added non-Priestley content to Priestley content, to give those subjects some coherence. For example, *Appellate Procedure and Advocacy* includes the appellate procedure side of the Priestley requirement, but that is done in conjunction with [a] more advanced advocacy skills development. Also corporate insolvency is a Priestley requirement, and bankruptcy isn't, so we put those two together into an *Insolvency* subject.

This school also has a compulsory *Introduction to Legal Theory* course, and, reflecting its status as a Law School within a Business, Economics and Law Faculty, has also added two commerce subjects (*Introductory Accounting/Introduction to Financial Accounting* and *Financial Management*) to the list of compulsory subjects. The final form of these subjects had not, at the

time of the visit to this law school for the purposes of this project, been finalised, but they are currently being developed

in a way that is much more conducive to the objectives of the LLB. [There will most likely] be a compulsory accounting course in Year One. That will be the standard financial accounting course for students in the BCom and the Business Management dual programs but we are hoping to get a specially customised Accounting for Legal Practice course in the first year. Now whichever of those two is taken, the Trust Accounts is included in there, so that does carry some Priestley element.

In probably Year Four the financial management course will deal with financial aspects of legal practice, such as the calculation of mortgage repayments, calculation of damages, portfolio theory so far as the administration of trust funds are concerned and things like that. Again it's the students in the commerce, e-commerce and business management courses who will do that, but as an alternative to that, we are developing a law practice and management course that will develop skills relating to the running of basically a legal business, but business principles that are especially tailored towards law practice and all of the other students are likely to do that. That's the way I see that developing but that's still in the course of development. So to that extent there has been some integration, although we have attempted not to have any reduction in the law content. But again we have used that opportunity not just to take a course from a sister school, but to have some skills development that we would actually think enhances the LLB program.

In addition to *Introduction to Law*, another law school has three compulsory non-Priestley subjects – *Law Foundation*, *Commercial Law* and *Taxation Law*.

In *Taxation Law*, we wanted to be able to produce a student who was a well-rounded person capable of acting well within a professional capacity, and if you don't know the fundamentals of tax there's no way you can operate in the current legal environment. Almost everything impacts on tax and we thought a competent lawyer could not be competent without that sort of knowledge.

At the other end, the introductory subject places emphasis on, among other things, legal research skills, the use of legal databases that we think that no modern lawyer could ever manage without, in addition to the normal things about legal reasoning, legal analysis, case reading and the like.

Law Foundation then is in some sense unique because it tries to give new law students tools for examining and analysing methods and modes of reasoning. It looks at, for example, analysing social science techniques of legal reasoning and understanding. It attempts to put in a much broader context how the law operates. So it's concerned with giving students the tools for legal analysis, the tools of legal reasoning and understanding a broader perspective on problem solving in a broader sense. In that sense it's unique and it's been now incorporated into the combined program in both schools – or in the single school rather on all campuses.

In addition, some universities require *all* undergraduate students to complete common compulsory subjects. At one law school, for example, students are required to complete two (from a list of five) compulsory subjects. Another law school has to comply with a similar university requirement.

Quite dramatically, one law school requires students to complete nine compulsory subjects that are not Priestley requirements. “Most of them are legal theory focused or ethics focused.” In addition to *Legal Process* and *Legal Research and Writing*, these include *Legal History*, *Remedies*, *Moot Court*, *Commercial Practice*, *Legal Issues*, *International and Comparative Law*, *Legal Philosophy* and *Alternative Dispute Resolution*. Students must also complete a service placement, connected to an ethics subject, in which they learn through service to the community. Further, the university also requires all students to take *Philosophy*, *Ethics* and *Theology*. However, the most dramatic example of a compulsory program extending beyond the Priestley requirements is a law school that has responded to university policy by making all of its LLB program compulsory, so that students have no elective choice. These compulsory subjects include many tax, corporations and other commercial law subjects, as well as legal theory. At the time the school was visited, it was in the process of reintroducing some subject choices.

So, while law schools’ compulsory programs are dominated by the Priestley requirements – which means that at least half of all LLB programs are dedicated to 11 areas of knowledge considered to be fundamental to legal practice - a few law schools did not feel compelled to include all of the Priestley requirements in their compulsory programs. Instead, they preferred to leave it to students to decide whether they would need to cover these areas in the elective choices. Moreover, most law schools were prepared to go beyond the Priestley requirements and required students to complete subjects in legal theory, legal skills or substantive areas outside the Priestley 11 which they considered to be important or part of the school’s special focus.

Elective programs

More so than their compulsory subjects, one of the main factors that distinguish law schools from one another is the size and scope of their elective programs. While law schools are confined in developing their LLB curricula by the need to cover the Priestley requirements in their compulsory subjects, they have a free hand in their elective programs, which are usually available in the latter stages of an LLB program.

Law schools accorded different relative weighting to the compulsory and elective programs. The balance between compulsory subjects and electives depended on many factors – including:

- the school’s overall philosophy of legal education;
- its aims for its LLB program;
- the teaching and research interests of staff members;
- student choices of elective areas;
- the law school’s resources;
- university policies;
- the way it covered the Priestley requirements; and
- the balance it had struck with partner schools in combined degrees.

For example, one law school was able to offer a significant elective program because it was a large school and was able to negotiate with partner schools to ensure that the LLB component covered 3.25 years of a typical five-year combined degree. Another law school restricted its compulsory subjects to Priestley subjects and *Legal Process, Research and Writing* “to give the maximum amount of flexibility to students ... to make our degree as attractive as possible.” In the mid-1990s Law School EA

had a debate about whether we would maintain compulsory units in environmental law and family law and it was a battle between core versus elective, a battle between choice and what we thought was good for students, and in the end choice won out, which I think in some ways is a little sad because I think they were important values we were trying to emphasise there in what we were trying to do in our law program.

On the other hand, one law school was forced by university policies to make all of its subjects compulsory. Two other law schools aim to maximise the scope for student choice in their degree programs, and in each elective subjects comprise roughly one third of the LLB component of the combined degree (7 out of 22 subjects and 8 out of 22.5 respectively). At another law school, the compulsory subjects take up 70 per cent of the curriculum. A few years ago the number of credit points for each subject was increased, which had the effect of reducing the number of electives students needed to complete.

Some law schools (usually the older schools) reported that over the past years they have either streamlined their elective programs, or reduced its weighting within the overall program. For example, one law school offers a full compulsory program, completely covering the Priestley requirements as well as a number of additional compulsory subjects (see above). It has streamlined its elective program by requiring teachers covering particular subjects areas to rationalise their subject offerings in the elective program. For resource reasons, two other law schools, in the late 1990s, increased the relative weighting of their compulsory subjects, so that students could choose fewer elective subjects.

Other law schools (usually third wave schools) reported that they had reduced the weighting of their compulsory programs in the LLB curriculum. For example, in 1999, one law school decreased the relative weighting of the compulsory subjects in order to ensure that it could offer a Professional Legal Training program as an integral part of its LLB offering .

To explain the changing trends with respect to the emphasis given to electives, one law school reported that:

In the early days of our curriculum there were far more compulsory units than there is now. For two reasons. One because they were values we thought were important for what we were trying to push, and secondly, and far more pragmatically, it's very hard in a new law school to offer a very wide range of electives. In fact you can actually run up quite a reasonable law degree if you had no electives at all because it's highly efficient but as we grew we were able to relax those sorts of prescriptive rules and introduce far more in the way of electives. So now the graduate degree would be about half and half. I think it might be 11 core and 13 electives, something like that.

These brief examples illustrate that elective programs in most law schools were constantly changing, as law schools strove to balance the variables governing the shape and content of their elective programs.

Rationales for elective programs

There were a number of motivations for the development of elective programs. As one interviewee observed, “we have a range of styles of electives, which are meeting different aims, [and] ... not just aiming to be attractive to students”. Another interviewee remarked that the law school’s elective program is offered “in areas of staff interest, staff expertise and we try to give the students as broad a range of choices as they can. They can do non-law electives.”

It appeared that in most law schools, the primary aim of an elective program is to broaden students’ learning experience, and give students the opportunity to explore areas of law beyond those covered in the compulsory subjects. It is not possible to cover all areas of law in the LLB, and so the elective program allows students to pursue their own interests. As one interviewee suggested:

it’s the freedom to do some of the kind of teaching that doesn’t fall within the constraints of the Priestley 11 subjects – to do the reflective and the analytical. Now ... I’m not suggesting that doesn’t happen in the compulsories as well, but there is a certain compulsion with the Priestley 11s, a feeling that there’s a certain amount of material that must be covered to comply. Whereas with the electives there’s scope for a range of other kinds of teaching and you can do subjects ... which give students the ability to look in depth at various things and not purport to be covering entire fields of knowledge.

One Dean explained that school’s rationale for its elective program is:

to diversify the areas of law about which students can learn, and in particular I would see the elective program as providing the means for seeing the application in depth of principles that have been dealt with in the Priestley subjects. In that sense I would see all elective subjects as having a relation to the core subjects and extending the core subjects so that, for example, if you’re doing industrial relations law you’re looking at extending the principles which you studied in the Priestley *Constitutional Law* and the Priestley *Contract* and perhaps *Torts*. And so then I would see all the elective subjects in those terms.

Another Dean explained the aims of the law school’s elective program as follows:

The aim of the elective program is to allow students to pursue particular areas in depth for the educational value that is derived from that experience. It’s not to produce specialists or to provide specialist training or qualifications in any field of practice. It’s deliberately not that. If you look at our graduate program, where we have fields of specialisation, that is deliberately linked to the way people practice in those fields of specialisation but the optional component of the LLB program is designed to allow students to pursue particular matters which either fall outside the compulsory component or build upon elements of a compulsory component... So some optional subjects take further, subject matter that has been introduced through

the core. Others branch away from the core to deal with subject matter that simply hasn't been dealt with, at least with any degree of depth in the core course.

This was echoed by another Dean, who commented

to give students a range of ways in which they could practise specialisation or get a sense of what it is like to specialise in an area of law, not so that they will then take that specialisation off and make a career of it, because that seems to me to be nuts. But rather that they had a sense of how to pursue a special interest, that they would in fact think about developing special interests in law, that law wasn't simply something that consisted of obligatory courses.

At one law school, new electives are "both responsive to student interest but also provide opportunities for staff to develop their teaching in the context of their particular research interest". This often means that when a staff member leaves the law school, electives peculiar to that staff member's research interests might have to be abandoned.

Some law schools did not see their elective programs as progressing from their compulsory programs.

enabled people to do subjects they choose to do and enjoy. We don't tend to have subjects that build on the core Priestley subjects. They tend to be in other areas. We have commercial law subjects and non-commercial law subjects.

A number of law schools, especially those offering the greatest range of electives, explained their elective program in similar ways

to have a good range of electives for students to choose from. We [have] a number of criteria or decision-making points that we wanted to take into account in deciding our elective program and none of them was more superior than the other. ..[W]e had to have a good range of electives, particularly in the areas where this faculty wants to establish a market position: international law, public law, environmental law and commercial law.

We wanted to have a sufficient range of more generalised electives that students can do. We wanted to have them offered on a regular pattern. We wanted to not hold ourselves as offering electives if there's no real capacity to do that, so if there were going to be resource questions, which had to be taken into account.

And there were some smaller factors. We wanted to make sure that we had to take into account enrolment patterns in electives. There are some electives that, if an elective is seen as not attracting too much support no matter what the merits or what we might think of it, that elective couldn't be sustained.

So in the end it was really a case of balancing a whole lot of different factors and coming up with a list.

Often such schools review their elective program by asking the following questions:

What do we have on our books?

What have we been actually offering?

What do the student numbers look like in that?

As these quotes suggest, there are at least three motives for an elective program. The first is to provide subjects that students would enjoy, and find intellectually stimulating. Related to this was the aim to enable students to learn to explore a subject area in depth. The second is to develop concepts and principles from the core subjects. The third is to expand the areas in which students could develop their expertise for vocational purposes. Particular subjects, such as *Intellectual Property Law*, “are seen as being very valuable in selling to an employer”. This rationale might lead to law schools developing a range of electives in a particular subject area, enabling students to specialise for vocational purposes.

Manderson (2002) argues strongly for a further motive for an elective program – to encourage students to think about postgraduate research and as a

core pathway to postgraduate study in law. [Electives] ... ought to involve elements in which students are introduced to aspects of advanced study as well as aspects of specialised knowledge.

In part for this reason, some law school encouraged students to specialise in elective programs. At one law school, for example, there are two principal aims of the elective program:

One is to promote choice. The recommendations that came to us [from a recent review committee] were that the LLB had to expand its opportunities for choice. Now those recommendations, coincidentally, coincided with the change in the admission rules. So the primary aim is to promote choice, and that is partially in recognition that the LLB can be something of the equivalent of the modern Arts degree. The second aspect of the elective program is that we have picked up on a recommendation made to the Pearce Committee that elective programs also enable students to provide some structure to the LLB and so we’ve introduced optional specialisations.

Some law schools offered “dual badge” subjects specifically targeted to students in particular combined degree programs. For example, one law school developed a *Children and the Law* for LLB students and for Social Work students. “One of the objectives of the subject is to promote co-operative professional relationships between groups, which is quite an exciting thing to do.”

Another law school’s elective program has been developed in response to its geographical position, so that it has an array of elective subjects in indigenous law and South-East Asian law.

Other electives did not so much allow for specialisation in areas of law, so much as specialisation in approach, by having a legal theory or skills focus (see the discussion of legal theory and of skills later in this chapter). So, for example, one law school offered a series of clinical electives.

An often-expressed rationale for developing an elective program was to allow staff to build links between their teaching and their research interests by teaching

an elective in their specialist area. As one Law Dean put it, a motivation for an elective program, which should mesh with the other purposes

was that it would be an outlet for the special interests of staff, that staff would be anxious to ensure that they had a slice of the elective program. And so that bane of the law school's existence, but also the sign of law school life, would continue. ... What it perfects, of course, is the constant way in which people develop as teachers and as intellectuals and how they seek to express their interests and their intellectual development in the courses they teach, beyond simply a particular perspective on a required course but into special topics or an elective.

So my ideal elective program would consist of the usual suspects but also Mediaeval Irish Legal History. ...A good elective program should be able ultimately to find a space for that kind of interest [if such an interest was expressed by a staff member].

Some law schools claimed that what was distinctive about their elective program was that many of their electives were research-based, and shaped by the research interests of staff. Many interviewees claimed that students appreciated being taught by experts with a passionate interest in the area. A further benefit identified by some law schools was that staff teaching in their areas of research interest often produced textbooks and casebooks.

With these different rationales for the development of electives, it was up to the head of school and relevant curriculum committee to ensure the appropriate balance in the types of electives offered (for example, the balance between social justice and human rights and commercial subjects, or between substantive law subjects and theory subjects), and the resulting balance usually reflected the law school's overall approach to legal education. For example, one law school offered students the opportunity of completing a full professional legal training program within the LLB program, and consequently only allowed students taking that option to choose three elective subjects. Until a few years ago, another law school had not thought about its elective program strategically, but recently had been forced to do so. Some of its elective subjects were identified, upon the establishment of the school, as "the sorts of electives the school should have", and the others have developed in line with staff members' research interests. The recent review of its LLB program, however, recommended that some electives be offered every second year, that new electives be created in E-Commerce Law, Human Rights Law and International Trade Law (conflicts of law), and that at least two electives should be offered over summer.

But the issues involved in shaping the elective programs, and ensuring that the compulsory program was properly developed, are complex, and Deans are always looking for new ways of finding a balance between the compulsory and elective programs. One interviewee argued that

I would like to see a situation approximating the American model where members of faculty have a responsibility essentially for teaching something in the core of the curriculum and an elective of their choice. A special interest. Maybe their special research area, because they're enthused about it they do it well and it would be of interest to students.

There are limits to how far you can go along the path there because even in the elective program you've got to make sure you cover a range of things that wouldn't necessarily be covered by free choice of faculty in what they teach. But it is important to try and match up your faculty's interests with what the elective program is, because it just is presented and taught more effectively and it's relevant to our recruitment rounds each year because we're looking at gaps and what haven't we got and what should we be looking at?

Size and Scope of the Elective Programs

The financial circumstances facing law schools did not always allow elective programs to blossom without constraint. For example, as a result of the 1997 enterprise bargaining round, which resulted in increased salaries but without corresponding increases in government funding, some law schools reduced their elective programs to conserve teaching resources rather than increase teaching loads. Two law schools, for example, increased the credit attaching to elective subjects, which in turn reduced the number of single semester subjects that a student was required to compete over the course of the LLB – from 27 to 24 in the case of one of these law schools, so that the number of electives that a student was required to complete was reduced by three. It was hoped that the elective units would fill out in content to make up for this. The Dean commented that this development had “weakened the student experience and had weakened the LLB”.

Similarly, another law school recently reduced the number of elective subjects required in the LLB program from 12 to 10, in response to university requirements to standardise subjects into 12.5 and 25 per cent subjects. “We were totally opposed to it.”

A similar story was reported by a third law school, which was subject to university requirements that undergraduate LLB students choose two compulsory common subjects in the first year of their degree program, with the result that students now undertake one fewer elective subjects. This was strongly criticised by the local Law Society, “because it was felt that it was a dilution of the law degree”.

Rationalising elective programs was not uncommon, as suggested above, and in the late 1990s, one law schools reduced its elective program from 40 to 45 electives to 32 to 35 electives because

we were simply spreading the same number of students across more and more elective courses and that meant we were not using our resources effectively. [We] effectively worked out the numbers of students and then the number of electives based on that. ... What happened in the 1990s was that my colleagues put forward more and more interesting elective courses but with the resources crunch that we've all had to face, [we had to consider] just how many electives do we need? [We] tried to push ... colleagues back more into the compulsory core, because what was happening was that the compulsory core was being denuded of experienced staff who wanted to teach the electives. [We] reversed that trend and [developed] a coherent policy on how many electives we offer.

One of the newer law school mentioned that its aims in relation to its elective program, has been:

to keep the number of electives that are available to students fairly narrow, and secondly to put them largely in areas where they fit in with both the commercial and global emphasis [of the LLB program]. So we have amongst them things like international trade law, Asian legal systems, comparative commercial law, and in intellectual property law.

Law School BC remarked that one factor strongly influencing curriculum design was the university's approach to "unit rationalisation".

we've been through a process recently of so-called subject rationalisation and that has got an influence on our programs. Our students are not very happy with the fact that we've taken away elective subjects. So if you say: 'Can you identify any factors that affect, impede or promote effective curriculum design?' well in our case it will definitely be the Teaching and Learning Management Plan from the university and then the way in which we implement it at school level.

Large law schools predictably tended to have the largest number of electives in the programs, with one offering 72 elective classes each year (although a number of elective subjects offered more than one class). Small to mid-size law schools offer students 30 elective subjects over the academic year (which one Dean considered might be beyond the resources of the school). Table 4.1 summarises the elective programs in most Australian law schools. The law schools are presented in no discernable order and the codes for law schools used in this table do not reflect codes used in any other part of the report.

Table 4.1
An Overview of Elective Programs in Law Schools

Law School	Number of electives required in LLB programs	Other features of elective program
1	7	
2	8	See discussion below.
3	12	There are at least 30 electives on the books, and 10-15 are offered each semester. Some electives are offered every year, and some every second year.
4	A minimum of 2 subjects if students adopt the PLT option, and a minimum of 7 for other students	About 20 electives are offered, but not all are offered every year.
5	12 (will be reduced to 10 when two new compulsory subjects introduced)	87 electives on the books, 60 of which were offered over past two years. Electives are only offered if class sizes exceed 25 – if not viable 3 weeks before subject starts, they are scrapped.
6	Undergraduate LLB 9 electives and 6 skills subjects (or 10/4, 11/2); graduate LLB 8/2 or 7/4	50 electives on the books, most offered every second year
7	5-6 elective subjects on average, depending on	32 electives offered; can specialise if want to but no streams etc, and elective must attract 20 students to be

	weight	offered; not all electives offered every year and some only every second year.
8	8	30 elective subjects offered each year
9	7	Two lists – list B – 3 units from list of 12 commercial law subjects; list C one from a list of 8 subjects
10	7	15 offered every year
11	6 to 10 electives, depending on the degree program.	30 elective subjects offered each year. Students must take one elective from a list of international and comparative law subjects, and one “law in context” elective.
12	9	30 elective subjects, most offered every second year. Students must choose at least one elective from each of three groups.
13	3	11 offered in 2002, 13 offered in 2003
14	10	50 electives on the books. Offer 29 electives in 2002. All electives semesterised. The 2002 curriculum review will “remove electives that have not been offered recently.
15	depending on program, between 4 (graduate LLB) and 8 (4 year LLB).	24 electives offered over past 24 months another 8 on the books but rarely offered.
16	Depends on program – generally 9, graduate entry LLB 12; Science/Law 5	About 25 electives are available.
17	6 to 8 electives, depending on the program.	72 elective classes offered each year (some elective subjects will have more than one class)
18	7-8 electives	30 electives on the books. Popular electives offered annually, others every two years.
19	Straight LLB 18 electives, combined degree/graduate LLB 12 electives	About 50 electives on the books, over 40 of which are offered each year.
21	10 to 11 electives, depending on the program.	50 electives offered. Students must take one elective from a list of “legal theory” subjects.
22		37 electives on the books, 19-21 offered each year (plus 11 cross-listed from other schools)
23	8 electives	Offers 40 electives at least every second year.
24	No electives	
25	8 in graduate LLB: 4-7 in combined degrees	Can choose any of the 35 Part B electives, and a maximum of 2 from the 6 part C electives.
26	6 electives	Students must take at least one elective from list B. The school offers about 40 electives in list A, and about 20 in List B (legal theory electives).
27	8 (4 if do the professional program)	60 on the books. Some offered annually. Most offered every second year.

Table 4.1 shows that there are notable differences in the number of electives required to be completed in the various law schools, and in the number of electives offered.

Electives can be categorised in various ways. Some electives comprised follow-on subjects from compulsory subjects, and included subjects like *Advanced Tort Law*, *Advanced Contract Law*; *Business Associations 2*; *Advanced Property and Equity*; *Advanced Criminal Law*; and *Advanced Administrative Law*. It should be noted that some law schools do not have electives of this type.

Other electives did not have a clear relationship with compulsory subjects, but rather were initiated by teachers (often prompted by the Dean or Head of School), who proposed elective subjects, and had these proposals scrutinised by the relevant committee overseeing elective development (see chapter 8). This would involve a consideration of which areas the school was strong/weak in; whether offering students a broad enough range of elective opportunity, and areas of staff research interest.

In some law schools there was a tension between electives that were commercially focused, and those concerned with legal theory, human rights and/or social justice. One third wave law school in 2001 conducted a survey of students to find out whether new electives were required. The results reflected the diversity of the student body. Vocationally focused students wanted more commercially-focused subjects, while others wanted more on social justice and human rights. In the words of the Dean, “it is very difficult to balance these”. Another second wave law school reported that a small group of students were adamant that a brace of human rights and social justice subjects be included amongst the elective offerings, and staff were also committed to ensuring that legal theory and social justice subjects were offered. Student choice of electives, however, tended to be driven by pragmatic considerations of what students believed to be the subjects required by the large law firms. In the words of one interviewee:

Students stay too close to the railings of what they see their potential employers wanting them to do (for example, intellectual property, corporate law and so on) and are not being risky enough.

As a result enrolments in some human rights and theory-based subjects were very small, and these subjects were sustained only by teachers committed to offering such subjects.

Other law schools reported a similar trend. For example a first wave law school reported that:

so far as students’ actual choices go, they largely focus on the traditional black letter law subjects. So they’ve got the choice but they’re generally choosing black letter law courses. Our figures would say that about 75 percent of our students are going into the legal profession so that’s what they’re doing.

In response to a question suggestion that most of the school’s electives were commercial law subjects:

It’s a response to demand. We’ve got a number of legal philosophy electives there but students do not take them. They just don’t take them.

At a regional law school:

a lot of our students are very motivated towards outcomes. They’re interested in getting a job. They want to know how practical subjects are for getting jobs. They like doing subjects which we say have practical applications. They think the other subjects are not good for them because they’re too theoretical and so forth. They

want to be lawyers at the end of their law degree, therefore they want the subjects practically oriented. I think there's been an effort to not abandon theoretical subjects. I mean we offer jurisprudence and what have you, and some subjects which from a practical point of view aren't particularly useful. We run next semester a human rights course. Once again, with the exception of anti-discrimination law, most of them won't deal with international humanitarian law or international human rights issues.

They're important and they're good to learn about and I think it's important to balance law and be open and do other things, but from a practical point of view, they're not vital. So we don't throw the baby out with the bath water, but by the same token our students like good, meaty, old-fashioned subjects that make them happy if the employers will like them.

Brand (1999: 173-174) argues that the adoption of the relative funding model by the Federal government (see chapter 1) means that

Law students are charged in part according to their perceived likely future incomes rather than the cost of the delivery of their degree. While government has traditionally paid law graduates at a higher rate in their early years of employment, within a few years of graduation it is usually privately employed graduates who enjoy the highest incomes. These high private sector incomes are much more likely to be attainable in private (especially commercial) practice than elsewhere, and students might well be expected to call for increased teaching of subjects appropriate to that segment of the profession. ... In an environment in which students-as-consumers have significant power, it has become difficult to resist student curriculum preferences.

In all law schools elective offerings are a heavy drain on resources. The Pearce Committee suggested that all proposals for new electives should be carefully scrutinised by a curriculum committee, and that there should be a reaccreditation process for all electives on a three-year basis. Almost all law schools now have processes to scrutinise new electives (see chapter 8 below), although few law schools would regularly review their electives every three years. Some law schools will cull electives that are not offered for three years.

Most law schools reported that a major constraint in the elective program was:

who was available to teach them, and how and when they are offered. We've had a lot of staff movements lately, and we had staff who were teaching electives who have now gone – so can we continue to have those electives on the books? If we do, who will teach them?

To cope with these factors, particularly the resources demanded by electives, and staff leave arrangements and turnover, many, if not most, law schools attempted to establish a rolling program of electives, where, for example, popular electives would be offered every year, and others scheduled for every second year, to ensure that each student had the opportunity to undertake the elective over a two-year period (see Table 4.1, above). Many law schools talked about the difficulty of timetabling elective subjects to minimise overlap so as to ensure that students had a wide range of choices in combining elective subjects. Some schools also offered electives over the summer.

One law school, for example, said that in scheduling electives

we aim for cost efficiency. Some are offered each year, a second group are offered on a two-year rolling cycle so students are informed over their final two years which ones are on offer so that they can plan their studies to take the electives they want to study. The third way in which we have developed some flexibility has been to develop summer school offerings which had very frequently been offered from here, but we no longer had the expertise, and we could attract top-line international lecturers to come and visit us, and teach the subjects. All of the summer school offerings are pretty recent. We notify students which electives will be offered two or three years in advance, so that they can choose their program.

Other law schools have adopted this third strategy (see chapter 12). For example, in order to increase program flexibility for students, and flexibility for staff, one law school offers “on a trial basis” two “semi-intensive” summer elective subjects. Another offers about five subjects over the summer period, although only one of these is an elective subject (the others are compulsory subjects). Yet another offers LLB electives both over the summer and in June/July.

The “rolling calendar” approach to electives is increasingly being adopted by law schools. Some schools have a carefully developed strategy to its elective program:

Usually the approach we have is like a rolling calendar, where you have a sense of a natural sequence of units from the students point of view but you need to offer them really within a two-year rotation because you’ve got your fourth and fifth year students and they need to have an opportunity for doing them within that two-year space. So our calendar gives you a two-year pattern, so you can have a sense of what’s going to be offered when, and one of the things I’ve been concerned to include in the approach to scheduling the units is, it’s not simply availability of staff, it’s what the program needs, what the students need.

Some schools will only program based on who’s around, but that’s not an approach that I take. There’s a sense of that, but mostly with your options you want to make sure that you’re offering the program. So for instance a unit like Alternative Dispute Resolution has not been offered for a couple of years and I said, “We have to offer that”. And the same with International Law. That needs to be offered every year. So even when our staff member is away this year we are offering International Law with another person teaching it.

You offer your units based on the program and then you find the staff to fill them. But then again to be fair to teachers as well as students, you want to offer a rolling rotation of the other things.

One law school offers all but the very popular electives every second year. An elective will be withdrawn if fewer than 10 students enrol in it. If fewer than 10 internal students enrol in an elective, they are informed that the elective will only be offered in the external program. Overall only one third of electives are offered internally. Similarly, another law school offers annually electives which attract over 50 students. The remaining electives are offered every second year. One exception to this principle is that the school will offer an elective in *Intellectual Property* (its specialist subject area) every year.

Similarly, a third law school has

always tried to have [a] two-year plan so that student enrolled in this year will know that over the next two years, these are the electives we are going to have on offer and these will be the semesters they will be in, so they can plan their curriculum at least for the next two years ahead.

Now it doesn't always work that way. Staff movements and people going on leave or resigning, or whatever, mean that we simply can't do that, but that was the thinking.

While most law schools tend to require students to complete all, or most, compulsory subjects before they can take elective subjects, this is not a uniform approach. One law school, for example, while channelling students' elective choices (see below), offers students flexibility in other respects:

Nowadays students take their elective units during the course of their studies, first, second, third year. In other words we haven't staggered all the elective units in the final year. They can take it; it's integrated in the program.

Students can also take electives offered in "off-campus" mode.

Finally, we observe that resources available for elective programs can be affected by the development of other programs within the school. For example, law schools developing postgraduate coursework programs would invariably have to draw resources away from undergraduate programs, which often meant away from the elective program. One large law school reported that in the late 1980s it had set up a Masters Coursework Program, and that this has shifted a lot of the energy out of the development of the elective program and into the postgraduate coursework program. For pragmatic reasons (to ensure sufficiently large class sizes in the LLM subjects), upper year LLB students had been permitted to enrol in these Masters subjects, but this had had "a stultifying effect upon the process of curriculum review" in the LLB program. As will be discussed in Chapter 6, it was common for law schools to allow LLB students to take LLM coursework subjects, and vice-versa.

Restrictions on Student Elective Choice

As indicated a few times already, most law schools considered that their elective programs should be designed to give students as much choice as possible, and placed no restriction (apart from logistical and timetabling constraints) on students' choice of electives. Of course students are able to only choose from the electives that are offered, and, as we have noted above, there were many factors which influenced the type of electives that were offered. One law Dean expressed the general view of law schools to their elective programs as follows:

I think very few law schools try to dictate much [about content or choice in electives]. Where they do, that is an area where notions of academic freedom perhaps have more force. But even there it would be perfectly open to the school to say, 'Look, ... if you want to teach here, we're pitching towards a curriculum which is more academic in its orientation and less practice oriented' or vice versa. I think that at the end of it all, it is open to the schools to [shape the program]. I don't think many

schools try to do that, they do leave that very much up to the teachers, but if you've got enough subjects, and enough staff, I'd say you'll have a healthy mix and that's why no one tries to convert anyone else or pressure anyone else to do exactly what they do. You're better off letting the diversity flourish and let students choose the subjects. Now there is a limit to that too, because in a resourcing sense you can't really afford to have a group of staff who in teaching electives, teach tiny electives all the time because their approach is an approach not consonant with what the majority of students want.

Of course some law schools have considered the option of shaping students choice of electives; however, often such notions would be rejected. For example, in its early years at one law school, staff had debated the option of offering students different baskets of electives and requiring students to select one elective from each basket. It chose not to go down this path: "There was a strong feeling that students should have more choice and define their electives according to their own interests and needs."

Other law schools have, however, decided to channel student elective choices in various ways to give expression to law school priorities. As mentioned above, one law school groups its electives and students then have to choose at least one elective from five groups of elective subjects. One group contains legal theory and jurisprudence subjects, another international law subjects, a third public law subjects, a fourth commercial law subjects and so on.

We were not convinced that students were in a position to make clear and independent choices. They would be influenced by anecdotes about the quality of a subject, or the ease of getting a grade. We believed that they should really have a broad general education in law, rather than specialising in commercial law or international law and then suddenly finding that it did not really match their chosen career path.

. In the 2002 review of its LLB curriculum, this School considered removing the need to do a commercial law subject "because there is sufficient commercial law within the core program, and there is a big push for students to take those subjects any way, because of the market".

Similarly, at another law school, students must choose at least one elective from each of three groups of electives. The first group comprises "theoretical and contextual" electives, with subjects like *Criminology*, and *Human Rights*. The second group includes "practice-orientated" subjects (such as *Family Law* and *Taxation*), and the third group includes "advanced" subjects (such as *Advanced Criminal Law*). At yet another law school, students must choose one elective from a number of "legal perspective" electives, and one elective satisfying the "research and writing" requirements of a scholarly piece of writing comprising at least 70 per cent of the assessment for the subject.

To implement its "commercial law focus", one law school originally required students to take three compulsory commercial law subjects. To accommodate student objections that they had inadequate choice of electives,

we have made certain of the commercial law subjects that have been compulsory in the past, we've made them electives, but within a group we call the List B. List A is the 17 core subjects that we have, and then it is expected of our students from the second list, consisting of commercial law subjects now, to take at least three subjects. Previously we had prescribed the three subjects and they were all compulsory, but now they can choose from a list consisting of about 12 subjects.

And then we also included a separate third list, what we call List C. ... They also need to take one international commercial law subject, and there they have a choice of about eight subjects from that list. In other words no student can complete our degree without having had exposure to at least four commercial law subjects and one international commercial law subject.

Some law schools, as mentioned above, have placed considerable emphasis on legal skills and legal theory, and at one law school this meant students were required to do between two and six legal skills electives, as well as two legal theory electives from a list of about 12 subjects, which include *Jurisprudence*, *Law and Society (Malaysia)*, *Feminist Theory and the Law*, and *Indonesian Law*. As one interviewee noted, "we make students take a range of elective subjects, some having a philosophical bent, and some having a skills or practical bent".

One law school requires its students to undertake one internationally focused elective – in international litigation, Public International Law, or international commercial law. This is the only stipulation, and aims to ensure that students have some understanding of how law operates at supranational level – whether it is recognition of other judgements, United Nations conventions, or international conventions of sale of goods. The Dean explained that this requirement develops a theme introduced in the first year program. "In first year students are told about international treaties and conventions and how they work – and later in the degree they have to study something in detail." From 2003, as a consequence of its modified approach to the integration of combined degrees, the school will also require students to take one interdisciplinary ("law in context") elective. Another law school requires students to complete one "Jurisprudence" elective. Another law school that has also placed an emphasis on legal theory requires every student to undertake at least one subject which is listed in a group of "legal theory" subjects, although the definition of what a "legal theory" subject is appears to be very broad.

In Law Schools which don't include *all* of the Priestley requirements in their compulsory program, and rather offer some Priestley subjects as electives, the shadow cast by the Priestley requirements will generally mean that students see electives with Priestley content as "quasi-compulsory":

Most students do them. That being the case, the range of what we call the real electives then becomes reduced.

Offering enough electives to allow for specialisation

"Specialisation" in elective choices could be formally recognised by the school, or just facilitated without any form of certification.

The formal approach to specialisation is taken at one law school, where students have an unrestricted choice of electives. Students can, however, undertake at least four electives (out of a total of eight) which if successfully completed would result in their being certified as having completed a specialisation stream. Each semester the school ensures that there were enough electives in each stream to enable students to satisfy the requirements for specialisation. The specialisation streams include Intellectual Property, Information Technology and e-Commerce; Corporate and Commercial Law; General Legal Practice; International Trade Law; and Public Law.

Another law school offers students two major streams in their law degree. These are “entirely optional”. Students may choose to graduate with a major in Community Law or in Business Law, by completing at least six electives from a list of Community Law Electives (for example, *Human Rights Law* and *Immigration and Refugee Law*) or Business Law Electives respectively. A number of electives (for example *Anti-Discrimination Law* and *Law and the Workplace*), are on both lists. The school also offers many electives in public health law, but does not officially sanction a major stream in that area.

Some law schools offer a specialist LLB for indigenous students, and at one law school students are able to complete a series of four indigenous law electives. This law school also offers students the option of completing a Professional Program instead of four electives.

This issue of specialisation at one law school has now been linked with the school’s postgraduate program “where we allow specialisation in the LLM program”, and one issue is whether undergraduate LLB students should be able to take these LLM subjects as undergraduate electives. At present the school does not have any “identified specialisations” in its LLB elective program, but “if students have a particular interest in an area they can choose a concentration of subjects in that area”. In particular, students can specialise in commercial law, labour law and environmental law, which are areas in which the school has a concentration of subjects. The recent Review recommended that students be allowed to undertake a limited range of specialisations within the framework of a “major study”. The factors to be considered in determining areas of specialisation should include the school’s existing resources, student demand, the number of existing subjects in the area, and the Faculty’s goals and profile. A student’s academic transcript should include a statement that the requirements for the specialisation have been satisfied.

Other schools facilitating specialisation tend to favour the informal approach to specialisation. One law school “layers” some of its electives, so that students can specialise to some extent by doing a foundation elective and then a more advanced elective in the same area. For example, this law school offers a “base” elective in *Environmental Law*, and students completing that subject can take *International Environmental Law* or a “floating subject” *Advanced Topics in Environmental Law*, “where they’ll pick out key issues in particular years and develop them”. Such layering also occurs in areas such as *Commercial Law*, *Public Law*, *Corporations Law*, *Human Rights Law* and others.

We don't call them specialised streams because we prefer them to have a real smorgasbord, but they can specialise and our focus in our elective program is to provide those layerings. The idea is not to have things stand out on their own. So for instance a new one, *Law and Sexuality*, is both a unit that explores aspects of theory or, sorry, theoretical perspectives. It's a jurisprudential unit but it also is anchored very much in criminal law/family law discourses, so it could sit with *Family Law*, *Discrimination*, *Health Law* and *Ethics*. So you could do a bunch.

Another law school allows students an unrestricted choice of electives, and also allows students to undertake "non-law" electives. It "streams" electives for students, by indicating that if students are interested in a particular area of employment, they might want to choose from a particular set of electives, but there is no compulsion, and the school does not certify that the student completed a particular specialisation.

Other law schools also allow offer their students a free choice in electives but do not have enough electives in some areas (South East Asian Law, Indigenous Law, international law and commercial law) to enable students to specialise in these areas. This was especially true of the smaller law schools.

For some law schools, the strength of its LLB programs lies in "the balance between compulsory and elective courses and the way in which that balance does allow students to either pursue a very general LLB or to pursue a more specialised path if they wish for example in the area of international law." In response to these comments, his colleague said:

I am often asked: 'Should I specialise in my elective choices?' My response is that unless students are very clear about what they do want to do upon graduating, unless they have a very clear vision, perhaps the best thing to do is to take a broad range of electives. Perhaps a slight specialisation in a particular direction that interests the student, but on the whole I think having a general portfolio of electives is a good thing.

I am a bit fearful that that the world is changing so rapidly and students can come here with very fixed ideas about what they want to do and then in fact find that their thinking changes when they have graduated. If [students are a bit uncertain about what they want to do when they graduate] I think choosing a broad range of electives will just give them that flexibility for the future.

This approach to elective choice would possibly reflect the views of most Australian law teachers.

Undertaking electives at another institution

As will be discussed in chapter 7, some law schools have substantial overseas exchange programs, and allow their students to undertake elective subjects at overseas law schools.

Further, in some of the major cities law schools in that city have an arrangement that their students can take each other's elective subjects if they are not offered at the student's law school. One small law school, and the only law school in its

jurisdiction, allows its students to go “cross institutional” – to study elective subjects at other law schools if they are not offered at their own law school.

A law school that housed the University’s criminal justice program, which also taught subjects in the Commerce program. As a result of these activities, the Faculty was able to offer its LLB students 11 elective subjects in the criminal justice and commerce programs. Similarly, another law school, which offers a Bachelor of Legal and Justice Studies degree, offers LLB students electives in the other degree program. As these electives are also offered externally, “we’ve actually structured the degree so that [students] can do their last year in a degree externally”. A third law school allows students to take some electives (for example, *Law and Economics* and *Social Regulation*) offered by other faculties. This was also true of another law school, which, in the stand-alone LLB program and the Bachelor Laws in Australian Indigenous Studies at Law School EC, students who have not sought exemptions for a prior degree may study up to eight “non-law” electives (that is, subjects offered by other faculties of the university, or offered by other universities).

Of course, traffic may flow the other way. One law school makes some of its electives available to students from other faculties, particularly electives covering environmental law, law and discrimination and some government/history/politics subjects.

Summary

This chapter describes the fundamental structure of Australian LLB programs, which is generally divided between core or compulsory subjects, and elective subjects. The mix between compulsory and elective subjects is a reflection of the twin foci of legal education – as a preparation for legal practice, and as a process committed to exploring law and its social, political and economic context. As one Dean observed:

I’ve often asked the question rhetorically: 50 per cent of our students come here without the intention of practising law. We need to respond to that. How should that be reflected in the curriculum? ... I think part of the answer would be ... to maintain our accreditation as a place that trains lawyers who can get admitted to practice, and so we have to cover the core in some way. So whatever humanities and social science dimension we feel the curriculum should have, its got to be consistent with the core purpose of training people for practice. But I think, having said that, our elective program is either consciously or subconsciously affected by the broader considerations, given that it is the compulsory core that by-and-large takes care of our minimum professional requirements. ... It is part of the thinking that affects [the curriculum] along with other factors ... like the interests of the particular faculty from time to time, your special areas, perceived gaps, what is necessary to make the place attractive. Sometimes these considerations are in conflict; sometimes they run together.”

CHAPTER FIVE

ETHICS, SKILLS AND THEORY IN THE LLB

One of the most significant developments in Australian legal education in the past fifteen years has been the incorporation, to differing degrees and in different ways, of the teaching of ethics, legal theory and legal skills in the LLB curriculum. These developments have been prompted by broader debates about the place of ethics, theory and skills in the law curriculum (see chapter 1), and to some extent by top-down pressures on all faculties, departments and schools to re-orient curricula to reflect the development of graduate attributes highlighted by universities

The Pearce Report concluded both that the existing LLB programs in the mid-1980s were insufficiently theoretical and insufficiently practical (Kift, 1997: 64), and suggested that all law schools examine the adequacy of their attention to theoretical and critical perspectives, including the study of the law in operation and the study of the relations between law and other forces. The Pearce Report suggested that skills teaching in law schools required greater attention, in particular oral expression and legal advocacy; drafting skills; and negotiation and interpersonal skills (Pearce, Campbell and Harding, 1987: 25, para 1.61 and 133, para 2.195), but failed to provide a blueprint as to how this might be done (see Kift, 1997: 44). Further, as noted in chapter 1 above, the 1992 McCrate report in the United States (McCrate, 1992) sought to narrow the gap between what was taught in law schools and the skills practiced daily by legal practitioners. The report listed the 10 key legal skills as problem solving; legal analysis and reasoning; legal research; factual investigation; communication (oral and written); counselling clients; negotiation; understanding litigation and alternative dispute resolution processes and consequences; organisation and management of legal work; and recognising and resolving ethical dilemmas (ABA, 1992: 139-40).

Most, if not all law schools have addressed these issues to some extent in the past decade, although the approaches adopted are far from uniform. As this chapter will document, some law schools have integrated theory, skills and/or ethics into the core curriculum. Some law schools have included some of these elements in foundation subjects, and then developed these early degree initiatives with integrated or progressive programs built into the middle and later stages of the degree program. Some schools have addressed these matters in a “single shot” subject – sometimes in the core program, and sometimes in electives. Some law schools, for example, adopt a number of these approaches:

We have a stand-alone subject for each of those, not necessarily by that name. So legal ethics is *Lawyers in Australian Society*, legal theory is *Legal Theory*, broader theoretical perspectives, is *Perspectives on Law*. These are all compulsory subjects. And we have six compulsory legal skills subjects. So that’s just a short starting answer to each of those is that we have a specific compulsory subject in each of those areas. And there are lots of subjects where those particular issues are dealt with. You can’t teach corporations law without teaching ethics in governance.

A recent review of the LLB program at this school, it was recommended that

we take steps to ensure the better integration of these different perspectives. The starting point for each will be a specific subject, and the objective is that they actually filter through a range of other subjects, but not each of them through every subject. We do that with some skills like drafting. We have drafting in a whole range of subjects and when [the teacher] who teaches drafting and conveyancing opens the subject, he starts by saying, ‘This is where you’ve done drafting before, and these are the skills you’ve got to do, these are the skills you’ve learnt there, these are the skills you learnt there, and this is what we’re going to do in this course.’ And that’s what we would like to do in a whole range of areas.

This chapter will separately consider the incorporation of legal ethics, legal theory and skills into the LLB curriculum.

Ethics

Across the common law world, law schools are increasingly understanding the importance of taking ethics seriously (see Brownsword, 1999b). Legal ethics falls within the Priestley 11, under the professional conduct requirement. In the past, most law schools covered legal ethics issues in discrete *Professional Conduct* subjects, offered as part of their continuing education program. Much has changed in the past ten years. This project found that all but two law schools taught legal ethics in the mainstream LLB program, and most as part of the compulsory program (see Armas, 1998). At one law school, “legal ethics” is still offered each year as a non-degree subject, so that students can complete the subject once they have graduated. At another law school, ethics is taught in the Professional Legal Training Program, which was completed by 95 per cent of students.

The first law school to make the study of legal ethics a compulsory part of its LLB program - in a subject called *Law, Lawyers and Society* - has now integrated that subject into the Legal Clinic at a legal centre tied to the law school. As such, students who take the compulsory Professional Conduct course do so through the legal centre and, in the words of one interviewee, “have some clinical exposure to the legal problems of poor people. That change ... has strengthened the course, the program and student experience.”

Some law schools ensure that ethics are not just covered in a “one-off” subject, but revisited at different points in the curriculum. One Dean mentioned that “broader ethical issues arise throughout the curriculum”. At another law school, ethics is woven into the curriculum at various points beginning with the compulsory first-year subject *Lawyering: Procedures and Ethics*. Then as part of the Professional Legal Training Program, ethics is again covered in units in *Legal Skills* and *Ethics* and *Legal Practice Management*. Subject material in other compulsory and elective subjects also includes ethical issues.

Some law schools mentioned that they covered ethics in multiple ways

First, formally in subjects themselves. So for example we have *Introduction to Law*, which would touch on issues of broader legal perspectives, theories and also ethics. Similarly with *Law Foundation*, looking at the broader issues of legal theories and approaches and concepts. And thirdly is the separate subject called *Professional Legal Responsibility and Legal Ethics*, which is a final year

compulsory subject for all LLB students. It has the formal elements of ethics affecting lawyers and then the practical working out in small group sessions of particular issues and problems.

The issue of ethics probably impinges in almost every subject, although often not formally defined as such. For example all you need to do is look at any issue regarding litigation and evidence, and they're invariably involved in issues of legal ethics and professional conduct and professional responsibility in all sorts of ways. I mean, for example, in issues of delay and trial tactics and all those sorts of things invariably come into play. And not only that, in many ways perhaps the mooted program does too, in the sense that students are told that you've got responsibility not only to your client but to the court, and part of that responsibility is to bring up authority and information for the court even though it's against your client's particular interest. So in some sense the issues of professional responsibility and ethics are inculcated at each stage, not always articulated formally in the course description but often a matter of almost an integrated issue about ethics in what we teach and how we teach.

I know that in Administrative Law [the teacher] used to formally raise these questions of ethics in dealing with administrative matters and how he regarded it as part of his responsibility as a lawyer to talk about a lawyer's responsibility in the context in which the law matters. And I suppose that's the responsibility of all of us as teachers, to infuse that issue of our responsibility as lawyers to the community and to the profession, and to the courts as well. So integrated rather than articulated I would think in most subjects. More formally articulated in things like litigation and tax and procedure and those sorts of things, and dealt with also in Introduction to Law perhaps in a more formal way, the role of lawyers in society and their duties and responsibilities.

At one law school the broader perspective of legal ethics spans five subjects, one of which is an elective. The foundation subject, *Torts A and Legal Method*, has a short introduction to the legal profession; trust accounts is covered in the commerce-based accounting subject and in the subject *Trusts and Trust Accounts* (which will focus on the ethics and law of the management of a trust account), a fourth year subject *Lawyer's Professional Conduct* (covering the practitioner's duty to the law, the court, the client and fellow practitioners), and finally there is an elective, *Lawyers' Ethics* which deals with the social and moral aspects of ethics.

One Law Dean explained that changes at his law school began quite a few years ago

About 15 years ago, there was a strong move towards bringing ethical components into just about everything in the Law School, which was dovetailed with a renewed emphasis on skills training and as well an emphasis on the law in action, or law in context. [A]t that time, for example, ethical components were being woven into criminal law and into family law and so into [other] substantive areas. I guess that can be uneven if it's not done really well and I guess we also felt that with the [introduction of] the Priestley 11 ... people would feel much more confident if we could point directly to something and so at that point we [included] an express general ethics component within our *Law, Lawyers and Justice* unit, which would have been taught in the first year of the combined law students' program. [W]e later decided that it made some sense to have people getting some substantive law subjects

earlier and then come back to it later, and so [the subject] is now in third year. ... [But] we also still have legal ethics form a part of quite a number of other subjects. It's very important, for example in our *Trial Advocacy and Litigation* and *Criminal Law* and *Family Law*.

One law school covers legal ethics in a compulsory subject and legal ethics issues also arise in the compulsory subjects *Legal Skills I* and *III* and in *Procedure*. Another law school has a compulsory *Lawyers and Legal Ethics* subject in final year.

In addition, with many of the subjects in the core we actually try and underline, particularly early on, ethical dilemmas. So for instance *Australian Legal Systems in Context* is ... both a theoretical kind of grounding in the legal system [and] a grounding also in ethics. In other words I don't think legal ethics sits in splendid isolation from the actual vocational pedagogy of even the Priestley 11 subjects. One needs to have a perspective on that and I think in all subjects but I think also in the practical component to the program [if] they're actually confronted with real ethical dilemmas with clients that they're instructing, preparing a brief in a hurried context like a magistrate's court, if they're doing particular research for mounting a public interest law case, they're also learning ethics as they do it.

Other law schools also reported a special focus on ethics within its LLB program. At one such law school, students are required by the university to complete two general subjects, *Ethics* and *Theology*. They also have to a complete compulsory *Legal Ethics* subject, and have the option of doing a further elective in ethics. The law school, following the university's lead, also has a social justice orientation that requires all students to undertake at least six hours of community work each semester. This may include work in a legal service or other non-legal work. For students enrolling in the LLB program from 1999, the requirement is 20 hours a year.

The following are some examples of how ethics is incorporated into the LLB program:

- A separate compulsory subject, *Legal Practice and Ethics*. In addition to this
 - we generally encourage individual staff members wherever possible to make students aware of ethical considerations in their [subject]s. For instance, it is a very important part of *Business Organisations* where we're dealing with conflict of interest situations. [In a subject] called *Company Directors*, I deal with the ethical way of doing business and staff members are generally encouraged to promote ethics in that sense.
- Ethics is covered in a compulsory final year one semester half subjects, called *Legal Ethics*, and "there's lots of ethical threads running through our subjects". It plans to create a new first year subject, which will combine legal history and ethics. The subject will include a history of the profession, and of legal ethics.
- ethics is covered in "two modes": in a compulsory subject *Legal Practice and Conduct* and in a double elective clinical subject, which is offered

twice a year. “We have a lecturer who’s the supervising solicitor as well as teacher. It’s very intensive and they learn on-the-job and then they have lectures and they also reflect through group sessions on what they’re doing and so on. So that’s one approach to legal ethics.”

- a core subject in *Values* (this is a university requirement), and separate compulsory half-year unit in legal ethics. In some of the substantive subjects, for example *Family Law*, some teachers also infuse ethics into their teaching.

- legal ethics is addressed in the first year subject, *Lawyers, Justice and Ethics*, which is the

focus of teaching ethics in the LLB, [and shows the school’s] commitment to inculcating an understanding of legal ethics in our students – although we would all like to think in our teaching across all law subjects that we encourage an ethical approach amongst our students generally.

- ethics is addressed in a compulsory subject, *Lawyers and Professional Responsibility*, and Law School EA in a compulsory subject, *Professional Conduct*.

- ethics is taught “pervasively”, in the sense that it not only incorporates “legal ethics into the majority of law school subjects”, but also deals “with it in a pervasive manner in those subjects”. In particular, it covers ethics partly in the compulsory subjects *Legal Practice and Transactions* (which includes an integrated multi-purpose website based on Web Course Tools (WebCT)) and *Civil Procedure*, and partly in a clinical elective.

- ethics used to be covered in a third year compulsory subject, *Lawyers and Legal Institutions*,

in which we had quite a lengthy component on ethics. But when the university required us to [standardise the size of our subjects to the national standard a few years ago] we lost that subject. Now we offer Professional Conduct as a fourth or fifth year elective subject. In this current curriculum review our interim recommendation is that it comes back as a compulsory unit, because we are concerned that it should really be part of the core.

Some schools reported that even though they intended to weave ethics throughout the curriculum, this aim has been difficult to implement and to sustain. When one law school was founded, ethics was central to the vision of the founders, and was intended to be woven into the curriculum. This was never successfully achieved, although ethical issues have been raised in the school’s Offices Program, where occasionally the simulated tasks students have been required to undertake have included ethical issues, like conflicts of interest. In the last five years or so, in the words of one interviewee, “ethics has shuffled its way back in the pack”. Ethics is now more specifically situated in the professional subjects, *Civil Procedure* and particularly the final year compulsory subject, *Issues in Legal Practice*. This is essentially a professional conduct subject, but students are also required to

consider sociological literature on legal profession, including questions of professionalism, professional regulation, ethics and trust accounts. The place of ethics in this school's curriculum is being revisited, with a view to furthering the original vision.

Some law schools did not cover ethics in the compulsory program, but rather incorporated the subject area into their elective program. For example, one law school covers ethics in an elective subject, *Professional Responsibility*, another in Legal Ethics and Professional Conduct (and claims that ethics related issues arise in other subjects), and a thirds in an elective subject, *Dispute Resolution and Legal Ethics*, where "legal ethics has been incorporated in the context of a fairly broad-based dispute resolution subject". There had previously been concerns that ethics was not adequately covered in the curriculum,

So we partnered [another law school] and got funding to do a multimedia project about legal ethics. [We have developed] scenario problems to raise in a number of different subjects. [For example] in *Corporate Law* we'll be doing some scenarios, and in *Property Law* we'll be doing some scenarios and that will basically present the students with situations where their behaviour, or virtual behaviour, will pose legal ethical questions. So we're actually producing a multimedia technical product to address that particular issue.

So, to summarise, while all but two law schools include ethics in the LLB curriculum, there is no clear pattern. Some law schools taught ethics in stand-alone subjects, and others as a component of a stand-alone subject. Most of these were compulsory subjects, but in a few schools ethics was only available as part of an elective subject. Some schools had ensured that ethics was dealt with at different points of the curriculum, and revisited frequently, and in other schools this appeared to be an aspiration, or an article of faith, but there were no formal arrangements to ensure a co-ordinated approach to the teaching of legal ethics, and its infusion through the curriculum.

Le Brun (2001c) recently surveyed Australian teachers of legal ethics and professional responsibility and found that some Australian law schools introducing ethics and professional responsibility subjects into the law curriculum appear to be relatively uncommitted to their development, success and implementation; not all law schools offer as much legal ethics and professional responsibility teaching as some law teachers think appropriate, and that Australian law schools have not adopted the teaching and learning innovations in ethics and professional responsibility that have been developed in the United States. She also raises some important issues for future work on the teaching of ethics and professional responsibility, such as:

- how law schools can integrate and embed ethics and professional responsibility and lawyering skills into the undergraduate curriculum;
- how student learning in this area can best be assessed; and
- what work being undertaken in other disciplines (particularly Philosophy and Applied Ethics) might be of interest to law teachers.

Castles (2001) warns that if legal ethics is taught without a coherent philosophical basis, and with an emphasis only on practical ethical problem solving, students are unlikely to see legal ethics as anything more than a gloss on the substantive law. Castles argues that ethics should be taught as a pervasive set of values that underpin the practice of law, and as an integral part of learning the law as a social phenomenon. Students must be presented with the opportunity to confront many facets of ethical decision-making.

Parker (2001: 178) argues that teachers can improve student learning outcomes in ethics

by more explicitly teaching them a *reasoning* or *judgment process* that connects the application of rules about ethics, and a critical standpoint on rules and regulatory institutions, with personal values in the context of the skills required for the everyday practice of law. ... [W]e should focus some more attention on making explicit to our students the underlying assumptions, tools, and processes of thinking that we use, both in practice and in scholarship, to put life, theory, and rules together to make moral judgments about both specific individual practices and the practices of the whole profession.

For more detailed examples of how legal ethics has been, or might be, taught in Australia, see Parker (2001); Hamilton (2001); Le Brun (2001b), Evans (2001), and Zariski (2001). For discussions of the incorporation of legal ethics in professional legal education, see Duncan (2002). For other recent work on the teaching of legal ethics and professional responsibility, see Economides (1998), Moliterno (2001), Schaffer (2001), Wilkins (2001), Menkel-Meadow (2000), Evans (2000) and Giddings (2001).

Legal Theory

A paradox in legal education during the last decade has been the increased focus on theoretical perspectives in the curricula of many law schools, despite strong consumer (that is, student) resistance (see Brand, 1999: 124 and Sampford and Wood, 1988: 37). One Dean suggested that increasingly law schools were teaching at this level

because with the recruitment of career academics there has been a real change. You don't have the emphasis on black letter law teaching because you have scholars as your teachers, and they are bored witless if they are unable to pursue things in depth, in detail and thoroughly.

In many law schools there are enthusiastic staff dedicated to ensuring that students are exposed to legal theory.

One of the difficulties in discussing "legal theory" in law schools is that the expression "legal theory" takes many forms, operates at diverse levels (see Sherr and Sugarman, 2000; Duncanson, 1994) and means different things to different people. To some, legal theory means traditional analytical jurisprudence. To others it means bringing "middle level" theoretical frameworks to bear on the subject matter. Some law schools would include subjects like *Human Rights Law* and subjects that study other legal systems (for example *Law and Society in Japan*) as

legal theory subjects. Some scholars would use the term to describe interdisciplinary perspectives (sociological, economic, psychological, historical etc) on legal phenomena.

Until the 1980s most law schools would offer *Jurisprudence* subjects in their elective programs, but few would require students to study jurisprudence or legal theory in the compulsory program. There has clearly been a significant rethinking of the place of legal theory in the LLB curriculum since that time. Of the 27 law schools covered in this study, all but four required students to undertake at least one compulsory legal theory subject in the LLB program. One of the four law schools not to offer a compulsory legal theory subject does, nonetheless have such subjects as electives, and claims that some electives and core subjects “incorporate a fairly significant amount of legal theory in them”. This law school is introducing a new “introduction to law” subject for 2003 (for the stand alone LLB) which will include introductory legal theory and ethics. The second law school that does not require students to complete a legal theory subject in their compulsory program, does offer some legal theory subjects in its elective program. The third admits that it does “not have a legal theory focus”. Students do, however, cover a little legal theory in *Legal Process and History*, and there are a few genuine legal theory subjects in the elective program. At the fourth law school, legal theory is

incorporated into subjects. It varies from subject to subject. We’ve got a reasonably substantial practical component to our degrees so legal theory isn’t something that is developed as much as it might be. But it does get a run. Each lecturer that has responsibility for coordinating a course can put as little or as much theory into their course as they choose. We don’t have a school-wide policy saying you will teach X number of lectures worth of theory. The students, by and large, don’t like it. In fact they hate it. But it’s something which they really can’t escape. And as I say, some of our staff members are quite keen to push this, so we’ve got staff members who ensure that, for example, *Medical Jurisprudence* and *Jurisprudence* are offered on a regular basis and get a reasonable run. But essentially the amount of intervention in the content which a lecturer provides in their course, is purely at a structural level to make sure the Priestley requirements are met. Beyond that, if people want to take different approaches and different ways of delivery, and different emphases on legal theory or different approaches, they’re left to their own devices and there isn’t any over-arching requirements saying do it this way or that way or the other. And just the nature of our staff has meant that that’s produced a relatively bland view of legal theory. Whether that’s a good thing or a bad thing I guess depends on your point of view. We’re not a hot-spot of legal theory.

About eight law schools require students to take an introductory legal theory subject in their first year. These schools would argue that it is important to introduce students to legal theory early in their studies, before they developed an uncritical and a theoretical approach to the study of legal rules. (For an empirical study showing that students have the capacity to grasp legal theoretical frameworks in first year, see Keyes and Orr (1996)).

One of these eight law schools was also one of the first schools to require students to engage with legal theory in its first year program in the 1980s – in a compulsory first year full year subject *History and Philosophy of Law*. It became apparent that this subject “was very ambitious and exciting and dynamic, but it

was too hard for entry level students. There was much too much reading”. In 1999 the subject was semesterised, and then revised in 2001 as a one semester compulsory first year *Jurisprudence* subject,

which is an introduction to ways of legal thinking. It is more streamlined, more straightforward, and structured to give more building blocks at the same time as exposing students to ways of legal thinking, but not drowning them in too much detail. *Jurisprudence* is not in the Priestley list, but for us ways of thinking about law are necessarily part of the structural fabric that students need to know. It’s about understanding that you can think about a legal problem in a range of ways. It what that does is lay the foundation for reflecting upon law in an informed way.

This school also includes legal history themes in its first year *Torts and Legal History* subject, “and we are reviewing the extent to which we want to expand our offerings in legal history”. In addition, in most subjects teachers will engage students in a theoretical framework – “for example, the theory of property rights, of the family or of dispute resolution”. Further, the school’s elective program reflects the school’s focus on “law in context and interdisciplinary perspectives”. Many electives explore contextual and theoretical dimensions in their subjects,

and they do because of the kind of staff we engage. We emphasise those kinds of approaches in our hiring practice and so you necessarily get the career academic whose research focus is such that the kind of interests that they bring into their teaching is very sophisticated. It is not a trade school approach. You can’t teach law without doctrine, but it’s the hows, whys and the directions of doctrinal development that are the interesting bits.

Approximately half a dozen law schools require students to complete a legal theory subject at least by the end of second year. One such law school requires all students to do a semester-long subject *Introduction to Legal Theory* in second year, and also offers a range of legal theory electives. *Torts A and Legal Method*, the foundation subject, includes some elementary legal theory, and at least one other compulsory subject, *Constitutional Law*, has a large theory component.

Perhaps adopting a narrow definition of legal theory, another law school requires students to undertake a compulsory subject in jurisprudence, (*Legal Reasoning*), and also claims that all of its subjects “start off from a theoretical base”. The compulsory *Legal Reasoning* subject is placed at the beginning of the degree so that the theoretical framework is put in perspective as students go through the LLB program. As the Dean noted,

I would see that the theoretical framework is critical, and that is recognised in all the courses. The seniority of the faculty, and their experience in, for example, writing textbooks, means that we have to have a theoretical framework. This is very important to us – the last thing we want is to be seen as a trade school.

Other schools place their compulsory legal theory subject later in the degree program. One such law school has had, since its inception, a later year compulsory *Jurisprudence* subject, which, because of increasing student numbers, is in analytical jurisprudence. The subject has been made compulsory because of its “general educational value”. Another such law school has a compulsory

semester long subject *History and Philosophy of Law* in the third year of a combined program. Most members of the law school staff have an interest in critical legal theory and would include some of these issues in their compulsory and elective subjects. Yet another such law school has a compulsory Jurisprudence subject in the fourth year of the LLB program and “in limited way some theoretical issues are discussed and considered in other subjects. Legal theory is too important to be confined to one subject.”

Likewise one law school has a compulsory *Legal Theory* subject in fourth year.

I don't think that's kind of enough alone. I'd say a lot of our subjects are taught contextually. In other words they would reflect a range of legal theory and broad perspectives and I tend to let people convening subjects, rather than impose my will, I count on them to actually run their own theoretical currents through particular subjects. Some subjects that have vocational orientations we also I guess have a theoretical underbelly, things like torts for instance. It has a theoretical perspective. ... It's partly to do with selection of the staff. We try to select staff that have particular perspectives, not all the same perspective, and to then let people have at least some imaginative head in particular development or evolution of subjects. We're teaching the subjects in teams and I tend to quite like team teaching as a pedagogical approach.

This team teaching approach seeks to bring teachers together to teach subjects from different perspectives, but in a co-ordinated manner, rather than the “sequential” model used in some law schools,

which have a number of people with different disciplinary backgrounds, but they tended to teach together, [but] they don't design the pedagogy together. They tend to teach sequentially. ‘You'll do blah blah and you'll do blah blah’, and that doesn't really generally work very well. It's just like reading a disjointed kind of narrative, isn't it?

The team approach avoids a “seamless book” describing the law, and rather “shows that there are tension lines”.

As noted in the previous chapter, one law school requires all students to take at least one subject from a group of legal theory electives. The subjects in that group currently comprise *Jurisprudence 1, 2, 3 and 4, Criminology, Comparative Law, Sociology of Law, and Legal History*. Similarly, another law school requires students to choose two electives from a list of a dozen legal philosophy and comparative law subjects.

A law school that requires students to complete *The Philosophy of Law* in the third year of a combined degree program, or in the second year of a graduate LLB, mentioned that, in the introductory *Legal Process* subject “they talk a bit about different philosophies, particularly the ones that are looking at law”. About half of the members of the teaching staff will include theoretical perspectives in their substantive law subjects.

Some law schools made more of an attempt to develop legal theory issues throughout the curriculum. For example, one law school requires students to complete two compulsory semester length legal theory subjects (*History and Philosophy of Law I and II*) in the first year program, “which introduce students to various legal theories”.

And then the teachers of the other compulsory subjects all inject an element of theory as they see it appropriate to their particular subject matter, in Contract, in Property, for example, and usually that’s quite explicit, so if you look at the Subject Reading Guides, it’s quite apparent how that is done. It’s very important that the introduction which is provided by the *History and Philosophy of Law* is continued through the other core subjects.

The final legal theory requirement is that students must complete one elective subject from a designated group of legal theory subjects. It appears that the definition of a “legal theory subject” here is very broad, and in addition to subjects like *Jurisprudence, Australian Legal History, Land, Race and Law in South East Asia* and *Feminist Legal Theory* includes subjects like *Corporate Governance in the Modern Company, Environmental Law, Human Rights Law, International Law, Law and Society in Japan, and Health and Medical Law*.

Another law school, perhaps taking a very narrow view of legal theory, incorporates it into the LLB program in three ways:

First of all we’ve got the subject *Introduction to Law*, to establish a good foundation for the students to study law. And then in their final year they take *Legal Philosophy*. And then in every single subject that we offer we believe that we give them a thorough theoretical exposure to the subject matter.

This school also ensures that in four compulsory subjects, students must complete large research assignments.

Some law schools had compulsory legal theory subjects at two points in the LLB program. For example, one law school requires students to complete *Perspectives on Law* (focusing on the social context within which law operates) in first year, and *Legal Theory* (the philosophical and theoretical context) in final year. In its 2001 review of the LLB program, a recommendation was made that the latter subject be moved into first semester of fourth year, so that students could bring aspects of this subject to bear on later substantive law subjects.

At other law schools, students have a choice of two compulsory legal theory subjects. For example, one law school requires all students to undertake one of two subjects, *Legal Theory* or *Law and Social Theory*. Students can also then take a number of further legal theory subjects as electives – *Feminist Legal Theory, Law After Communism, Legal Philosophy* and so on, but none of these electives are compulsory. Of interest is that the law school reports that students are not likely to take legal theory subjects as electives, preferring instead to undertake subjects that they believe are favoured by the law firms.

Many models for incorporating legal theory currently exist, and these different models reflect the purpose and importance each law school gives to legal theory, as the following examples illustrate:

- Legal theory dealt with in multiples ways:

Legal theory has traditionally been dealt with in two ways within our undergraduate program. The subject *Legal Institutions* has [always had] a significant theoretical dimension to it. Then there is the jurisprudence requirement [that students take at least one] unit drawn from one of the list of jurisprudence subjects. So that's been the traditional way. I think one thing that has certainly happened over the last few years, and I would like to see continue, is the weaving of theoretical perspectives into substantive courses. I think that's very important and I think that's clearly the way of the future.

- A compulsory legal theory subject in second semester of the second year of its combined degree programs. The school also offers an elective, *Feminist Critical and Legal Theory*. In addition to this

a number of teachers endeavour to incorporate theoretical perspectives into their subjects. I think all of us endeavour in various ways to teach law in a contextual fashion, but some members of staff would be more explicit in using legal theory as the contextual backdrop to their teaching. So it is not necessarily just quarantined to legal theory. ... We also have electives in *Comparative Legal History* and *Contemporary Issues in Constitutional Law*, which talk about theories of constitutions and interpretation, and so forth. In [electives like *Criminal Justice* and *Environmental Law*] there is a commitment to bringing broader perspectives to bear on the study of law, although the nature of the broader perspectives will differ. Some ... will choose the classical theoretical perspectives; some ... might be talking about histories providing context and so forth. I think there is a broad diversity of practice, but on the whole a general commitment to teaching legal theory in a broader theoretical and contextual framework.

- A range of compulsory legal theory subjects is available, including *Contemporary Legal Issues*, *Legal History*, *Legal Philosophy* and *International and Comparative Law*. Students can also take *Legal Externships* and *Law in Context* which aims to develop the school's service to the community orientation. Some students are placed in the Human Rights Centre, and some have the opportunity to spend their placement in East Timor. But overall the school considers itself "not to bend to legal theory" because of the practical orientation of the LLB program.

- The subject *Jurisprudence* is available

but it's not a major optional subject and it is not one of our larger areas. We tend to take the view that jurisprudence as a conceptual field is an old fashioned field and that a broader contextual approach should be reflected in all of subjects. And also in the elective subjects. [The subjects are] designed to knit together. For example we teach public law at first-year level, traditional administrative law and the subject Constitutionalism, which is also done in first year, was designed both to

teach part of the Priestley subjects, the Priestley area Constitutional Law, but also to introduce them to fundamental constitutional notions, the rule of law, constitutional powers, give them some idea of constitutional history, British constitutional history, Australian constitutional history and provide a platform therefore for the other subjects, other public law subjects. So as I said, it is part Priestley 11, but partly designed to link.

- When the school was founded the first year subject, *Law and Legal Obligations*, attempted to introduce students to the many strands of thought in modern legal theory. Students were also required to complete compulsory fourth year subjects in *Jurisprudence* and a theory subject developed by the law school and the partner school in the student's combined degree program. In addition, every subject was required to include a component of or theme in legal theory. Over the years, this latter requirement has weakened, and it is now largely up to each subject convenor to decide what aspects of legal theory are covered in each subject. As one interviewee commented: "This can safely be done because all of the convenors have an interest in legal theory at some level." Until 2002, legal theory has been formally incorporated in the first year and the fourth year of a typical combined degree program. The first year second semester subject, *Introduction to Legal Theory*, and the fourth year subject, *Jurisprudence*, are compulsory subjects. Students are also required to undertake a fourth year compulsory legal theory subject that is integration specific (that is, law and another discipline, which from 2003 in most of the combined degree programs will be offered by the law school only), and a fifth year research project supervised by a member of the law school and a staff member from the partner school (from 2003 in most of the combined degree programs this will not be compulsory). In addition, a number of core courses would have a theoretical component, reflecting the interests and knowledge of legal theory of the convenor. There is no formal mechanism to ensure that theoretical themes are included in the core subjects, but legal theory is included in most subjects because, in the words of one interviewee, "it is a theoretically sophisticated law school. ... There is no need to force people who don't know any theory to teach theory." "People teach what they know best", and, depending on who was teaching a subject, it could include perspectives such as feminism, postcolonial theory, post-modern legal theory and so on. For example, *Property Law* begins with a political theory of property; *Corporations Law* has a significant law and economics component; *Constitutional and Administrative Law* includes theoretical discussion of communitarianism and stakeholder theory; socio-legal themes permeate *Torts*; and *Issues in Legal Practice* examines concepts of professionalism and the sociology of the profession. [Get more detail]. The elective program also includes a number of legal theory subjects (for example, *Legal Fictions*). *Feminist Legal Theory* and *Postmodern Legal Theory* electives are occasionally offered, but are not heavily subscribed to by students. A subject covering indigenous issues was developed about five years ago, using a Department of Employment, Education and Training Grant, and covered indigenous issues, and cross cultural issues for lawyers. Because many members of staff have an interest in legal theory, many electives have a strong theoretical content.

Despite the impressive growth of feminist legal theory scholarship in Australia from the late 1980s, and some important work on feminist perspectives on the law curriculum led by law academics such as Regina Graycar, Jenny Morgan, Hilary Charlesworth, Ngaire Naffine, Margaret Thornton, Margaret Davies, Rosemary Hunter, Rosemary Owens, Peta Spender and others, feminist perspectives have not had much impact on the law curriculum. Only eight law schools offer elective subjects in *Feminist Legal Theory* (Field 2000). A study of the theoretical approaches to introductory legal process subjects in Australian law schools showed that the majority of introductory subjects have been taught with a critical approach to subject topics, and that there is much diversity in the approaches taken. The study found, however, that in most law schools feminist critiques were not brought to bear as frequently, or as extensively, as other critiques. In many introductory subjects, there was no feminist content, nor any content concerning women's distinctive, but universal needs and experience (see Ward, 2000). For examples of how feminist issues might be incorporated into subjects, see Parasher (2000) and Graycar and Morgan (2002).

During the 1990s there was some interest in incorporating comparative and cross-cultural perspectives into the law curriculum. Inspired by Department of Education and Training funding in the mid-1990s, a group of law schools were engaged in projects developing a cross-cultural perspectives on the law curriculum. While all of the projects bore fruit (see Laster, 1997; O'Donnell and Johnstone, 1997; Lamb, 1997; and see also Bird, 1993), and some subjects in a few law schools have a strong and sophisticated cross-cultural focus, there is little evidence that cross-cultural perspectives have been integrated into the undergraduate law curriculum to anywhere near the same extent that legal theory and ethics have been incorporated into the mainstream curriculum in law schools. Although there was no reference to this work during interviews for this project, at least in four of the participating law schools the teachers involved in the project have continued to develop and infuse cross-cultural issues in their curricula. There is little evidence, however, that the materials developed in the project have been taken up by other law schools.

Nevertheless, there are signs of cross-cultural issues permeating some LLB programs. Some law schools have developed a strong Asian focus. For example, through its Asian Law Centre Law School, one law school has developed many specialist elective subjects on Asian legal systems (Law and Society in Japan, Law and Society in China, Law and Society in Indonesia, Commercial Law in Asia and others), on race-related issues (*Indigenous People and the Law 1788-2000*, *Land Race and Law in South East Asia*) as well as *Feminist Legal Theory*. Further, beginning with the first year subjects, the law school has sought to introduce "a strong comparative element into all of the core subjects, so that students ... see Australian Law in the context of a wider array of legal systems".

Through its Asian Law Centre, another law school, has developed many specialist elective subjects on Asian legal systems (Law and Society in Japan, Law and Society in China, Law and Society in Indonesia, Commercial Law in Asia and others), on race-related issues (*Indigenous People and the Law 1788-2000*, *Land Race and Law in South East Asia*) as well as *Feminist Legal Theory*. Further,

beginning with the first year subjects, the law school has sought to introduce “a strong comparative element into all of the core subjects, so that students ... see Australian Law in the context of a wider array of legal systems”.

One law school that has developed a range of indigenous law and South-East Asian law electives commented that even within compulsory subjects, cross-cultural issues are addressed.

So in Criminal Law we'd be looking more closely at the case of customary law and criminal law and in other areas of the law dealing with the particular problems posed by the indigenous and other ethnic populations.

Further, the jurisdiction in which the law school is located is

something of a social laboratory in many respects, because [it does] not have perhaps some of the conservative restraint that other jurisdictions have, and you have the introduction of things like the euthanasia legislation, mandatory sentencing. I'm not saying that these are all necessarily good or progressive, but there are things that happen here that happen at the cutting edge of law in society and so that we do get an opportunity to investigate and introduce into our courses, from time to time as they become relevant, sort of areas of the intermix of society and law that you may not get in a more conservative environment.

Case Study 5.1 Teaching Diversity

Mack (2000) outlines an approach to teaching the law of evidence (“the law of facts”) which tries to avoid the issues of race and gender raised in the subject from being “marginalised”. The approach requires students to investigate how we think about facts and why we think in a certain way, and to expose unacknowledged assumptions, beliefs and ideas (Mack, 2000: 58). The subject encouraged students to “look inside themselves and to see that they are equipped with a whole set of cultural and personal beliefs that they may not be aware of, but which profoundly influence the way they think of the world around them and the people in it, and to see that others may have beliefs which may be very different, but seem as completely ‘natural’ and self evident to them” (Mack, 2000: 66). The subject attempts to embed issues of difference into the basic concepts in the subject and the fundamental nature of reasoning about facts. The subject includes a lecture and a workshop on gender and race, and which includes aspects of sexuality and class. Issues of race, gender and diversity are raised from the very beginning of the subject, are re-emphasised in different ways throughout the subject, and are included in assessment tasks. See further Mack (2000) for examples of activities used in classes, and for more detail of the underlying theory which governed this approach.

For further discussion and examples of representing diversity in law subjects and in teaching materials, see O'Donnell and Johnstone (1997), Laster (1997), Bird (1993) and Bryant (2001).

The Pearce Committee suggested that law schools should examine the possibility of fractional and joint appointments to bring into the teaching program people appropriate expertise in non-law disciplines. Only a handful of law schools have taken up this suggestion. At one law school, the compulsory fifth year *Legal Theory* subject is taught by the Philosophy Department; however, as one interviewee pointed out, under current university funding arrangements there are not many incentives to do this.

There's the need to develop inter-faculty and cross-disciplinary relationships throughout the campus, which is competing with the financial interest of having your own students under your own control with your own teachers. However, financially it's better for us to teach our own students because then we get the funding for it. So there are competing interests.

Most law schools only employ staff with common law LLB or equivalent qualifications, although some law schools have staff with law degrees from non-common law jurisdictions.

So, in summary, while most law schools require students to do at least one subject in legal theory, some schools go further, and require students to do further legal theory subjects, and/or require, or at least encourage, staff to incorporate theoretical perspectives into substantive law subjects. Not many schools, however, appear to have a rigorous process of ensuring that different threads of legal theory are integrated into the curriculum, so that students can build up their understanding of different areas of legal theory as they progress through the degree program. Some law schools have tried to co-ordinate the infusion of legal theory into substantive law subjects, and have met with resistance from staff with little interest in, or threatened by, legal theory.

Some interviewees also pointed out how difficult it was to teach legal theory, and contextual and critical approaches to school-leavers in the LLB program (for an alternative view, see Keyes and Orr, 1996):

the doctrine can be understood by somebody with no knowledge of the outside world. Relating the doctrine to its social context requires a degree of prior interaction with the outside world on the part of the student and I think part of the problem that I find a difficulty is that you're dealing with 18- and 19-year-olds straight out of the school and that they find it easy to learn technical rules, because they're just technical rules, but trying to awaken an understanding of how this operates politically, that's more difficult because you find that you have to, in a sense, teach them the nature of the legal system and the nature of social interaction at the same time. Because they haven't learnt that already and I just sort of wonder whether or not it would be a bit easier if they were doing this as a second degree rather than doing it as a first degree. ... You know, personally I find that that's the challenge. How to teach an 18-year-old who's got bugger-all knowledge of the outside world, how the doctrine relates to the outside world.

Very few law schools seem to have a clear strategy of training students in legal theory to prepare them for postgraduate study. As noted earlier, Manderson (2000) argues convincingly that LLB programs must be structured to encourage and prepare at least some students for postgraduate research in law and legal theory.

Through course design and by implementing and encouraging students to take flexible research-orientated assessment options, the undergraduate curriculum must also introduce students to some of the more complex, theoretical and unresolved issues within each of their units of study. A consideration of the areas of more complex evaluation which open out from those basic elements must be a stated and implemented course objective throughout the law degree.

James (2000) observes that despite the changes in the teaching of legal theory in law schools documented in this section, most law schools appear to be more concerned with more practice orientated approaches to law teaching, than with legal theory and “critique”, which remains a marginalised approach to the teaching of law.

Skills

Arguably the most significant of all of the developments in Australian legal education in the past decade is the focus on teaching legal skills within the undergraduate curriculum. In chapter 1 and in the last chapter, we discussed the development of interest in skills teaching in law programs, and different conceptions of the kinds of generic and legal skills that might be included in undergraduate legal education (see also Webb and Maughan, 1996; and Gold Mackie and Twining, 1989). In the remainder of this chapter we examine to what extent, and how, generic and legal skills have been incorporated into the LLB programs in Australian law schools.

In the traditional model of legal education (see chapter 1), at least as manifested in the 1980s, skills taught in the LLB curriculum generally included legal analysis and reasoning, legal research, legal writing and mooted. As the Pearce Report pointed out, these followed “quite properly from general university aims in educating students” (Pearce, Campbell and Harding, 1987: 25, para 1.61 and 114, para 2.133) and were to some extent a ‘by-product’ of teaching in substantive law subjects (Pearce, Campbell and Harding, 1987: 25, para 1.61; and Wolski, 2002).

It would be safe to say that from the 1990s most Australian law schools have largely improved their approaches to the teaching of these skills, and at the same time have, in the main, expanded the range of skills taught in the LLB curriculum. But beyond that it is very difficult to generalise – either about the type of skills taught in the LLB curriculum, the way skills are taught, or the extent to which skills have incrementally and systematically been embedded in the curriculum. As Wolski (2002) suggests, some schools make it compulsory for students to learn particular skills, and in other schools skills teaching finds its place in elective subjects. Skills can be taught in combination with substantive law subjects; in discrete, stand-alone, subjects; and/or “spotlighted” in discrete units (see Gold, 1993). Skills teaching can be *ad hoc*, or systematic. Students’ skills can be developed in a general way, through assessment tasks like essays or seminar presentations in substantive law subjects, or specific skills can be expressly taught and assessed. Skills teaching can be express or intentional (that is, skills are taught consciously in carefully designed activities), or unintentional or implicit, as a “by-product” of other forms of learning in substantive law subjects (Grimes, Klaff and Smith, 1996: 45-46). Some schools teach skills in blocks and build up

legal skills incrementally through the duration of the degree, beginning with simple introductory tasks, and then progress to increasingly complex tasks (Wolski, 2002). All of these forms of skills teaching are evident in Australian law schools, although as is described later in this chapter, only a few law schools have a systematic incremental and integrated approaches to skills teaching. Wolski (2002) also observes that this is reflected in the academic writing on skills teaching in Australia, and that

the bulk of the literature on skills teaching in Australian law schools falls into one of the following three categories:

1. The incorporation of a particular skill area, such as legal writing, or legal analysis, or advocacy within the curriculum;
2. The integration of skills components in individual substantive law subjects; or
3. The teaching of a specific limited enrolment elective.

Rather than trying to map law school approaches into the categories outlined above, we have loosely identified four different approaches to skills teaching in law schools – minimalist (where the approach is largely ad hoc, general or implicit); more explicit (where skills teaching is more systematic and structured); integrated (where skills up built up incrementally and in a co-ordinated manner); and, finally, where skills are taught in the context of a fully-fledged professional legal training program within the LLB program). We note that the approaches tend not to be clearly delineated, and there are notable variations within each approach. As is described later in this chapter, most law schools fall within the first two approaches.

Before we outline the different approaches to legal skills teaching, we make a minor digression to discuss, briefly, developments in clinical legal education in Australia. “The core idea of clinical legal education is that teaching students while they are in professional roles is an essential component of professional education” (Milstein, 2001: 375). In 1970 the first legal referral service involving students was established in Melbourne, followed, in 1975, by the first clinical legal education program at the Monash University Law School (see Giddings, 2002). An elective subject, *Professional Practice*, was offered on a pilot basis in 1975, based at the Springvale Legal Service, and supervised by a professor with the assistance of three practitioners as part-time tutors. In 1977 and 1978 two further clinic sites were opened, at the Doveton Legal Service and the Monash-Oakleigh Legal Service. Clinical programs were established at one law school in 1978 (when the school was still a Department of Legal Studies) and at another in 1981. As Giddings (1999: 39-40) observes, the universities involved in these developments:

were all ‘second wave’ universities, established in the 1960s. The law schools of these universities were ‘new kids on the block’, needing to find their niche. These universities attracted academics interested in developing new teaching methods.

Further clinical programs were established during the 1990s. Two law schools have established “live-client” clinics, but, as Giddings (1999: 41) notes

simulation-based and placement activities have also been characterised as clinical. Clinic appears to have been viewed by some of these new law schools as a means of differentiating themselves from other new law schools in an increasingly competitive environment.

Law schools have also given students experience of “law in practice” through placements, in legal centres, legal practices and other kinds of workplace.

Developments in clinical legal education will be discussed later in this section but at this point we note that even though there is no doubt that clinical legal education programs have a very important part to play in legal education, the clinical legal education movement is still very small, and most of the existing clinical legal education programs have been developed by law teachers with strong links with the community legal centre movement (Giddings, 1999: 37). We suspect that before clinical legal education will gain a stronger foothold in Australian legal education, existing programs will need to be rigorously evaluated to demonstrate the nature and extent of improvements to student learning deriving from these programs.

The minimalist approach

Some schools have adopted a minimalist approach. Rather than integrate practical legal training into the curriculum, these schools seek to teach different legal skills within the curriculum – both within the compulsory subjects and in electives (such as Alternative Dispute Resolution). These schools tend to define “legal skills” conservatively, focusing on “intellectual” skills and “general transferable skills” (see Bell, 2000), rather than on “legal practice” skills such as interviewing and negotiation. As an interviewee from such a law school commented, the school’s objective in its skills program is:

not just to train them in skills. The skills exercises [in the first year subject] are designed to introduce students to the reality that lawyering, while it involves knowledge of law, involves much more than a knowledge of law – it involves people skills; it involves intellectual skills like communication and writing, besides the ones they will learn in the conventional legal curriculum. And that there are ethical dimensions in those varied interactions and exercise of skills. So the impetus came from the recognition of the changing demands for law degrees.

For example, another law school considers the core skills to be analysis, writing, and research and these are covered in compulsory and elective subjects. Each compulsory subject has a legal research component (research essays). Because of the school’s commitment to small group teaching, there has always been a focus on skills of oral communication. Students are expected to engage in discussion in class – to analyse, discuss, to answer questions, and to contribute to class discussion. Other subjects cover drafting, advocacy, and similar skills which means that although the school is not part of “new legal skills movement” in Professional Legal Training, skills are covered as part of the School’s sensitivity to social and professional context.

The following are examples of the minimalist approach:

- Since 1981, an in-house clinical legal education program at a local legal centre has been running. One motivation for the establishment of the program was “to challenge the pre-eminence” of its rival first wave law school (Giddings, 2002). This program has been distinctive in that it has a strong litigation and “test-case” focus (particularly in anti-discrimination law and, in its early years, domestic violence), and has also “forge[d] novel links between the teaching of law and other disciplines, in this case social work” (Giddings, 2002). Since 1989, there has been a social work placement at the centre, involving an academic/practitioner and three students.
- There has been an attempt to cover a range of skills within the compulsory subjects

We cover a range of skills, the fairly obvious ones of legal research and use of legal resources of all sorts, and legal writing and oral skills of all sorts. ... When it comes to more advanced skills, interviewing, negotiation, mediation, then those skills are more incorporated into the optional subjects. If you’re going to teach those advanced skills in any really rigorous way, you have to ... spend a considerable period of time and structure a subject around them. You can’t just give students a half-hour class and say: “Go away and mediate”. It’s just not possible to do it.

There are no dedicated skills subjects in the compulsory program because you can’t teach skills without teaching content – a dedicated skills course doesn’t make sense to me. I... Skills in what? And if you’re teaching skills ... the implication is that that’s not something which engages with other aspects of academic work, that engages with critical and analytical thought. And that’s not the way I teach skills. So for example the way I teach skills is that I get students to experience, to acquire skills and to experience their application and then get them to think about why those skills are being used by lawyers, in what context they are being used, what problems are there in the way in which those legal skills are being utilised? So I like to incorporate skills information and knowledge acquisition and criticism at the same time.

Some within the school have attempted on a couple of occasions to suggest that we might have a program in ... the compulsory subjects which would ensure that skills were introduced in a sequential way and that all students covered all skills. There’s been some resistance to that and I think mainly because the people teaching the compulsory subjects want to be able to teach their subjects in the way they want to teach them, and they don’t want to be compelled to teach in a particular way. So there is that tension between allowing people to do thing their own way, which in many ways ensures that they teach the subject well, because they’re doing what they feel passionate about, and trying to systematise the way in which we introduce students to skills – personally I would like to have a systematised program. I think that that would be helpful and I think that that’s pedagogically the most defensible way to go. But that’s not a view that’s held by everyone. ... I feel satisfied that students do get a good grounding in skills but I would like to see it systematised.

- the integration of skills in the core curriculum, so that we incorporate various skills from first year as students move through their program, rather than have separately taught skills subjects.

That is reflected in a wide variety of performance and assessment, which ... are subject to experiment from year to year as the teachers of individual subjects try and assess the effectiveness of different [teaching] techniques for not only developing those skills but evaluating the levels at which students have attained those skills. ... It varies from subject to subject, and it varies from year to year. We don't think that there is any single model or technique, so it's a process of continuing experimentation and evaluation. ... There is a staged level of skills. With one exception ... we've deliberately not gone down the track of creating [specific] legal skills [subjects] - at any level. The one exception to that is the optional subject called *Advocacy*, which is very popular. ... [I]t is the only explicitly or exclusively skills-based subject.

Case Study 5.2 First Year Formative Skills Assignments

For example, in its first year *Torts and the Process of Law* subject, students at this law school are required to complete and pass "Skills Assignments" which are marked on a pass/fail basis by a later year law student (a "Student Contact"). Two Student Contacts are assigned to each of the smaller group classes in the subject. The Student Contacts meet regularly with their assigned students, provide pastoral care and general advice, and mark the skills assignments.

All the skills assignments are compulsory, and a "pass" is required as a credit to complete the subject. Students failing the skills assignment must meet with their class teachers to review the assignment, and then may revise and re-submit the assignment. As a result of this process, teachers in the subject can feel confident that students have an adequate level of competence in fundamental first year generic and legal skills.

Skills Assignment No 1 requires students, by the end of week 3 of the subject, to attend the school's computer laboratory to work through a Computer Assisted Learning program called *Understanding Law Reports*. The aim of this assignment is to help students understand some of the fundamental features of law reports.

Skills Assignment No 2 is a "Library Research Exercise", which is issued in week 4. Students are given a series of questions requiring them to use hardcopy and electronic research tools which are designed to help students "acquire some of the skills associated with using the law library for research purposes." Students may work in small groups (3 to 4 students from the same contact group) to complete the assignment.

Skills Assignment No 3 is intended to help students "get into a proper frame of mind for reading cases, analysing judicial decision-making, and knowing what to look for when doing so." The assignment aims to assess students' "ability to identify the significant features of a reported case". Students are required to answer 18 or so questions on a recently decided case. The assignment includes a list of questions which are "similar to

those you should try to answer after reading *most cases* you encounter.” The questions range from “What court decided this case?”, “Was this a decision of a judge sitting alone, or a decision of an appellate court?”, “Who was the appellant?” “Who succeeded?” to “What were the material facts in this case?”, “Please identify the *ratio decidendi* of the case (or possibly more than one *ratio*) and “Please provide a summary of the court’s analysis i.e. judicial reasoning” to ? What are your thoughts on the court’s analysis/reasoning? Would you have decided this case differently? Why/why not?”

Skills Assignment No 4 is an “Observation of Court Proceedings”, which gives students an opportunity to “see and describe the ‘legal process’ in action’ and to ‘bring aspects of the adversarial system to life’. Students are required to attend a court (preferably the Supreme Court) at any time before week 11, and to try, if possible, to see a torts case being argued. Students are given instructions as to how to find cases by using the local newspaper. Students are required to write a 1000 word report of the case that they have observed, guided by a set of questions provided in the subject materials. The guiding questions include:

- *General Observations* (What court did you attend? Where?; What was the nature of the hearing (i.e. cause of action)? Etc)
- *Case Observed* (Were the parties legally represented? What facts emerged from the evidence? Etc)
- *Personal Observations* (What was the attitude of the judge to the parties and the witnesses? Were the witnesses given a reasonable opportunity to tell their story? Etc)

Skills Assignment No 5 requires the “Application of Doctrine to a Hypothetical Problem”. It takes place in week 4 of semester 2 and assesses students’ “ability to analyse a legal problem, apply relevant legal principles and precedents to the scenario and formulate a reasoned legal opinion or judgment as to the solution to the problem. We want you to demonstrate the skills you are acquiring in legal reasoning and legal writing.” Students are given guidelines as to how to prepare the assignment and are limited to 1500 words.

Skills Assignment No 6 is a Computer Assisted Learning Tutorial on “Statutory Interpretation: Understanding Legislation”. Students may complete this assignment in pairs.

Skills Assignment No 7 is a Computer Assisted Learning Tutorial on the “Intentional Torts”, which is a revision exercise which may be undertaken in pairs.

In *Constitutional and Administrative Law* instead of writing a research essay, students are given the opportunity to put together submissions about particular legal issues to a civil liberties body. In *Property* students undertake a series of exercises, including a series of exercises using an IT-based tool, *Navigating the Native Title Act* (see chapter 16 below), where students complete a series of exercises in relation to complex legislation. Similar approaches are taken in other subjects in both the core and elective programs.

- generic legal skills and they are taught across the curriculum. The foundation subject, *Foundations of Australian Law*,

like most introduction to law subjects it has a very specific skills focus in inducting students into skills of legal writing, legal research, reading legal materials, skills in oral presentation and so forth.

Another compulsory first-year subject, *Lawyers, Justice and Ethics*, “has a very specific skills focus”. Most of the subject is taught in seminars, “and in these seminars students undertake skills exercises to simulate professional activities of interviewing, advising, negotiating and so on”. In *Litigation and Dispute Management* “students are obliged to attend a one-day dispute resolution workshop.” In the early 1990s the school introduced a subject called *Law Internship*, where students conduct a research project *in situ*, usually in a government department.

It is a research project equivalent to doing an elective unit here and it’s run for us by an adjunct professor who is a former very senior public servant with contacts everywhere and he is very clear and concise, when dealing with the hosts, about what’s involved. They’re not getting a person in to run around and do their photocopying for them. They’ve got to have a project. So the project has to be identified up front. It has to be presented as a 6000-word paper and the host marks it as well as the internal marking.

- No compulsory skills subjects, “but skills are dealt with cumulatively in compulsory subjects”. An elective in *Alternative Dispute Resolution* attracts about half of the fourth year students.
- Most of the key skills areas are covered. This law school has a compulsory *Research and Writing* subject, requires all students to complete a subject *Legal Practice and Transactions* (which is required for graduation in that state), and has a clinical elective. The clinic is

intended to meet the legal needs of people who have difficulties with access to justice so it does tend to focus on things like family law, some immigration matters and some criminal matters. I think those are the main focuses and when I say family law I’m including domestic law. [Students] attend at [a] Legal Centre to help deliver legal services – under supervision of course. And they also have a seminar program that’s a part of the subject. Numbers are limited. There’s a quota because of the numbers, and they’re generally chosen from senior students. Priority is given to students in their graduating year.

- some skills subjects are offered, but “we have recognised that at one level there needs to be a little more skills about”. This law school has only one compulsory skills subject (the first year subject *Legal Research and Writing*), but offers electives covering skills in *Family Law Practice, Wills and Estates, Mediation Practice and Procedure, Law Placement, Conveyancing Law, Legal Interviewing*, and *Clinical Legal Experience*.
- Until the last few years, a discrete subject covering legal skills was offered, which was introduced in response to the Pearce Report. This subject included legal research, writing, library skills, and client interviewing.

It was a good program, although we had some misgivings about having it as a separate program. So we rethought it, and thought it would probably be better and make it more relevant to students if we incorporated those skills within other core subjects. Each of the core subjects has a specified skill component, whether it be negotiation, drafting, statutory interpretation, electronic research and so on. [In the current review] we are looking at it carefully to see how well it is working, because there was a fear that if we did this it would fall out of the compulsory subjects. The danger is that if you require generic skills to be included into what are already quite demanding subjects, some may be dropped just so that you can get through the material. And you end up with bits and pieces, but you haven't got any coherent content. Some subjects, such as *Contracts*, do have a formal, fortnightly, skills class, where you work through certain things. Subjects like *Torts* and *Family Law* practise skills like negotiation and conciliation one-on-one in small groups, because the only way you can learn that is by doing it. I think there are lots of different models. What we require of each subject is to tell us how they are going to do it, rather than having one plan. There is a very strong tradition in the law school that with all of this uniformity coming through, we still value the initiative, integrity and responsibility of the individual lecturer. We prefer to say "Here are the broad things you have to do. How will *you* best achieve that?"

- A clinical elective is offered on one of its campuses. The subject is co-ordinated with the local Legal Centre.

and a staff member plus the staff of the centre all work together and the students are properly supervised, but essentially they're placed in an advice environment and it counts as an ordinary optional subject. We limit its numbers to no more than 15 in any given semester, so they can be properly supervised. It's very popular and far more students want to do it than we can possibly accommodate. We run it at a loss. It costs us more to run it than we receive in terms of student fees and the like, that we get from the university. But it's so popular and has such practical importance that I don't think we'll be getting rid of it.

To some extent [there is a practical orientation in the compulsory subjects] Virtually every member of staff has practiced at some point, which is unusual. I think everybody's been admitted to practice in a court somewhere and that's tended to mean that there is a practical orientation to what we do. In addition, because we do make a reasonably extensive use of our profession, the tutorial problems tend to also have a practical bent and the students like the idea that they are getting access to individuals who do that. They see that as something that's positive. So we generally get good feedback about the use of tutors, with the possible exception of the timings when they're available. We make use of people extensively after hours and that creates irritation for some students. On the other hand we get praise from others because they can do so.

So it's tended to mean that it has that sort of a slant. I don't think that it's something that we consciously work out new ways to make our subjects more practical. I think it's just a natural flow-on from what we do and the input we get from students about what they like and what they don't

like. And it's something too which I think the local profession is also keen on.

We're presently reviewing the skills component. This was a matter that I introduced at the beginning of the year, basically saying: look we need to investigate our delivery of skills and certainly there's a school working party that will consider that at a school retreat when it takes place later in the year. The proposal is that perhaps a specialised skills subject, rather than incorporating skills through all the subjects is better.

- The LLB program has a "practical emphasis". There is a first year *Legal Research and Writing* subject. Legal skills are incorporated into the core subjects (for example, conveyancing is taught in *Property Law*), and there is a compulsory short subject on *Mooting*. This "illustrates the reality of theory". Students can also choose an elective subject, *Law in Context*, which might include a six month placement with a humanitarian, environmental or development agency in the Asia-Pacific region; six monthly placements in external community advocacy agencies; or a final year externship in a real legal *pro bono* legal practice.

As these examples illustrate, over one third of law schools adopt a low key approach to the introduction of generic and legal skills into the curriculum. Most focus on the fundamental skills such as legal research and writing, case analysis, statutory interpretation, oral communication, and advocacy, and many include more specific legal skills such as alternative dispute resolution skills and negotiation. Generally these skills do not offer stand-alone skills subjects (though as we have seen some do), and two schools offer "live-client" clinical programs.

A Law Dean from one of the law schools that adopted the minimalist legal skills model argued that as law teaching is now undertaken by career academics, this results in:

a different kind of approach to legal education. That leads into a discussion on the role of legal and practical skills in the law curriculum, and an ability to do that properly. Should that be the place of the law school?

In a sense it should probably not, because the nature of the career academic is such that most of my colleagues have never practiced. They can't teach practice in the way that a legal practitioner can teach practice other than through a kind of theoretical perspective, and there's lots of opportunities for nice partnerships at different points in the curriculum but given the nature of career academia, I would say that most of the teaching in legal skills should be done as a kind of theoretical discipline.

There's a lot of theoretical literature about the dynamics of negotiation and all sorts of things, but some of the really practical-end skills in a sense can't be incorporated in the curriculum, [apart from] at a fairly general level, so that they're more of a generic skill, which we're emphasising more and more in terms of signalling to the students that what they're actually doing is not only just doing their law homework but in fact they're requiring a range of generic skills through the process of undertaking those exercises.

A More Explicit Skills Teaching Program

Other law schools include a stronger skills program in their LLB curricula. Some of these programs (the first few discussed in this section) are more focused versions of the minimalist model. Other models include clinical teaching, placements, and/or incremental and co-ordinated skills development.

The following are examples of this approach:

- The skills program is delivered in specialist subjects like *Advanced Legal Research and Writing*, *Legal Ethics* and *Lawyers' Professional Responsibility* and *Litigation Skills*. The remainder of the skills program is:

a reduced form of integration. Things like basic problem-solving and writing and communication skills are progressed through consistent assessment criteria in which we try to make sure that basically when we're testing the skills we adopt the same kind of criteria.

We progress them in the sense that we've agreed that the program should be a progressive one so that you don't start off with doing moots in Year One but have a more sophisticated development of oral communication skills in later years. For instance we start off first of all in Law I dealing with case notes etc., and applying them to the facts of the situation and subsequently have perhaps a more sophisticated approach through the law of contracts and other common law subjects and making sure that in fact there is some refreshment at some point, not merely a repetition, an assessment against a certain criteria that at certain points there is some refreshment for those skills.

Skills are integrated into the curriculum so that some subjects will emphasise problem solving, others will emphasise oral presentation, and, for example, criminal law does mooting as part of its program. The skills components "work better in some subjects than others, and probably some lecturers take it more seriously than others.

- Three "legal skills subjects" into the LLB curriculum in 1999. Each subject is taught in conjunction with substantive law subjects. *Legal Skills I* is taught in conjunction with *Contract*, and covers legal analytical skills (case reading and statutes), dispute resolution and legal ethical dilemmas (both including practical exercises), and legal research, writing and drafting skills. *Legal Skills II* is taught in conjunction with *Administrative Law*, and further develops the skills introduced in *Legal Skills I* in the context of "more advanced exercises". It includes interviewing. *Legal Skills III* is taught in conjunction with *Civil* and *Criminal Procedure*, and further develops the skills in the previous two subjects, in more challenging exercises. It includes practical exercises drafting documents for litigation (statements of claim, defences etc) and in dispute resolution, including negotiation and mediation.

Legal Skills III has been extremely successful. It's taught over two semesters, linked with Procedure only in one semester, and Evidence is the next, so half the subject in each semester. Essentially what's

happened in that legal skills subject is that students have carried out practical exercises based on the material they've done in the theoretical subject of procedure and evidence, and it has worked extraordinarily successfully. Very, very, very intensive in terms of preparation and teaching, but I think very successful.

Legal Skills I and II have, apparently, been less successful. This school also has a compulsory later year subject, *Legal Research*, in which students opt for a core subject which they have completed or are completing, and are assigned in groups of 30 to a teacher in that subject. They choose a research essay topic, and then attend five seminars which cover general research techniques. Students submit a draft of their essay which is returned with comments prior to final submission.

- The incorporation of practical legal skills in ten of the compulsory law subjects. For example, in *Constitutional Law* students engage in mootings, appellate advocacy and written and oral communication; in *Administrative Law* taking instruction and client interviewing, as well as undertaking a professional placement, and so on. Students completing this LLB program are given an exemption for one of the four units (Professional Skills) in the Law School's Professional Legal Training Program, the Graduate Diploma in Legal Practice.
- A compulsory skills subjects in the LLB program.
These are not simply legal skills ... somehow separated from the intellectual subjects ... but they are actually subjects like any other subject because they involve a whole range of different things, not just the technical skill acquisition."

Those subjects themselves are largely professional skills subjects and they emphasise the other part, which is that I want to have our students coming out with a lot of contact already with professional life.

This school is also developing a clinical program, built around its small business legal centre. It aims to require each student to participate in the clinical program and

to work a diversity of placements. [It will] initially offer a small business legal service but there are some very large community legal centres in this area that have significant cost problems and if we can actually aid in terms of research and so forth.

And we've just been exploring a number of other avenues where students can actually get a diversity of different placements rather than just simply one option within a clinical subject that I hope then will become a core subject. But at the moment we can't afford to make it a core subject. Again it is partly that thing of: how do you get resources? Where do you get the resources from to run things? It's not an absolute impediment to creative pedagogy but with things like clinical programs it is, because they're quite expensive.

We're also negotiating an arrangement with [a] Magistrates Court where effectively our students will operate to provide briefs on particular matters for unrepresented clients. So in a sense they're filling the role of duty solicitor when there's none available. And it again serves a rather poor clientele for the local Magistrates Court. So what [we] want students to do is have a large degree of experience with real life, of a variety of different aspects of the profession, and to mix that with a hopefully fairly rigorous intellectual underpinning and see how that works. ... We've got connections between whatever placements we're doing and their learning in the other subjects. In other words we're not doing this in splendid isolation. We're trying to use [placement] as a constructive way to actually advance people's learning and use their skills in that way, whether they be research skills on a large public interest law case or whether it be to utilise their skills in terms of negotiation advocacy, whatever, by way of instructing, by way of providing briefs. Or whether it be in terms of client interviewing to utilise in a real-life situation.

The problem I have with a lot of the content of some of the large law schools is they don't have clinical programs, they don't have placements. [In some first wave law schools] you have these things that look like private-school debating societies and are client interviewing. It assumes that all clients are white and Anglo-Saxon and speak kind of English as a first language, that you don't need translators. Whereas anybody who has actually worked in a community legal centre in an area [like our local community] finds that 90% of your clients don't have English as a first language. You need to bring in translators. The client interviewing isn't this nice little debating thing, it has actually got a real focus that's quite complex and difficult to negotiate. And, you know, letting people have an awareness of that while they are being trained is probably more useful than throwing them out there amongst it.

And also getting them aware of the diversity of legal practice. It's all very nice to go to international meets and get into a moot competition but the fact that there is in corporate law firms a very different life and it's important that they actually have placements and realise how that is and how that negotiating works as well. That they also recognise that there's a sort of realm that's dealing with crime, domestic violence, family law matters that are quite fraught, and that there's a whole range of difficulties negotiating for those sorts of clients and particular matters as well. Some of the placements are to do with research skills and public interest law matters. In a way they're oriented towards practice but they're oriented towards advancing more generally legal research skills that are quite useable in a variety of contexts whether or not they go into legal practice. I'd see them as life skills, not just practice skills. I mean interviewing and understanding what a client needs is something that's equally useable in a range of other commercial public sector employment contexts. If you're working for the RTA as a lawyer and you have to negotiate interviewing a client, it's not significantly different from the sort of skills that you're getting in interviewing a diversity of clients in a law office. So I don't necessarily see that we narrow skills. Writing and drafting in a precise way, yes, it's leaning towards practice but concision in writing and an ability to draft documents is, again, a translatable skill I would have thought. And that's kind of the way I was hoping that we would negotiate it.

What I have tried to with most things is try to set up a scenario where people, rather than again simply seeing assessment and their operation in isolation, to actually get them to work in teams, which I think is again a kind of translatable skill. And not just teams of lawyers.

- Legal skills are covered in two ways

One is largely by integration. The other is in stand-alone subjects. Effectively we've nominated four skills areas for integration into the compulsory LLB subjects and they are Legal Research and Writing, Alternative Dispute Resolution, Advocacy, and Drafting. There are skills co-ordinators for each of those fields and ... we have specified ... that certain skills are to be dealt with in certain subjects. The plan is to have those staged so that the development of the skill occurs vertically through the program. The most comprehensive of those would undoubtedly be drafting, which appears in something like nine or ten subjects. So that's the primary means of dealing with skills and they've been specified for the compulsory subjects so that we're satisfied that all students have reached a certain level of skills development.

The other way is by stand-alone subjects. The primary ones that interest the students would be mediation, interviewing and negotiation. There's a clinical legal education course. That only has small enrolments and it's very, very expensive to resource it. It is done in conjunction with one of the community legal centres. There is also a subject *Trial Advocacy*, which is also a very expensive area to resource.

This school also offers other "skills" subjects, in students participation in mooting competitions (The Jessup International Moot, the Willem Vis Moot and others) and in the law review editing subjects.

- Skills are mainly addressed in the school's "Offices Program". This program is built around teacherless groups, in which students are expected to work together to complete a series of tasks.

In terms of skill development we try and place them into as practical a context as possible so for the first few years we have Offices programs which basically operate in terms of real life situations so that students are experienced enough to deal with each other on that basis, so in second year we place them in the position of an administrative officer who has to take actions, both administrative and legal, to reach desired results.

And so we simulate environments that actually do that and in that process they both learn skills as well as an attitude of what it means to go through these things, and knowledge as well.

The skill program is developed systematically. Each year has a particular skills focus, to make "the five years of the degree a little more coherent.

Legal research in Year One, interviewing in Year Two, negotiation in Year Three, interviewing and advising in Year Four, and then workplace management in Year Five. Advocacy is not just focused on an appellate

court, it's much more concerned with oral presentation skills in general and with a view to those being developed in each of the years of the degree program. Those are, I guess, aspirational standards. It doesn't always operate that way, but that's the basis that was adopted back in 1996 and I think that the people who were here and involved in setting up the Law School had lots of good ideas in regards to incorporating the learning of skills into the rest of the degree program.

We have a chart that sets out the skills that they're actually going to be learning and enhancing each year and alongside of that which assessment items are actually specifically set up to do that.

Some core subjects have skills tasks as assessment – for example, a moot in first year and in second year; a *voire dire* in fourth year, and various other skills (oral presentations, research essays and similar written tasks) built into the assessment in the compulsory program.

This school also has a clinical program, with restricted entry because of the labour intensive nature of clinical work. The school claims to offer “a greater diversity of clinical programs and opportunities than anywhere else in the country”. There are six different clinical offerings. These include a clinic run with a local Legal Centre, where students cover all areas of law while undertaking work for clients under supervision. They meet clients, take instructions, and run files. There is also a special federal government funded Family Law Clinic, run on similar lines but specialising in Family Law. There are two further “semester in practice” electives, where students undertake work placements. The first elective is generic, and students are placed in a range of settings (law firm, public service, public company) where they spend time in an office, and write a reflective journal and other forms of assessment. The second has been designed in conjunction with the State Bar Council, and enables indigenous students to undertake structured work experience for one day a week with a barrister, spending time in the Supreme Court or in legal aid. This law school also offers, in conjunction with the State Department of Justice and the Attorney-General's Department an Alternative Dispute Resolution Clinic, where students learn the theory and practice of alternative dispute resolution, and gain practical experience. There is also a Japanese internship. Finally, there is a new clinic, the Innocence Program, where students work with lawyers on cases where an inmate is claiming wrongful conviction. The work involves identifying cases where there is a possibility of wrongful conviction, and working to correct it. The school claims to be able to accommodate most students who want to do clinical work.

- There are a number of subjects dealing with skills. A *Legal Skills in Context* subject in first year is compulsory not only for LLB students but also Bachelor of Legal Studies students. It also emphasises research and writing skills. The School also teaches the elective subjects *Communication and Advocacy Skills*, *Legal Practice and Conduct*, *Dispute Resolution*, and *Negotiation and Mediation*. *Legal Practice and Conduct* includes clinical placements at an office of the state's legal aid

provider. Other clinically-based subjects include *Property Law Practice*, the first part of which is conducted at a legal centre; the placement, since 1996, of a small number of second year students with magistrates during one semester; and a well established legal service-based program.

This latter program developed from a university-based legal service run by staff of what was, in 1974, a Legal Studies Department (Evans, 1978). In 1977 the Department agreed to introduce a clinical legal education subject. Twelve students were placed in the university SRC Legal Service, and participated in seminars on interviewing skills and some substantial areas of law. The Department paid a fee to the Legal Service for having the students on placement (Evans, 1978, Giddings, 2002). In 1978, the Department employed a lecturer in Legal Aid with responsibility for establishing a Community Legal Service at a local community centre. A student placement scheme at the legal service was initiated, and grew into a subject called *Law and Social Justice*. Students were placed in the legal service until 1987. A focus of this placement scheme was to develop paralegals who would play a role in improving the working of the legal system (Giddings, 2002). The clinical legal program was revised in 1986-87, and a two semester clinical program was developed, initially at both the SRC Legal Service and the Community Legal Service, and since 1992, at the Community Legal Service. The subject has a maximum quota of 24 students, and “sought to link clinical skills, substantive law, research, exposure to case work environments and techniques of public interest legal analysis” (subject co-ordinator, quoted in Giddings, 2002).

- All students are required to undertake *Legal Process, Research and Writing* in first year, and then requires students to do between two and six skills units, from a list of 10 skills units. These units include *Advanced Legal Research, Advocacy, Computer Skills, Costs, Cross Cultural Issues, Moot 1, Moot 2, Negotiation and Mediation, Client Interviewing, and Law Journal*. These are often taught intensively, and some are taught by practitioners. The skills units were introduced in the early 1990s.

And that was largely in response to the profession. There was a fairly close relationship with the profession here, and we consulted fairly extensively with them. And also at the time I did rounds of all the other law schools to see what they were doing. So in some ways I think we were a little bit ahead of the pack

The skills program was not integrated.

A lot of the skills aren't taught probably in conjunction with other skills, rather they are probably taught after the completion of certain parts of the law degree. For example, we require them to do *Evidence* before they do *Advocacy*. ... *Client Interviewing* requires them to have a base knowledge of things like *Contracts* and *Torts* because the scenarios that we run with during that skill are contractual. A client comes to see you, like somebody owes him money. If they don't know anything about contracts, it's difficult for them to do the role play that we require of them. We don't preclude them from doing one skill if they haven't done

another, although some of them, we would advocate that they only do, for example, in their last two years.

- Skills and dispute resolution components have been built into specified compulsory subjects, and there is also a “professional experience” program.

In certain core subjects, it will be expected of students to complete practical legal skills - the typical skills that they would have or that would be required if they start to practise law. For instance, in *Business Organisations*, which is a core subject, they must complete the registration forms to incorporate a public or private company. Or they need to give legal advice to clients as to which business form is the most appropriate, given a certain set of facts. And those are typical practical legal skills that will be required of them. And we’ve got these skills incorporated in other core subjects as well.

Our dispute resolution program is a compulsory part of certain core subjects. Once again, it is expected of every single student in this school, on- and off- campus students, to do a moot as a compulsory part of one of our core units. They must do an arbitration, they must participate in a mediation, and they also have a witness examination. And none of our students can get our degree if they haven’t had the exposure to these practical aspects.

And then, the final component that I’ve mentioned with professional experience, we expect our students to go out and practise and work closely with somebody in the legal profession, for instance at a solicitor’s firm, without any payment. It’s different from articles, it’s different from summer clerkships, it is experience in the profession in a legal environment, and they need to get up to 21 days of professional experience and without that they can’t get our degree. And they must provide proof that they’ve been working in practice for 21 days. ... [The exact nature of the work experience] is up to the employer. ... It can be done any time during the LLB degree. They do roughly 10 days per year. They need to go out to a firm and say “Here I am as a [BC] student (we provide them with a letter) and I must do professional experience.” They are all covered by university insurance and the firms are quite helpful in providing them with opportunities ... We assist them to a certain extent, but not to a large extent, to find places. For instance, we have got arrangements with about eight law clinics in Melbourne that will take our students for professional experience. We have a particular program in [X city] with the [X city] Community Legal Service, in close collaboration with the [X city] Law Association, in terms of which about 12 of our students will do some or get some practical experience, or professional experience, in the [X city] Community Legal Service. They will work closely with a solicitor from the Law Association and in that way they can also complete their professional experience.

- There are six compulsory specialist skills subjects, and a placement program. The six compulsory subjects are:
 - Computing and Statistical Skills
 - Litigation Practice

- Communication Skills
- Drafting and Conveyancing
- Advocacy and Negotiation
- Legal Research and Writing

Some of these subjects have been closely allied to substantive law subjects, “in order to develop a better understanding of both the substantive law subject and the relevance and significance of the skill”. In some cases “specific academic and professional skills have been further developed as part of the assignment and assessment regime in later year subjects”. A 2001 Review of the LLB program recommended that:

- The school develop a coherent and holistic policy statement on skills and values to be developed throughout the degree
- “All students should be introduced to the skills and values identified as essential for all law graduates early in the degree, and given opportunities to further develop those skills throughout the degree.”
- This latter recommendation be implemented by “a hybrid approach to skills teaching: initially by stand-alone subjects, then subsequently by integration into substantive law subjects.”
- The school should “appoint an academic staff member as a Skills Co-ordinator to ensure that a consistent and holistic approach in skills development is adopted throughout the degree.”

Further, this school has a placement program, where each student has to complete two four week placements, typically in their fourth year, before they can graduate. Before undertaking a placement a student has to complete the third year subject *Lawyers and Australian Society*. An academic staff member co-ordinates the subject, which includes ensuring students understand the objectives. A general staff member “spends a lot of time talking to students about their preferred employment opportunities”, and then tries to match these up with placements. Students are assessed on their reports of each placement. “Students are exposed to a whole range of possible legal environments, including suburban law practices and government departments.”

even though the bottom line for these placements is that they need to work in a legal environment, that really is interpreted, quite properly, very, very broadly. So the student, for example, who is doing a combined degree in Information Technology and Law may be working for an IT company with their in-house counsellor in some context where they’re really getting an opportunity to explore whether or not law might be for them but they’re also seeing how an IT company would work.

In some ways the program actually consolidates a feature of our law degree, which is that it prepares students to make informed decisions about a whole range of diverse career options. In fact it’s probably less likely, and I think the statistics show that, it’s less likely to have them lead into traditional practice because they have had the opportunity to, if

they want to, have a look at what that's like. Or perhaps not even have a look at what that's like but go ahead and explore related things which they think they might be interested in and how to find out how they are.

The brief examples of skills programs included in this section illustrates that some skills programs go beyond a concerted attempt to build generic legal skills into the curriculum. Many of these programs offer comprehensive skills teaching, including a variety of clinical opportunities for students.

Integrated Skills Programs

A third model is the integrated skills program. Building on the type of skills programs to be found in some of the law schools described in the previous section, integrated skills programs are characterised by a high degree of planning and co-ordination in order to ensure that students have the opportunity for incremental skills development.

Some examples of such an approach are as follows:

- Legal skills are considered to be the “flagship” of the LLB program. At its inception in 1989, this law school adopted a “combined skills/substantive law approach to skills integration” (see Wolski, 2002, from which much of the following account is drawn). Skill components in research and analysis, negotiation, advocacy and interviewing were specifically taught and assessed in designated compulsory substantive law subjects throughout the undergraduate program. Skills such as problem-solving, fact identification, legal analysis and reasoning, research and written and oral communication were also developed, less specifically, in assessment tasks in compulsory subjects. The rationale for this approach was that theory and practice are complementary and should best be learned together. The approach taken was “incremental and systematic”, because skills take time to develop, so students should be introduced to the skills early in the degree program and given many opportunities to practice the skills, in increasingly complex situations – skills are best acquired “gradually by practice” (Wolski, 2002, quoting Mackie, 1989: 9). The school also argued that skills are best developed when there is a “‘linked progression’ of tasks, skills, information and methods” (Mackie, 1989: 18, quoted in Wolski, 2002), something that cannot be achieved if skills teaching is ad hoc, where teachers have individual discretion as to whether, how and when they introduced skills components into their subjects.

In 1995, this legal skills program was reviewed and major difficulties and challenges were identified (see Wolski, 2002). A new skills program introduced in 1997. Skills are still taught as components of compulsory substantive law subjects, but the major change was since 1997 has been the creation of *Legal skills* as a new and separate subject, which runs over the whole degree in the form of six modules. Students enrol in this subject in first year, and the subject replaces an elective subject in the LLB program. The six modules in this “integrated skills program” are legal

research and analysis; legal writing and drafting; advocacy and oral presentation; negotiation and dispute resolution; information technology; and client interviewing and communication. The modules are taught in connection with various substantive legal subjects over the duration of the degree. They are taught at a number of levels, or components. Some modules contain more components than others, to reflect an emphasis of some schools considered fundamental to lawyering, such as research and writing. They are first taught at a basic level, and then developed in one to three further incremental levels later in the degree. Components develop in complexity, and each has detailed learning objectives, which reflect the increasing complexity. At each level students receive written and oral feedback on their skills development. For example, in the first year subjects *Australian Legal System* students undertake a basic level of legal research and analysis, legal writing and drafting, and negotiation and dispute resolution. In *Criminal Law & Procedure A* they cover advocacy and oral presentation. In these subjects students receive teaching materials covering the relevant skills at the first level stage, and special lectures (in addition to lectures on the substantive law areas). A major part of the assessment for each subject will then focus on assessing students' competence with the skill. In later year subjects, students undertake another one to three levels within each of the skills modules, where they get instruction, practice and feedback at each level, so that at end of the LLB program they will have reached a fairly high level in each module. For example, each student in the Advocacy module will go through the different stages and different types of advocacy in four subjects – *Criminal Law and Procedure* (see above) (where students cover guilty pleas and pleas in mitigation of penalty); *Principles of Tortious Liability* (where students learn about written appellate briefs); *The Law of Obligations* (where students learn oral appellate arguments) and *Civil Procedure* (where they learn interlocutory applications). In short, they learn four different types of advocacy on an incremental basis.

This school devotes intensive resources to this skills program. For example, in the negotiation and dispute resolution module, teaching is structured around two teams of two or three students, participate in individual negotiations and moots. The program is undergoing continuous improvement, and is being reviewed in 2002. Satisfactory completion of legal skills program enables students to get exemption from foundation skills modules in the school's Professional Legal Training Program (see the final section of this chapter). For fuller details of this incremental and integrated skills program, see Wolski, 2002).

- A program aimed at developing an integrated and incremental approach to the development of both generic and discipline-specific capabilities, which forms part of the compulsory LLB program (Christensen and Kift, 2000). The process for developing this program began with a comprehensive review of this school's first year program in 1998-1999. The school soon realised that it had to take a "whole of program" approach to this reformulation of the LLB program, and, with the

assistance of two University Teaching and Learning Development Large Grants.

The first step in the redesign of the curriculum was to identify the generic and discipline-specific capabilities that the school was to require of its graduates. Data was gathered from employers and graduates, surveys conducted for DETYA and by professional bodies, the Centre for Legal Education, various international studies and the university's own list of graduate capabilities (see Christensen and Kift, 2000: 214-219).

Rather than then seek to list the various skills (generic and discipline specific) that might go to constituting each of the capabilities separately (as was first attempted and which led to much duplication), the approach taken was to deconstruct the capabilities holistically and to identify sets of generic and/or discipline specific skills that, taken together, go to making up the graduate capabilities" (Kift, 2002a: 5).

The six desirable capabilities of a law graduate were described as follows (Christensen and Kift, 2000: 216).

Discipline Knowledge

Graduates will possess detailed and comprehensive knowledge of Australian legal principles and statutory regimes, knowledge of legal systems and influences outside Australia, an understanding of the latter's relationship with the Australian legal system and a fundamental knowledge of extra legal factors impinging upon substantive law.

Ethical Attitude

Graduates will possess a sense of community and professional responsibility and will be able to identify and offer appropriate solutions to ethical dilemmas.

Communication

Graduates will be able to clearly, appropriately and accurately communicate both orally and in writing having regard to the appropriate language for a variety of contexts.

Problem Solving and Reasoning

Graduates will possess critical thinking and problem solving skills, which enable effective analysis, evaluation and creative resolution of legal problems

Information Literacy

Graduates will be able to use current technologies and effective strategies for the retrieval, evaluation and creative use of relevant information as a lifelong learner.

Interpersonal Focus

Graduates will be able to work both independently and as a productive member of a team, practice critical reflection and creative thinking, be socially responsible and inclusive, and be able to work effectively and sensitively within the global community in continually changing environments.

The second stage in the process was to identify the different skills, and then the expected level of achievement for each of those skills – to guide students as they progress through the program, and for staff as they design individual subjects and assessment tasks (Christensen and Kift, 2000: 216-219). Most of the identified skills are inter-related. “Very few generic or discipline specific skills exist in a vacuum: many skills draw upon others to demonstrate effective acquisition of a particular skill (e.g. problem solving draws on many of the other skills) while some skills are so fundamental that they permeate the application of nearly every other skill (reflective practice is a good example of the latter).” (Kift, 2002a: 6). The project team identified four categories of skills, and then a number of skills within each category (Christensen and Kift, 2000: 217).

<ul style="list-style-type: none"> • Ethical values • Creative outlook • Reflective practice • Inclusive perspective • Social justice orientation • Adaptive behaviour • Pro-active behaviour 	<ul style="list-style-type: none"> • Problem solving • Legal analysis • IT literacy • Legal research • Document management • Discipline & ethical knowledge
<ul style="list-style-type: none"> • Oral communication • Oral presentations • Advocacy • Legal interviewing • Mooting • Negotiation • Written communication • Drafting 	<ul style="list-style-type: none"> • Work independently • Teamwork • Appreciate race, gender, culture and socio-economic differences specifically and diversity generally • Time management

Each identified skill was further analysed for the following details (Kift, 2002a: 7):

- “the broad **skill category**: from the four categories set out above;
- the **specific skills** within those categories: from the more detailed shaded table above;
- the **course objectives**: that is, the level of competency expected of a graduate by the end of his/her course regarding the specific skill; and
- the **demonstrated abilities** of the graduate for each of the skills: that is, a statement that to meet the (final) course objectives for the specific skill, the graduate will have demonstrated certain abilities.

Example – Skill (cf Capability) of Problem Solving

Graduate Capability: Problem Solving and Reasoning

➤ **Skill Category:** Cognitive skills.

▪ **Particular skill:** Problem Solving

- **Course Objective:** The graduate is able to develop effective strategies for applying knowledge and solving problems to achieve objectives.
- ♦ **Demonstrated Ability:** To demonstrate that the graduate has met this objective and has attained this skill on graduation, a student will need to be able to do the following:

- Identify information needed, formulate questions, refine questions through answers, identify issue(s)
- Research and analysis
- Synthesis of research and ability to draw on analogy
- Reflection and review (which may require review of 1-3)
- Articulate possible solutions to problem – where appropriate a creative practical solution should be offered.”

Each skill was then broken down to through broad levels of development, so that assessment criteria for skills can be developed at each level, and then the skills are to be mapped into appropriate compulsory subjects in the LLB program, so that each subject takes responsibility for the development of a particular skill up to a specified level. The levels of development have been represented as follows (Christensen and Kift, 2000: 219)

- **Skill Level 1** - At this level (notionally year 1), the student will be instructed on the theoretical framework for and application of the skill, usually at a *generic* level. The skill may be practised with guidance and feedback provided. Assessment will usually include a critique of the skill as practised.
- **Skill Level 2** - At this level (notionally year 2), a degree of independence is required of the student. This may involve some additional guidance at an advanced level of the skill, an environment in which to practise the skill in a real world legal scenario and feedback to students on their progress. Students will be encouraged to reflect on their performance and on ways in which that performance might be improved. At this level, individually or within a group, a student should be able to complete a task utilising a range of skills in relation to a simple legal matter.
- **Skill Level 3** - At this level (notionally years 3 and 4), students should be able to draw on their previous instruction and transfer the use of the skill to a variety of different circumstances and contexts without guidance. Students should be able to adapt and be creative in the ways in which they approach the context for and use of particular skills. Reflection on performance will be a key aspect. At this level, individually or within a group, a student should be able to complete a task for a knowledgeable and critical audience utilising a range of skills in a complex legal matter.

The third stage of the project requires skills thus described in stages 1 and 2 to be integrated into the compulsory curriculum. The compulsory program was reviewed in its entirety to “embed” the three level approach to capability development, but in a manner that ensured an appropriate balance between skills development and the acquisition of content knowledge. The strategies the School developed to map skills into subjects were summarised as follows (Kift, 2002a: 9):

- The identification of appropriate units (in terms of content correlation) in which to position the development of the various skills and the planned articulation of those skills with other units throughout the degree;
- A reconsideration of the learning objectives, teaching and learning approaches and assessment methods for each unit to reflect the balance struck between substantive content and skills development;
- A re-assessment of the mode of delivery and the teaching and learning approaches in units so as to achieve authentic learning environments for the development of skills within the course;
- Developing appropriate assessment tools and mechanisms (including identification of criteria and publication of feedback sheets) for assessing competency levels within each of the skills;

- Establishing an appropriate reporting procedure for the students to track their development by documenting skills attainment (at the various levels of competency) through a reflective process that will lead ultimately to the development of a “student capability profile” at a university level.
- Creation and implementation of a staff development model to enhance the staff-as-instructors’ abilities to facilitate, guide and assess capability development in students;
- Compiling of staff resources for the teaching and assessing of graduate capabilities.

Finally, the project also involved a detailed review of the School’s assessment practices (see chapter 15 below).

Integrating Professional Legal Training into the LLB Program

A fourth model integrates Professional Legal Training (PLT) into the LLB Program. Four Law Schools have adopted this model (see also Australian Law Reform Commission, 1997: 60 n 5). This is clearly a market driven development

since students can complete their qualifications to practice-ready stage more quickly and within one institution. There is also the incentive of retaining students for longer (and hence receiving more fees income per student) rather than students being lost to a separate institution for this component of their qualifications. ... Economic efficiency has not been the sole determinant of the shift to include PLT courses in university law degrees, with equity and access issues also of concern. Nonetheless, the practical effect of these moves is to significantly increase the vocational element of the law degree being offered, as a function of both what is taught and by whom it is taught. (Brand, 1999: 126-127).

Examples of the integration of PLT are as follows:

- Since 1999, students have been offered the possibility of a four and a half year LLB/Legal Practice Program. This program is longer than the normal LLB program, and just under half of it is comprised of compulsory LLB subjects, just over one third of elective subjects, and the remainder (exactly one sixth of the combined program) is made up of eight legal practice subjects. In effect, students undertaking the Legal Practice program have fewer electives to complete. Students can also undertake this LLB/Legal Practice program with another combined degree. Most LLB students complete the Legal Practice Program. After a rigorous examination of the Legal Practice Program the local legal professional admission body has certified that the program satisfies the elements students need to enter legal practice.

At present of these eight legal practice subjects, three are primarily taught by the state’s Law Society and the remaining five by the Law School. They are undertaken in the last three semesters of the LLB/Legal Practice program. Most of them are taught in an intensive mode. One of the subjects overseen the by Law Society, *Legal Practice Management*, involves a placement of students in a legal office. Students can find their own placement, or may have it organised for them.

Law students are prepared for the Legal Practice program through skills components in the compulsory program. This law school's Handbook (page 9) explains that “[p]articular skills emphasised include:

- *legal research techniques*, in particular the capacity to locate primary research material (statutes and judicial decisions) in both the traditional hard copy and in the developing range of electronic data bases;
- *legal reasoning*, especially case analysis, statutory interpretation and an appreciation of how facts are established and their relevance determined;
- *critical evaluation* of legal rules and policy issues;
- *presentation of arguments*, both orally and in writing;
- *interpersonal communication*, for instance in the contexts of interviewing clients or conducting negotiations; and
- *uses of plain and understandable English* in legal drafting and other forms of writing.

Legal skills such as the interpretation and analysis of statute and precedent, the oral and written presentation of legal argument, the ability to retrieve information and the capacity to distinguish the relevant from the irrelevant are of value in a variety of careers as well as in professional legal practice.”

Such skills components are included in a first year subject called *Lawyering: Procedures and Ethics*, the first year subject *Legal Method* (which includes legal research), *Professional English in Law*, *Advanced Contract Law* (which includes an oral advocacy component), *Administrative Law* (which includes an interviewing component), *Corporate Law* (which includes a drafting component) and *Resolving Civil Disputes* (which includes a negotiation component). All of these skills are reviewed in the Legal Practice subject *Legal Skills and Ethics*.

This Legal Practice program, which is only offered to the law school's students actually enrolled in its LLB program, was introduced for a number of reasons. A major impetus was that the university which had previously offered a professional legal training program ceased to do so, leaving a vacuum in the state. Furthermore, this law school always had a commitment to teaching practical legal skills, “and it seemed like a natural thing for the school to do, to try and formalise that and teach PLT” but “in the context of academic understanding”. Further, the Vice-Chancellor believed that teaching PLT would distinguish the law school from its local competitor. Finally

the school felt that it had almost a moral obligation to students to take them to the point of admission at HECS rates. That it was simply wrong to take students, to give them a degree, and then say: ‘Okay, well now if you’re going to become a lawyer you’re going to have to pay fees to an external body.’

- Professional legal training is fully incorporated within the LLB program, but also through a “clinical” model which has been running since 1995.

Students have the option of pursuing an LLB with a full elective program (option A) or integrating a full Professional Training Program into their LLB program (Option B, a professional program, with a ceiling of 60 students). If more than 60 students seek to undertake Option B, students are selected on the basis of their average results in the core program (first five subjects). Option B extends over the last two years of the five-year LLB program, and the Professional Legal Training program is undertaken while students complete the academic component of the LLB program. The law school considers this approach to be superior to the six month Professional Legal Training programs offered by some law schools to students after they have graduated because “it is a way of stretching out what is normally at other law schools a six month PLT course in an integrated and less intensive manner”.

The integration of Professional Legal Training into the LLB program means that Option B students complete more credit points than Option A students in same time. A normal load in a semester is 40 credit points, and Option B students do 50 or 55. Option B students, however, have fewer elective subjects (two rather than seven in Option A). This partly because some elective subjects (*Family Law, Conveyancing, Succession and Commercial Law*) are compulsory subjects for Option B students, and partly because Option B students must complete *Legal Practice 1* and *2*, as well as 180 hours of professional legal placement each year. The Legal Practice Subjects are *Legal practice 1* (fourth year) and *Legal Practice 2* (fifth year), which are each worth 10 credit points over the whole year. *Legal Practice 1* includes clinical components *Commercial Law Practice I, Criminal Law Practice I, Family Law Practice* and *Professional Skills* in first semester, and *Civil Litigation Practice I, Civil Litigation Practice II, Commercial Law Practice II* and *Professional Practice. Legal Practice II* includes *Advanced Business Law (Insolvency), Advanced Litigation Practice, Advanced Litigation Practice (Unfair Dismissal)* and *Conveyancing Law Practice* in first semester, and *Criminal Law Practice II, Professional Conduct (Trust Accounting)* and *Wills Practice*. In Option B the School seeks to integrate the Legal Practice components with compatible academic subjects that relate to practice. Each component would have been three and six practical exercises or activities, with a considerable amount of class and peer feedback. There used to be a tight integration between academic subjects and clinical components, but this has loosened in recent years. Students completing Option B graduate with an LLB and a Diploma in Legal Practice.

As noted above, students have to complete 180 hours in placements in each of their fourth and fifth years. Students can obtain approval to do placements over the summer. Students not taking this option are given placements by the law school during the year. The school tries to place fourth year students with the legal services based at the university. Students get some experience in interviewing clients during regular Advice Days, under the supervision of clinical program staff. The school now has more law firms offering student placement opportunities than it has students to organise placements for, because local law firms have been

very supportive, and because fifth year students are organising their own summer clerkships.

The Law School has appointed a series of clinical lecturers who mostly take part in the clinical program. There are also electives in the academic program in which members of the profession might be involved, particularly forensic analysis of legal practice (which requires a certain level of professional expertise), conveyancing (where faculty resources not available and it is compulsory).

This program should be seen in the context of the first three years of the degree. In their first year, students receive a handout which explains to them the operation of the clinical program, how it relates to the LLB program, and how academic learning is integrated with practical training. There are no clinical subjects in the first three years of the LLB program, although students in each core subject are inducted into, or exposed to, clinical skills. "In the core program subjects we do introduce students to some of the things they will be experiencing in the clinical program." Thus, by their third year, when they have to nominate whether to go into option A or B, they have an idea of how the clinical program works, and some experience of clinical approach in core subjects.

For example, from 1992 four of the core subjects, *Legal System and Method*, *Criminal Law*, *Contract*, *Torts* and *Property*, had a clinical component. As the number of students in the LLB program has increased, some of these skills components have been abandoned or diluted. The first year subject *Legal System and Method* now teaches legal writing and provides an introduction to mooting. *Contract* has a drafting component, and in *Criminal Law* the clinical component of criminal law involves court visits. The course co-ordinator arranges for groups of four students to go to a particular court and to meet with the police prosecutor, or a legal aid solicitor (depending on who is available for that day). Students spend the day with the practitioner, and observe the case and the part that the practitioner plays in the case. The teacher in that subject reports that it is becoming difficult to co-ordinate the court observation program, when as many as 180 students are involved. These resourcing issues have already seen a reduction in the skills programs in other subjects in the school. *Legal System and Method* used to include a second semester skills component in which a student managed a file in a hypothetical motor accident case. Because this was a labour intensive exercise in which staff facilitated negotiation and other professional skills activities it had to be abandoned when student numbers increased threefold. For similar reasons the mooting component in *Property* has been abandoned in last few years because the logistics of supporting the high student number has proved too difficult. In *Torts* students used to go into a private firm and research a personal injury file covering negligence, and complete a report on that. The increasing student numbers have made that too difficult to co-ordinate.

It should be noted that some interviewees were critical of this integrated approach to professional legal training. An interviewee in a law school that did not provide professional legal training remarked that

You have a cadre of your students – the A team – getting into the integrated program, and the B team go to the College of Law. It is divisive, and we don't feel confident that can make those selection judgements. We are also critical of the ... approach of enabling students to substitute PLT subjects for LLB electives. This, we feel, is not in the interests of [that law school]. We are not persuaded that integration will secure the academic goals [that we have].

- In 2001, one law school introduced a Graduate Diploma in Professional Legal Education and Training (PLEAT) for law graduates or students currently enrolled in a law degree who have also completed the Priestley 11. The program is integral to the School's philosophy of a "complete legal education structure to cater effectively for primary legal education and pre-admission professional training through to graduate study and continuing legal education". The program aims to

equip students with frameworks, concepts, knowledge and skills integral to legal practice together with appropriate professional values and a professional attitude towards learning.

- **Frameworks**
 - Models and theories of legal practice
- **Concepts**
 - Ideas that explain how lawyers think, work and solve problems
- **Knowledge**
 - What lawyers need to know to practise effectively, eg substantive and procedural law, office management and transactional information
- **Skills**
 - Practice methods and techniques eg letter writing, document analysis and drafting, drafting pleadings, interviewing, negotiation, mediation and advocacy
- **Professional Values**
 - Ethics in practice
- **Professional attitude towards learning**
 - Habits of diligence, mental focus and collaboration, together with the ability to learn from and elaborate experience.

The courses contained in the program "reflect the essential lawyering skills". The program runs concurrently with the final year of the LLB or JD program. It has three components – the Structured Program, Link Day Program and Professional Work Placement. The structured program is a 15-week professional legal educational phase providing students with the frameworks and theories of legal practice skills. It contains three stages which are scheduled during times that the LLB and JD programs are not in session. Stage 1 (January/February) includes units covering legal letter writing, document analysis and drafting, client interviewing and procedural legal knowledge 1, relating to the practice areas covered in this stage). Stage 2 (June/July) includes units covering negotiation and draft pleadings, as well as procedural knowledge covering these areas. Stage 3

(November/December) covers advocacy and relevant procedural knowledge. Sessions are taught by specialist law school teachers and guest practitioners.

The Link Day Program is a “self-learning program that provides students with the opportunity to plan, implement and evaluate their own learning experience”. The program is completed between each of the stages. Guided by the lecturer, students create their own program by selecting some aspect of legal practice that they wish to learn more about in practical detail. “They must identify what they expect to learn, where they might do the learning, and from whom they might learn.” They link ‘real world’ legal activities with the frameworks, concepts and theories of skills learned in the structured program. It aims to “measure how students can transfer skills learning to different contexts”.

The third component is a 12-week professional work placement (usually at the end of Stage 3 of the Structured Program) in a legal practice-based environment, which might include a private law practice, a government department providing legal services, the legal department of a corporation, a community legal centre, or an associate to a member of a court. The placement can be on a part-time basis but must comprise two consecutive days per week, and amount to 60 days. Students can organise their own work placement with the prior approval of the Director of the PLEAT Program, or can seek to have the placement organised by the Director. “In 2001, 50% of students were placed in CBD legal firms, 25% in government departments and the remaining 25% in community legal centres, suburban legal practices and provincial city law firms.” Sixty per cent of students subsequently obtained permanent jobs with the work placement provider.

- A law school that used to integrate its legal skills into the LLB program now, with the exception of the subject Legal Research, cover legal skills in the optional Professional Legal Training Program. LLB students have the option of studying, in their final semester, five Practical Legal Training subjects (the Professional Program) instead of four electives. The five subjects are *Litigation*; *Property Transactions*; *Professional Conduct 1 (Legal Accounting)* and *Professional Conduct 2 (Legal Ethics)*. In addition, students can enrol in a concurrent Graduate Certificate in Legal Practice, in which they complete the other three subjects required for admission to practice – *Legal Skills and Professional Awareness*; *Advocacy*; and *Practical Experience*. Some Professional Legal Training subjects are offered over the summer semester. The Professional Program may also be taken in flexible learning mode. Ninety-five per cent of students complete the Professional Program.

While all four models of skills incorporation suggest that law schools, albeit to different degrees, are placing an emphasis on skills, the move to teaching legal skills, particularly practical legal skills in the LLB curriculum, is not without its trenchant critics. One senior law academic suggested that the relationship between

the legal profession and law schools had become too close, a symptom being the greater “skills focus” of most law schools.

I think the relationship was better when there was a bifurcation between the university and practical legal training, such as the Roman Board and the Oxbridge Model, or, in the US now, where they can teach what ever they like in law schools. So the more prestigious law schools can have only one semester of compulsory courses and the rest are electives. But then of course, later they do the separate bar exams.

I think that in Australia it’s been very, very difficult because we have amalgamated those two processes and accepted that the law degree should be sufficient in itself as a qualification for admission with a bit of PLT. But of course we now have a number of institutions which are offering PLT within the LLB, and indeed most law schools have moved to offering more so-called skills and so we’re actually now moving to a stage in which PLT will simply become irrelevant apart from what’s offered within the law firms.

We’ve acceded absolutely. We’ve tugged the forelock to the profession, and I think this is another reason for actually dumbing down what’s happening within the law schools now by, again, subsuming the PLT within the curriculum.

Well theoretically one might talk about teaching of skills clinically and so on. In practice, that’s just not the case. I mean it’s basically what I call a ‘how to’ approach and I don’t wish to sound superior about the profession but I do think the university is a different exercise, has a different value system, and the notion of critique and questioning is crucial, whereas in the profession you’re not supposed to do that. In the profession one is operating within a particular framework. It’s like questioning the existence of God in the mediaeval universe. You’re operating within a particular paradigm. Whereas in the university, you’re not. It seems now it’s become an old-fashioned view, that one should be an independent thinker. One is not accepting a particular predetermined value system, but one is seeking truth or whatever. But as soon as you say, ‘No I’m deferring to the profession’ you’re subverting that and changing that.

Which is why law has actually had quite a low reputation within the academy, because it has been seen, not as education, but as training, vocational training, that it is simply accepted there are certain values and certain skills that have to be taught and that’s it. That one isn’t free in that sense as other areas of the Humanities and Social Sciences. I think someone’s talked about a sort of relationship with feudalism between the law school and the legal profession and that we owe this fealty and until we actually break that, sever that, then we will not really be an intellectual discipline within the university.

On the other hand, some would argue that, with the exception perhaps of the law schools which have developed an integrated and incrementalist approach to skills teaching, the skills-based curriculum in most Australian law schools is piecemeal and fragmented (for example, Wolski, 2002). Most law schools appear tentative about the way in which they have developed their approaches to teaching legal skills, and arguably have not devoted enough resources to working out how to approach skills teaching in the context of an academic law program, or to mapping and embedding skills teaching within the curriculum so that students are exposed to skills teaching incrementally, and can develop their skills over time in

increasingly complex situations. Other common difficulties in teaching skills programs include (see Wade, 1994):

- Resistance to skills teaching because of the perception that it infers that a law school is taking a “trade school” approach to legal education, or because the school believes that skills teaching will interfere with substantive law subjects;
- Lack of incentives for skills teachers;
- The labour intensive nature of skills teaching, and the failure of law schools to devote sufficient time and resources to teach skills properly; and
- Lack of sufficient institutional stability to that skills programs struggle to survive changes in law school staffing.

Practical legal training

Practical legal training traditionally was the preserve of the legal profession, and delivered by articled clerkships in the case of solicitors, and pupillage programs for barristers. The Leo Cussen Institute in Victoria and the College of Law in New South Wales have been longstanding providers of professional legal training. (see Australian Law Reform Commission, 2000: 116).

The preceding section of this report discussed the way in which professional legal training has been taken up in some law schools by integrating professional legal training within the LLB program. As discussed, this approach to professional legal training is controversial, and some critics and commentators would see these developments as a move back to a LLB program dominated by the practising profession. In relation to the use of part-time practitioners in professional legal training programs. Brand (1999: 127) comments that

The shifting of ground back to a more heavily profession-dominated degree is immediately apparent, with implications for the relationship between reform in teaching and the satisfaction of employer-body demands.

Professional legal training has been taken up by other law schools in less radical ways. In the late 1990s, as the national law firms resolved to move away from the articles system of professional legal training, and with developments towards a unified national system, law schools had an opportunity to introduce fully-fledged Professional Legal Training courses as “add on” programs available on the completion of LLB studies.

The majority of law schools have not embraced PLT. Some of these law schools already had large graduate programs, and therefore did not need to look to PLT programs for revenue. Other law schools were in jurisdictions in which PLT was provided by other institutions, or by articles. In addition to these factors, some law schools clearly did not believe that PLT was within their domain. This is illustrated by the comments of one Law Dean, who remarked that:

We don't see it as part of our role. It wasn't historically and we don't see any need to move into it. We would obviously provide it if there were a shortage of other providers or if there were a perceived deficiency. But now not only does the College of Law and the other universities provide it, but a couple of the major law firms have

got their in-house programs, and they take a lot of our graduates. So we don't see any demand for that from our students.

Another Dean explained why his law school did not have a PLT program in the following way:

PLT has always been part of the law school's real world approach. We produce lawyers who can function in the real world, and that means having some skills essential to legal practice (eg communication, drafting, being creative with legal rules, advocacy, client counselling, etc). All of this is part of the LLB – it is part of 'Getting real'. We don't teach something that is abstracted from its context, both social or professional. There is a strong skills dimension in the LLB. We feel that that balance is right, and we are not a PLT provider and stop short of teaching the mechanics of how do core transactions. ... We see that that we should stick to things we are good at, and not diversify into things that we are not good at.

Another law school had "thought about" providing a PLT program but "currently we are not going to". Yet another law school mentioned that it did not intend to offer a PLT program because "it is just too intensive", and because the school was committed to its practical legal skills and dispute resolution program, it did not believe that it had the resources for a quality PLT program.

While one law school made the decision not to offer a PLT program – "because our jurisdiction still has Articles" – it, nonetheless thought that "there is an increasing need for students to have another option outside of articles because not everyone gets articles". The school has had discussions with PLT providers in other jurisdictions about establishing a "licensing or co-teaching" arrangement.

Other law schools were happy to develop and offer PLT Programs. It was not possible within this project's remit to explore these PLT programs in any great detail; however, we have chosen to provide describe what motivated some law schools to provide PLT, as well as a brief description of the types of programs that are offered.

- One law school has offered The Legal Workshop since 1970. Candidates completing the program earn a Graduate Diploma in Legal Practice.

The day-to-day running of the Legal Workshop is quite separate from the running of the undergraduate LLB.

- One law school started to offer PLT simply because the opportunity to do so was made available to law schools. Law firms approached the law school and asked: "if we were to abandon articles as the route to admission, what could you offer us". The three other law schools in the same geographical area decided to introduce PLT "and we did not think that we could afford to be the only law school in [the area] not to offer it". And clearly offering such a program was going to assist the law school develop links with the legal profession, and

to show that we were serious about professional legal education, in a way that we could not otherwise. To a large extent PLT has given the law school an interface with the local firms that would not otherwise have

had. It is now taken seriously not only as provider of LLB graduates, but as a provider of post LLB practical legal training.

Having a Professional Legal Training program has also enabled the law school to attract students to the LLB program. “They can see that they can do everything under one roof, and they can see a way from where they are now to being an admitted solicitor, and can do it all [at this law school].” A third reason for introducing a Professional Legal Training Program was that that program “acts as a magnet to draw people into our other postgraduate fee-paying programs. We can offer them credit towards a Masters on the back of our Graduate Diploma in Legal Practice.”

Where Professional Legal Training programs are offered, law schools tend to offer automatic entry to the Professional Legal Training program to their own students who have successfully passed the LLB requirements. One law school observed that in addition to attracting its own graduates and new graduates from other law schools, its PLT program appealed to “people who got a law degree a while ago, and want to complete Professional Legal Training; or who start articles and get fed up”.

- One law school reported that its Professional Legal Training program is completed

primarily by our own students ... who don't want to go to big firms, because big firms tend not to want them to do a PLT program. Most firms want them to do the firm's own in-house PLT, and in Melbourne firms want them to do articles, so we are catering for middle and smaller tier firms. A number of international students also want to do PLT, and we may have some people from overseas who have to do two or three subjects and PLT to be admitted.”

At this law school, students from other institutions enrol for the Professional Legal Training program as long as they have successfully completed an LLB. They must undertake three additional weeks of study, “to make up for their deficit in skills training (i.e. get them up to scratch)”. This PLT program comprises a 15 week intensive skills training course at the law school, and 15 weeks of practical experience in an approved law office in Australia or overseas, supplemented by 75 hours in the Continuing Practical Training by distance education from the university's Professional Legal Training Institute.

- The PLT program at one law school is offered over 6 months for on-campus students, and over 12 months for students off campus. All of the individual units in the program are either drafted by or assessed by a practitioner; and most are taught by practitioners or ex-practitioners, or have some practitioner involvement in the delivery. The program has an Advisory Board which meets regularly, consisting of practitioners. The Solicitors Board scrutinises the Professional Legal Training program very closely.

- One law school has provided PLT since 1989. Currently it offers a Graduate Diploma in Legal Practice, a 24 week full-time program to law graduates or law students with one or two subjects still to complete. The program “introduces knowledge, understanding, skills, values and attitudes needed for the law graduate to become a competent entry-level legal practitioner”. The program comprises seven subjects covering *Transaction Skills*, *Dispute Resolution Skills*, *Banking and Finance*, *Commercial Law Practice*, *Family and Estates*, *Litigation* and *Property Law Practice*. One subject comprises a work placement. Graduates of the Program are given credit for half of a Masters of Law by coursework. The School has entered into an agreement with the College of Law and the Leo Cussen Institute to offer Professional Legal Training on-line.
- One law school is the only law school in its state where to house a PLT program.

It is broadly under the umbrella of the faculty of Law. There is an agreement between the university and the Law Society for the Centre for Legal Studies Limited to offer a seven month, full-time PLT course, offered in the city because it relies a lot on practitioners and judges. About half the law school’s students complete the PLT course.

Summary

Previous chapters of this report mentioned the shift in most law schools’ LLB curricula from an almost exclusive concentration on the exposition of legal rules in the mid-80s, to a greater emphasis on ethics, legal theory and legal skills. This chapter describes all three aspects of LLB programs.

While law schools generally embraced these three dimensions of the LLB curriculum, they adopted different models. These included dedicating stand-alone subjects to ethics, legal theory, and/or skills; and teaching these elements to within substantive law subjects. A few law schools have gone further to plan programs with incremental approaches to developing students’ capabilities in ethics, skills and theory – as discussed earlier in this chapter the best examples of this approach focus on skill teaching.

Legal Ethics fall within the subject areas designated by the Priestley Committee as required for legal practice. As a result the majority of law schools dedicated a compulsory subject, or part of a compulsory subject, to legal ethics, although some did not teach ethics at all in their LLB programs, and some taught ethics in elective subjects only. Some law schools mentioned that teachers in different subjects would examine ethical issues. There was no suggestion, however, that there was a co-ordinated law school effort to this approach. Others have also criticised their own and other law schools for focussing too much on “ethics as rules”, without sufficient attention to underlying theoretical models governing ethics.

All but two law schools required students to undertake a compulsory legal theory subject – in first year, in second year, or near the end of the LLB program. Only a few schools required students to engage with legal theory more than once in the degree program in dedicated legal theory subjects, and only one law school appeared to engage more than twice with legal theory in the LLB program. Law schools seemed to have different views of what was meant by legal theory and some assumed it to be traditional analytical jurisprudence. Others saw it as mid-level theorising about subject areas. Some took a broader interdisciplinary approach to legal theory. Although we did not have the time or resources to pursue issue further, some interviewees did indicate that some law schools are finding it difficult to know how to “pitch” legal theory to law students. While many law schools suggested that teachers taught substantive law subjects within a theoretical framework, no law school suggested that such approaches were co-ordinated. Many law schools reported that students quickly lost interest in legal theory because it was seen as “too dry” or “irrelevant to legal practice”. Further work needs to be done to develop legal theory curricula in a way that enables students to find relevance in legal theory.

The biggest change in law school curricula over the past decade has been the infusion of skills education and training into LLB programs. Again, law school objectives and practices differed, with some law schools defining legal skills as principally including core skills such as learning to read cases, legal research, and oral and written communication, while at the other end of the spectrum some law schools were concerned to provide students with skills they would require in legal practice – from negotiation and drafting skills, to learning how to complete the paper work to incorporate a company. This chapter gave examples of at least four different approaches to incorporating legal skills in LLB curricula, from a minimalist approach; to a more explicit approach where there were dedicated skills subjects, modules within subjects, clinical programs and placements; to carefully planned incremental, integrated and co-ordinated skills programs spanning the LLB degree program; and finally to the inclusion of fully-fledged professional legal training programs within LLB programs. Finally the chapter also described “post-graduate” professional legal training programs offered by an increasing number of law schools.

CHAPTER SIX

POSTGRADUATE CURRICULA

Postgraduate education in law schools has expanded rapidly in the past fifteen years. Indeed, Manderson (2000) observes that

we have witnessed an explosion over the past several years. A bewildering array of diplomas, certificates, and coursework Masters' degrees are now offered by almost every tertiary legal institution in Australia, part-time, full-time, distance, and intensive, on every conceivable subject from superannuation and tax law to medical ethics, international regulation, and public law. In 1999, 1396 new students enrolled in such degrees. Almost all have a professional focus, whether for lawyers or non-lawyers, and may be characterised as offering training and information within specialised areas. Few have significant research components.

Some law schools have developed large LLM programs, and many schools have introduced graduate offerings, aimed at non-lawyers. But, as we show in this chapter, the growth graduate and postgraduate coursework programs are largely offered by older law schools, particularly those based in the CBD area of the large cities.

Postgraduate coursework programs dominate the postgraduate offerings of law schools; however, there also has been an increase in the number of doctoral offerings. Whereas just 10 years ago, most law schools would have had very few doctoral students, now a much larger proportion of law schools have dozens of PhD students enrolled in their doctoral programs.

This chapter of the report:

- outlines developments in postgraduate coursework since the late 1980s;
- describes masters level coursework programs, for both law and non-law graduates;
- provides an overview of graduate certificate and diploma programs;
- notes the trend towards intensive teaching in graduate coursework programs; and
- examines higher degree research programs.

The Postgraduate coursework programs

Postgraduate coursework programs have expanded since the late 1980s. For example, in 1987, 771 students were enrolled in Masters programs (coursework and by thesis), and this figure increased to 1952 in 1993 (McInnis and Marginson, 1993: 437). In 1998, the number of students enrolled in coursework Masters was 3373 and in the Masters by Thesis, 130 (Legal Education Yearbook, 1998: 41). The number of students enrolled in a Graduate Diploma program in 1987 was 275 and in 1993 it was 724 (McInnis and Marginson, 1993: 438). In 1998, 169 students were enrolled in Graduate Certificate programs, and 656 in Graduate Diplomas (Legal Education Yearbook, 1998: 41).

The expansion has not been experienced across law schools; however, as this chapter outlines, the major developments have taken place at older, CBD-based law schools.

Many law schools indicated during the course of this project that postgraduate coursework programs were not always introduced to enhance the intellectual life of a law school, or to develop teaching or research at the school. Some programs were introduced to mark the law school as having a special niche – for example Environmental Law at one law school. Some of the first wave law schools saw their postgraduate coursework programs as a means to establish links with other institutions, including overseas universities. One second wave law school developed its LLM program because “the Pearce Committee recommended that we should have one. We looked at it seriously after Pearce, and developed it”. But the main factor driving the development of postgraduate law programs was the prospect of revenue from fees from graduate and postgraduate coursework programs, during resource stretched times. A number of the larger law schools freely admitted that they use money from their coursework LLM programs “to cross subsidise undergraduate teaching”. As one third wave head of school wistfully noted, this confers a huge advantage on the older large city-based law schools. He recounted a conversation he had had with two law deans of large first and second wave law schools:

we're sitting down over lunch and I asked them about their funding, and both of them said, ‘Well actually we're lucky because we have these really big postgraduate coursework programs and we suck the money out of those, and we bolster up our undergraduate teaching with that money.’

In all but a few law schools, the LLB is seen as more important than postgraduate coursework programs. For example the Dean of one law school observed that the school had always considered “that the primary mission of law school is the undergraduate program – that is where you have the greatest effect, and the most students. It is the jewel in the crown.” Another reason for the secondary position of the LLM by coursework is that “by necessity” LLM by coursework students are usually part-time students (the exception being international students, who tend to be full-time).

Contrary to the above views, an interviewee from one law school remarked that the postgraduate program is a very important part of that law school’s activities:

the LLB is just half of what we do ... Graduate education is a huge dynamic force and part of our profile and our mission as a faculty, and postgraduate research training is also a massive part of it.

The constraints on postgraduate coursework programs were different from those which drove LLB programs. Postgraduate law coursework programs do not have to conform with the Priestley requirements that restricted curriculum design in the LLB program. But on the other hand, postgraduate coursework offerings are far more market driven, and, as one interviewee put it, “they need to focus on ongoing training for people in relation to their work”. As such, informally, students, employers and international markets strongly influence the content of the LLM programs.

Developments in postgraduate coursework programs

The large postgraduate programs

Some law schools have comprehensive graduate and postgraduate coursework programs, but even then tend to offer specialities. These law schools tend to be those located in the CBD of the major cities, and develop LLM programs for practitioners.

One such law school had 1000 postgraduate coursework students, and offered more than 100 postgraduate coursework subjects each year. “Our mission in postgraduate training is the Masters. Its subjects tend by many people to be seen as subjects enabling advanced specialisation, and tend to lean towards the practical side.” Whereas this school used to offer an generalist LLM by coursework, “which was focused on postgraduate training of lawyers, with emphasis on Commercial Law and Tax”, in the past decade the school has diversified its offerings, and there are now 11 specialist LLM programs, although a few of these have yet to prove themselves to be viable. This school offers these specialist Masters programs to graduates in disciplines other than law.

So a good way of thinking about our program would be to say it’s an LLM with satellites. The LLM [is] still the dominant focus and the majority of our students remain people with first degrees in law, possibly not from Australia. Quite a lot are international students, but they’re doing postgraduate legal training. And then around that core, there are very substantial programs in specialist areas which involve non-lawyers as well. And increasingly we’re getting a lot of economics students who have typically done a fair amount of business law in their undergraduate degree and who fairly seamlessly fit into our Tax and Corporate Law program.

Another interviewee from the same law school described the market for the school’s postgraduate coursework programs in the following way:

There are three principal constituencies for our postgraduate coursework programs. The most numerous constituency is local practitioners for whom it serves a very important professional development role. In fact many firms depend upon us for provision of mid-level professional development. And we work very hard to ensure that we’re providing the kinds of programs that appeal to the firms.

The second constituency is non-lawyers. I think more than a quarter of our enrolments are from non-lawyers, like for example a town planner who wants to do environmental law, or a medical administrator or a doctor who wants to do health law, or an industrial relations officer who wants to do labour law, or a taxation professional who want to improve their credentials in taxation law. So there are very significant enrolments from that class of people.

And then the third constituency are international students who[se] interests are not so specifically focused on professional development within this particular context, although they often end up sharing quite a bit with the non-lawyer constituency, and they’re coming at it from a broader perspective because they’re really interested in getting an advanced education in particular substantive areas that they can then draw upon and apply in their own home jurisdictions.

We also have a stepping stone from our postgraduate coursework program into our postgraduate research program. That means that some of our postgraduate coursework students are in the first stages of a doctorate, a research doctorate. They do three subjects as a coursework component before moving onto the research for the SJD degree.

This school's graduate coursework program includes nine specialist and one general, graduate diplomas, the generalist LLM, 11 specialist LLMs and the SJD program, which this law school pioneered in the early 1990s. The program is flexible, and "coursework programs are sequenced, allowing single subject enrolments to be built into Diplomas or full Master's degrees".

To support the expansion of the graduate program, and particularly the increase in international students, this school has been successful in obtaining a university grant to establish a variety of special programs to assist in the orientation and integration of international students, and to ensure that their needs are catered for.

We have bridging programs for international students. We've created a new Postgraduate Unit that's meant to introduce students from a non-legal background in the postgraduate program, because we do have non-legal postgraduate students as well as postgraduate students from civil law countries. They need to be introduced to common law reasoning, common law methods, and common law educational methods.

We were concerned that for many graduate law students the beginning of law was quite abrupt, because they got the law all at once as well, so we used to have a bridging program for them. We actually decided that that was not enough and so what we've done is we now offer *Legal Institutions* on an intensive basis at the beginning of the semester, for graduate law students, and then compensate for that by then back-loading the other two subjects that they have to take that first semester. So that they have a good, intensive, solid introduction before they get into their substantive law classes.

The law school that has the other largest postgraduate law program in the country - with over 100 subjects and well over 1000 students in its coursework programs (which include graduate diplomas) – mentioned that the expansion of its program began at the end of the 1980s, when, with the assistance of a consultant and a series of focus groups, the school

asked the profession, as being the most likely source of postgraduate students, what they wanted and expected in a postgraduate program in law, and they gave us a number of responses. They said they wanted a higher quality program; that they were already paying a whole lot of CLE [Continuing Legal Education] providers huge sums of money but that they would rather devote that money to the Law School, but that they wanted, at the same time, the quality to be racked up. They said they wanted specialisation, they said they wanted cutting-edge programs and subjects, and they said they wanted them run in a way that recognized the particular problems of part-time students who have busy professional lives. And in response to that, we completely redesigned our graduate program. It's built around areas of specialisation.

"The basic building blocks" of this school's graduate program are the graduate diploma programs. Starting with three areas of specialisation, and focusing on four subject graduate diplomas, the school began to build up the graduate

program, expanding the number of areas of specialisation, and in the mid-1990s, offering specialist LLMs to both lawyers and non-lawyers. The school now offers 11 specialist coursework Masters programs and 17 Graduate Diplomas. As would be expected from a market leader, the school does not monitor the offerings of other law schools and attempt to fill the gaps. Rather it asks

What's important? What's going on in the law that we should be covering? And of course we pay regards to the question of whether we're going to fill the classes because otherwise it's not commercially viable for us.

This school's program is flexible. All subjects in the graduate coursework program are available for credit at the diploma, masters or doctoral (SJD) level. More than two-thirds of the subjects are taught intensively over a period of one or two weeks, a format that this law school claims to have pioneered. Furthermore, candidates are permitted to move between graduate programs. For example, a candidate completing a specialist graduate diploma can apply to enter the specialist LLM in the same area, which the candidate can complete by completing four additional subjects in that specialisation area, or may apply to transfer to the LLM. If the candidate received high honours for the graduate diploma subjects, the candidate may transfer to the SJD.

The graduate program is taught by full-time academic staff, as well as by practitioners (including judges, barristers, solicitors and people in other branches of the profession) and by academics from other law schools. Over the years the school has developed the number of subjects taught by academics from overseas. "At least 25 to 30 of our teachers in the program [in 2002] will be international people".

One other significant recent change to the program has been the increase in the number of offerings to students from other parts of Australia, as well as a significant increase in full-time international enrolments in the graduate program. The school now has 140 full-time international students in the program "from all parts of the world". Some of these candidates hold significant positions in the legal system in their own countries.

For a program designed around students assumed to be practitioners in law, government and business, and studying part-time, required significant modifications to the original program.

[T]here are a number of obvious categories. Australian-trained lawyers ... divide into two categories: (i) people who are doing further study in an area of which they're already familiar, and (ii) people who are moving into a new area. ...

Then there are the Australians who are not lawyers. Now we have let some of those into our specialist Masters, if they have a good other degree and if they are working in an area that suggests that they ought to be able to tackle a graduate program in law. We make it quite clear to them that they are doing graduate work in law but we're not going to teach down, although it depends on who they are. We may help them get into it. We run introductory courses on legal method to help them get into it. ... And in particular areas of specialisation we run other things. For example, we run a Masters of Construction Law, which has deliberately been designed to mix lawyers

who work in the construction area and engineers who would like to learn more about construction law. But obviously for those two cohorts you need to do different things. For the lawyers you need to give them a bit of training in engineering, and for the engineers you need to give them a bit of training in Introduction to Construction Law. So in a couple of the areas of specialisation there are particular, targeted, introductory days.

Then there are the overseas people. And if they've come from another Commonwealth jurisdiction, generally we can treat them pretty much like we treat the Australian-trained lawyers. Maybe with a few concessions but not tremendously many. ... If they are civil lawyers who have been trained in the civil law, then they need special treatment again, and those people are likely also to come from another language area.

Now, that raises a host of issues. ... At the faculty's expense, this year we hired someone who is an English language training person, who can sit down with students and help them to understand, not just English writing and English legal writing techniques, but also to get them thinking about the way in which common lawyers' reason That's actually proving very successful.

We also run a subject called *Fundamentals of the Common Law*, ...[which is compulsory for] ... the overseas-trained civil law lawyers and the Australian non-lawyers.

And we're also presently making a CD, or at least an electronic program, about common law methods which we will, hopefully, have ready by the beginning of next year, and which we will send to all our international students before they arrive.

The school also offers international students intermittent Saturday briefings on the program, and networking programs to link graduate students who have established careers in their home country with their counterparts in Australia.

Other examples of the larger postgraduate programs are as follows:

- A law schools that offers about 50 postgraduate coursework subjects each year mentioned that the focus of its postgraduate and graduate programs is "to offer subjects which meet the needs of practitioners and professionals in the global community". It holds graduate coursework subjects at CBD venues, as well as at the law school, which is 15 minutes from the CBD. It schedules winter semester intensive subjects in June/July, with assessment due to be completed by late October, as well as intensive subjects, taught over a four or five day period. Some postgraduate subjects are offered by distance education, usually on-line.

This law school's postgraduate program also includes an LLM by coursework, a Masters of Applied Law to non-law graduates and Graduate Diploma and Graduate Certificate programs. The two Masters Programs can be taken as a dual program with the Master of Business Administration (Executive). "Within each of these programs are specialisations ... which reflect the research and teaching strengths of the Law School. These specialisations also recognise well-known fields of professional legal activity within the public and private legal and other

professions.” Areas of specialisation include commercial law, comparative and international law, dispute management law, financial services law, intellectual property law, litigation, maritime law, property and environmental law, public law and taxation law. The school also runs a joint program with the Marquette University School of Law, in Wisconsin, USA.

It is an international, comparative and foreign law program which is held in alternative years at [each law school] in June/July. ... This program offers students the opportunity of studying intensively during winter, giving their programs an international orientation and increasing their professional network.

Students must complete three subjects at each law school, as well as two supervised research projects. The school has also “formed alliances with international law schools and institutions” in Thailand, Singapore and Malaysia for the purpose of conducting the Master of Applied Law and LLM programs offshore. These subjects are taught intensively, and can be taken by Law School AE students and local students.

This law school mentioned that it had pioneered the first “on-line Masters [in Law] programs”, specifically aimed at the international graduate coursework market, particularly in Europe and Asia (and perhaps building on the off-shore Asian programs), but also including Australian students. Four subjects have been offered in each semester in 2002 and five are proposed for first semester 2003 and six for the second semester 2003. The law school has engaged a part-time specialist staff member to assist with the development of the materials and to co-ordinate the program, and further educational assistance is provided by the university’s higher education support unit. The course materials are available through “real time access on-line” and through compact disks. One subject in 2002 attracted 25 students, but most have attracted between seven and ten students.

- A law second wave law school that is CBD-based offers a Graduate Diploma in Legal Practice, a Graduate Certificate in Law and a Master of Laws by coursework. It has offered an LLM program since the early 1990s, which is mainly undertaken by local practitioners. In the last few years, it introduced a Graduate Certificate in Law, which is available to graduates in a discipline other than law, and which can articulate into a specialist Masters degree if the candidate achieves a sufficiently high grade point average. The LLM and Graduate Certificate programs can either be general programs, or focusing on specialist areas (see below). The Graduate Certificate may be undertaken by a candidate with an undergraduate degree in a discipline other than law who also has appropriate professional experience. The school also offers a Graduate Certificate in Legal Studies, which is comprised of undergraduate subjects, which can then become part of a Graduate Diploma. Most of the graduate coursework subjects are on the web. Many of the graduate subjects are offered externally, and some are offered intensively (in which

case they are not external subjects). About one third of the subjects in the graduate coursework program are taught by outside practitioners.

- A law school that offers Graduate Certificate and Diploma programs, and coursework Masters programs in Law and in Legal Studies, also has specialised programs in Industrial Property, International Trade Law, Professional Legal Training, Taxation Law and Dispute Resolution.
- One law school revitalised its postgraduate coursework program in 1998-1999, by creating some major specialist coursework programs.

For a long time our graduate program had more-or-less only a research base and offered some courses in particular areas but we aimed for a broad ranging coursework program in all of our main areas of strengths - international, public, environmental and commercial. And then in more recent times I guess the two main developments on the coursework side have been [that] we last year merged our public law and our commercial law coursework programs into one, called Government and Commercial Law, and that was really just a recognition of that particular market for the students.

The development of the graduate coursework program has been in response to market demand. Our perception was that there was a demand for a broader range of postgraduate program. That clearly was the way other law schools were going and there was also an imperative coming upon us where you have to make your own money these days. One of the ways of raising money is with fee-paying students.

Having said that, one of the initiatives we've always had in setting fees here is that as a regional university, trying to attract students not only from our local market but also from interstate, we're not going to be able to do that if our fees aren't also attractive. So we've already taken the deliberate step to set them below the fees charged elsewhere.

That's a compensation for having to travel here I guess. Having said that, we don't get a great number of coursework students coming from interstate. We get the occasional student doing a particular unit but we don't get many doing the full program. Most of our intake is local.

The School offers three specialist graduate certificates, a graduate diploma in law, specialist graduate diplomas, an LLM, a Masters of Laws (Legal Practice), a Masters of Legal Studies and four specialist Masters programs in Government and Commercial Law; Environmental Law or Environmental Law, Government and Business; Intellectual Property Law; and International Law. The program is offered mainly to Australian students, "although we have a handful of international students who do it". The school has recently collapsed two of its LLM programs (government law and commercial law) into a single program, so that the marketing of the programs is a little more targeted.

The difficulty in developing a postgraduate program is the perennial balancing you have to make between how much effort to put into the coursework, and how much effort to devote to attracting a higher degree

of research students? The signals we get from government are that there's big money to be earned by universities in higher degree research completions and so, if we're meant to be getting it we should be out there attracting PhDs, SJDs, because that's where the government wants us to put our effort.

We certainly do that but equally, there's a market out there for coursework programs. So at the end of the day there are only so many people on deck and trying to effectively run both sides of that postgraduate program is difficult. So it's something that we just have to continually keep an eye on.

- One law school first offered the LLM by coursework in 1988.

The subjects for that have changed a bit, not in line with any policy changes – at least not up to now – but just because of what people make available. Over the last year or two we've engaged in an exercise to try and make our postgraduate offerings more attractive, because numbers have been falling. I think that's mainly due to the fact that as from about '96 or '97 it was much more difficult to get funding to do a postgraduate course and numbers fell. The Higher Degrees Committee has been working on a set of proposals. Prior to that we did some market research and consulted a large number of people (we got somebody to do it for us) and a large number of lawyers in practice and law graduates out of practice were interviewed. And we put together a series of reform proposals which have just gone through faculty and which should come into operation for 2003.

Now the changes may not be that dramatic as far as our LLM is concerned. We're trying to revamp subjects a bit to offer a few new things that will be attractive particularly to lawyers in practice. I think the main thing is to try and be more flexible in terms of how we offer what we offer – intensive courses, the time and the day we offer them – and we're going to try and bring in more external specialists and a few things like that.

What we are going to offer is a Masters degree for non-lawyers. We have one ready to go. It's called the Masters of Banking and Finance Law. We're also going to offer a Masters of Commercial and Resources Law, and there is already a Masters of Criminal Justice, which is really run by the Crime Research Centre, which is attached to the Law School. And the Masters of Commercial and Resources Law has just been approved.

Currently the school offers an LLM by coursework, and a Master of Taxation Studies run in conjunction with the Faculty of Economics and Commerce.

Smaller postgraduate coursework programs

Those law schools located away from the CBD faced obstacles in offering LLM by coursework programs if these were aimed at practitioners. Consequently those law schools had to find a niche for their programs.

Some of these law schools opted, from the outset, for specialist programs. For example, an interviewee at one law school observed that:

Rather than have a generalist LLM, we have sought to specialise in particular areas – Corporate and Commercial, Information Technology, Media Law, International law, criminal law, Comparative and Asia Pacific Law etc. This was restructured late in 2001. We have a cluster of subjects within each area, rather than trying to be everything to everyone. We have a single LLM, but with a capacity for specialisation.

But it would be inaccurate to portray LLM programs as focused solely on part-time local practitioners. Even the modern LLM by coursework in some law schools has a richly diverse array of students. An interviewee from the same law school as above observed that

Students are bifurcated in the LLM. Half of our LLM students are international students (and half of these from Asia and half from Europe), and the other half are practitioners. So we have diversity of backgrounds, and of need. Some students are from non-English speaking backgrounds, and have language needs. The European students have good English language skills. So it makes for a plural experience and requires some adjustment, because we teach in a small group mode ..., where language is important. ... We have more eclectic group of students [than the other big law school in the CBD]. We have always sought international recruitment in the LLM area as part of Law School's mission of regional engagement and mission to be an international law school.

Other examples of the smaller postgraduate coursework programs are as follows:

- One law school offered a generalist LLM Program from its inception in 1989. From 1996, it has offered specialist Masters programs, including a Masters of Business Law (MBL) and Master of Jurisprudence (M Juris) for non-law graduates. These changes were motivated by desire of graduate students to specialise in particular areas. A second motivation was that in the first four or five years of the school's existence local practitioners undertook LLM studies. After that time, that market was exhausted. Since that time the LLM has been undertaken mainly by Masters students from outside the local area – students from other cities and from overseas. Very few the Australian students offered placed by this law school study for an LLM full-time. Most law graduates studying for an LLM do so while they are working. This law school also has a strong representation of students from all over the world. "So we are probably are following North American model where we have very few locals." This law school has tried to create its own niche in four areas – ADR, Corporate and Commercial, International Trade, and Intellectual Property, Informational Technology and e Commerce. It offers seven specialist masters degrees – three (either LLM, M Juris or MBL) are in Corporate and Commercial Law; Dispute Resolution; International Trade Law, in addition to LLM (Intellectual Property, Information Technology, and e-Commerce), LLM (Legal Practice), Masters of Dispute Resolution, and Masters of Corporate Governance.

- One law school offers a coursework Masters of Law and a coursework Masters of Commercial Law, both with eight subjects, and a Masters of Law by coursework and minor thesis (five subjects, a subject *Research Methodology and Critical Analysis*, and a 20,000 word thesis). Candidates in the Masters of Commercial Law who have a non-law background must complete a compulsory subject (*Perspectives in Commercial Law*), plus seven other prescribed subjects. In the Masters program students can choose three non-law subjects. This school also offers a Graduate Certificate of Commercial Law (four subjects) or three subjects and *Perspectives in Commercial Law* for candidates without a law degree.
- A law school that has different postgraduate coursework programs at two of its campuses explained that one campus has developed

very strong programs in the Masters of Dispute Resolution and a number of embedded graduate diplomas and certificates and things of that kind. It's largely taught in the city still, as a short, intensive program, usually for professionals wanting to upgrade skills. So that's where the primary emphasis has been there. They also have an SJD program, which is, again, a fee-paying program which doesn't qualify as a research degree because the research component is less than 67 percent.

The other campus offers postgraduate coursework programs that are largely business oriented

but not exclusively, so that there's quite a number of specialist units in the banking and finance area. We have the Graduate Diploma in Health Law, which feeds into a niche there.

The school sees potential in restructuring the postgraduate programs to bring out a more coherent base and also to have more opportunities for students to do some of both. For example, students could both do dispute resolution subjects and business law subjects as part of their postgraduate [programs].

- A law school that receives financial support from the local profession, established a Centre for South-East Asian Law, which in turn allowed for the development of a Masters Program in Comparative Law. The Board of the Centre monitors the Program.

It was offered externally, and we needed the money because the materials were put together by experts in their fields, from wherever they were in the world. We paid for – and it literally was people around the world – writing either whole units or parts of units. And many of those were appointed Adjunct Professors to the Centre. And also we were forming links with Asian universities.

This program was launched in 1996, and by 1997 had about 70 students, many of whom were based in North America and Europe. But since then the number of students had fallen to about 15 and the program and Centre

are being reassessed “as to where we’re going to go with that Centre and where we’re going to go with that Masters program”. The Masters program was suspended in 2002, and only offered to students already enrolled in the program.

- One law school that currently offers two specialist LLM programs, in Global Business Law and in Alternative Dispute Resolution mentioned that

we had some not very good experiences in that we’ve had several programs which we have closed down. We just didn’t get the numbers for enrolment, although they have been very good programs. It was just the numbers.

- A second wave law school situated in the suburbs of a large city has a “full blown” Masters of Environmental Law. The program is monitored by the school’s Centre for Environmental Law. Until recently, the school also offered a Masters in Financial Services “to train people in the financial services industry in law”. This latter program has now been terminated. “We are quite a long way out of town, which makes it difficult.” Instead, the school took a decision 18 months ago to develop its PhD program. “Its partly our vision of ourselves as being specifically academic in our approach to law” and partly a response to being remote from the city centre.
- A regional third wave law school, offers a few specialist postgraduate programs – a Masters and a Graduate Diploma in Transnational Crime Prevention, and a Masters of International and Comparative Law “which is mainly targeted to people from overseas who want some grounding in international comparative law in a common law system”. Another Masters program, Natural Resources Law, is “on the books”, but it has not been offered in 2002 because of lack of student demand. A Graduate Diploma was offered, relatively successfully in the early 1990s, and a Masters in Court Policy and Administration from the mid-1990s, but both have been abandoned as demand has been exhausted.

It started out with very good intakes, a lot of excitement, a lot of interest, but we found that we were scratching harder and harder to get people to come. Gradually it sort of wound down in various ways. ... One obvious reason is that we’re not in a capital city and we don’t have masses of our own graduates falling over themselves to do a Masters Degree.

One interviewee explained the difficulties of running such programs in regional cities:

Until they turned up for their first intensive, we didn’t know how many students we were getting and it was just a nightmare. And so you’re gearing up an entire sort of set of courses for an indeterminate number of students, and when I say indeterminate I mean anywhere between 3 and 20, you know.

- One law school mentioned that it has “created and tore down” two postgraduate programs over the past ten years. The school has a strength in human rights law and intellectual property law, and established specialised coursework LLM programs in each of these areas. Recognising that the local market was small, and that it would be difficult to attract students from elsewhere in Australia, the programs were designed to attract students from the South-East Asia region. This involved teaching subjects intensively in the evening to minimise the time (and therefore the expense) that people from the region would need to spend at the law school.

Both programs were reasonably successful. That is to say they would attract, each of them, three, five students a year, but what I was pleased to see us do, was actually sit down and do a proper costing after a while to see whether the thing was working out. And the costing would always be difficult, but we had to ask: what’s the school getting out of it in direct resource terms and what’s the school getting out of it in intangible terms? So: are we actually getting students who are working with staff in research projects? Are we getting students who are referring interesting research possibilities or teaching possibilities to the school after they finish their program with us, and otherwise marketing the school’s expertise abroad? What are benefits of having them here and the costs? And the costs were, what are we expending on teaching in direct cost terms, and then, and this was ultimately what caused us to shut both programs down, indirect costs. Indirect costs to be expressed in the opportunity costs of these programs.

That is to say, to what extent are the people who are teaching in these units lost to the school in other respects, and therefore their absence means that the rest of the school has to carry a correspondingly larger load? Are we getting value for money in that respect? That is to say, are we clearing enough from the program to be able to say we now see why we are all doing this additional work? The answer was no. In both cases we needed larger numbers than that.

I think we just discovered that the [Asian] market wasn’t there or couldn’t be developed fast enough to keep paying these costs and we were seeing, because of the way we track our teaching workload, we were seeing the cost go way up. So, we shut both programs down.

The school “has been casting around for ways of maintaining a presence in the postgraduate studies area” And is hoping to develop an LLM program that included in the LLB “double-coded” subjects also included in the LLB elective program.

The tricky one is whether there’s a market for a specialised LLM by coursework only. An LLM by coursework that leverages off our elective program is actually an LLM with substantially a research work component. We’ve been discussing with the major law firms here whether they would be interested in an LLM with a focus in corporate and resources law that would draw conceivably on some of our intellectual property assets, that would draw on our corporate law assets

and that might help the school build up some resources and expertise which we currently lack.

Some law schools have recognised that they are unlikely to be able to develop postgraduate programs for “onshore” students, and so have focused on overseas students. One law school, for example, has developed an LLM coursework program for law graduates which specialises in comparative commercial law,

for people from other jurisdictions, say for instance from China, where they have a civil law tradition. People want to get some understanding of the common law system in specialist areas. Significant problems with WTO, we offer international trade law and a post-graduate program in WTO issues. Now whether we deliver them in Beijing or whether we deliver on-shore is a question, and that would provide a significant level of cross subsidisation of your undergraduate programs.

It also offers a Master of Comparative Commercial Law for other graduates, and a postgraduate short course, the Graduate Certificate in Australian Immigration Law,

which is quite complex because it has to be accredited with MARA (Migrant Agents Registration Authority). We run something like 26 courses all over Australia annually, which involves training something like 1000 students as migration agents and we run these CBD courses, so as I say, we’re the largest provider in that area and have that considerable expertise. And interestingly enough there’s probably a higher level of demand for courses like that than there is for straightforward law post-graduate programs.

Law schools not offering graduate or postgraduate programs

Other law schools do not offer postgraduate programs at all. One law school, for example, does not offer a coursework LLM or any graduate diplomas or certificates even though the School would like to develop such programs. “We have never been able to justify this in terms of demand, and as a small law school, we also can’t justify in terms of breadth of expertise of our staff”. One reason for the low demand is that many of the local profession are not law graduates, but qualified for practice through a legal practitioner’s course. The law school surveyed the local profession for their interest in a postgraduate program, and received a 27 per cent response rate, with most practitioners saying that they were not interested in postgraduate study. The school does, however, see possibilities for teaching law subjects into the MBA, Master of Industrial Relations and Human Resource Management, because it has staff with expertise in discrimination law and occupational health and safety law. The school proposes to offer a Graduate Certificate in Common Law (badged jointly with University of Nankei, China and offered at Nankei). This program will articulate with the Master of Common Law – currently being developed – that could be taken at the law school if the student has a visa.

Other examples of the reasons some law schools ended up without postgraduate programs are as follows:

- One law school tried to develop an LLM program, in order to ensure it had another revenue stream and because the university was keen to have an LLM program. It was eventually forced to abandon it.

We were on the verge of offering a Corporate LLM, to start this year. We did a lot of work on that last year, including some preliminary market surveys that suggested it would be viable. When it came time to get it rolling the numbers did not sustain it. The decision was reached not to offer it this year. It's on the books. We're thinking of different ways of doing this and getting a Masters course up. But it's unlikely we'll go forward in the way that had been planned. ... Once you start it, you have certain obligations and it was felt that it was simpler not to start it. We had had that experience with a Master of Health Law that was started in '97 or '98 in conjunction with the Health Sciences Faculty, and that actually got off to a reasonably good start and then fell away fairly quickly. There were too few people who wanted to do it and we wound that back a couple of years ago. ... We are thinking of alternative ways [of developing a graduate course work program] and one possibility is running some Continuing Legal Education seminars and offering the people who attend the seminars the option of writing a paper and then having that credited as a course and then building up to a Graduate Certificate or an LLM. And again we've just really started the negotiations there and thinking about that.

- Another law school that is in the same city as the one above had a similar experience. Once again, a coursework LLM program was offered, with areas of specialisation – particularly commercial law, international law and environmental law. “It had a fairly heavy commercial orientation – that is what people are interested in.”

The major development in our postgraduate program since 1987 has been the abandonment of our postgraduate coursework program because it simply did not warrant it. There wasn't a market. It was totally subsidised by the undergraduate program and we simply were not able to run it. The only post-graduate programs we have at the moment are our research degrees and a Masters of Comparative Law, which we offer jointly with [a German University] which is reasonably successful but it doesn't have a lot of enrolments in it from [our] end. It's largely engaged in by the [German] students. And so I'd say the major development is the abandonment of the degree. We're looking at reinstating it, restructuring it and reinstating it, probably in 2004, but I don't personally feel very positive about it.

- One law school that is the only law school in the state without a postgraduate coursework program has nonetheless built up its PhD program.
- A law school that developed a Masters program in 1997, originally offered it to non-lawyers. The majority of students in original program were mainly from government and community legal services. The subjects contained a lot of theory, and law, and there was one introduction to law subject, for which students received no credit. This program ran for two to

three years, but then stopped taking new students. It is currently being revived, and there is a strong view that the program should not be competing for the practitioner market, but rather should focus on non-lawyers – “doctors, teachers, the public sector, other professional groups that need to have legal knowledge, such as their liabilities in negligence etc.”.

- Another law school that attempted to get a post-graduate program up and running also failed in its attempts.

Mind you, we're in good company there. There is not a single post-graduate Masters subject offered in this state now. So I don't think we're alone in that. Competing with the big players ... is difficult.

Other issues in postgraduate coursework programs

Most law schools did not think that coursework postgraduate programs should be articulated with LLB programs. As discussed earlier in this chapter, postgraduate coursework appeared to be geared to the professional development of legal practitioners studying part-time to either develop their area of specialisation, or to move to a new area of practice. The marketing pressures on the development of LLM programs, however, have been seen by many of those interviewed for this project to have had an adverse affect on the quality of LLM coursework programs. Reflecting the views of many staff in law schools, one interviewee thought that

Other universities are ‘dumbing down’ the LLM. It used to be seen by prospective academics as a stepping stone up the academic ladder; and by people in the legal profession as giving them an edge. The tendency over the past decade has been to reduce the research component of the LLM by coursework. And then the coursework became more practical – for example focusing on developments in [a particular area of law]. These changes moved the LLM a long way into the LLB, so that it was no longer a natural academic progression from an LLB to an LLM. If a person wants to be an academic the LLM has been so dumbed down that he or she has to do a Ph D (and there is a danger that the Ph D is now being dumbed down too).

Some law schools, however, claimed to be resisting this “dumbing down” process. One law school thought that its LLM program provides an opportunity for students to study, in an organised fashion, certain areas of speciality and with a greater level of difficulty than how it is covered in the LLB. It also claims that its programs are “interdisciplinary and focus on policy; and have a research component”; the focus is on high quality graduate programs that it hopes will distinguish its program from its main urban competitor.

Another feature of in the development of postgraduate programs has been the non-progressive relationship between LLB and postgraduate programs. As such, particularly in the smaller law schools, postgraduate coursework students are able to undertake LLB elective subjects, and LLB students are able to enrol in postgraduate coursework subjects. The principal motivation for this “double badging” of subjects has been to ensure that class sizes are not too small, so that

resources are efficiently deployed (law schools typically distinguished double-badged subjects by having different assessment regimes for LLB and postgraduate students.) Some law schools want to allow international postgraduate students to enrol in LLB subjects

because they are very interested in doing undergraduate electives, and so the school allows them to do undergraduate subjects with postgraduate assessment - a 10,000 research paper. In short, they sit in on the same classes, but assessment differs. Where we have our focus in postgraduate areas, international students will not have done any of that work at undergraduate level, so we offer them the basics, assessed at a higher level. Our [LLB] students, of course, can go to postgraduate subjects.

An interviewee from a law school where subjects had been double-badged observed that:

It peeved some of the LLM students because they were outnumbered by LLB students. The tensions are more with students than staff, because students have different expectations - especially LLM students who have different world view. LLM students might be doing their LLM to help their career. They are busy, and other things to do, and do it for career reasons. If they are interested in broader issues they will do a Ph D or an M Phil. Whereas undergraduates will be interested in broader issues - maybe. Sometimes undergraduates are working to a higher standard. It is often said that Masters students are not as good as the top undergraduates.

An interviewee from Law another law school claimed that having LLB students and postgraduate students (particularly international students) had a positive impact upon teaching and learning

in that it raises the level of learning and discussion quite significantly, because having postgraduate and mature age and international students brings life experience, practical experience, and international and comparative perspectives. Apparently the undergraduate students gain a lot from this. Our teachers have skills to facilitate this process ...

Some of the law schools with large postgraduate coursework programs were able to ensure that only graduate students took subjects in the graduate program, although these schools still made all subjects in the graduate program available for credit in the Diploma, Masters and Doctoral programs.

While many law schools have integrated legal theory (at least to some extent) into their LLB programs, the same cannot be said of the LLM programs offered by law schools. In most LLM programs there is no requirement to undertake any legal theory, although it should be noted that one law school originally had “high ambitions” to build “theoretical requirements to come across in certain subjects”, and to ensure that subjects had strong theoretical underpinnings, but for various reasons this original postgraduate program was abandoned. In reconfiguring its postgraduate coursework program, the law school has

become far more pragmatic. We are less inclined to insist on certain theoretical foundations being built from which students must enter into the course and then branch out in to the subject – this just narrows the potential market.

The market-driven nature of the LLM programs has had other consequences. Some law schools reported that “globalisation” affected the development of the LLM on two levels. First, some LLM programs offered (for example, the Sports Law LLM) were connected with English, Dutch and perhaps a South African University. One law school has been talking to law schools in China and India to develop a formal relationship with those schools, which would include student and staff exchanges, and “we hope that when students graduate they may want to come back and do an LLM”. This law school has “internationalised its offerings”.

Many of the programs have a comparative component with other countries, particularly the Asia-Pacific region. In a world where legal practice increasingly involves transnational elements, [the School’s] recognition of this globalisation is vital.

As discussed earlier in this chapter, other law schools have also developed the international dimensions of their postgraduate coursework programs.

Divergences in programs offered and student enrolment and completion

Coursework LLM

The threshold requirement for all LLM by coursework programs is the completion of an undergraduate law degree. At one law school it is an “LLB at honours standard, or its equivalent”.

The coursework LLM programs tend to follow the same general pattern, and are summarised in Table 6.1 below (law schools have been numbered randomly and in no discernable way and the ordering of schools does not represent the ordering of schools in any other part of this report). Only two law schools vary from the standard requirement of eight subjects in the LLM. As the examples in the table below show, some schools offer specialist Masters programs, and some offer a Masters by coursework and minor dissertation. The law schools have been numbered arbitrarily and in no discernable order.

Table 6.1
Details of LLM Programs

Law School	Number of subjects	Details
1	8	<ul style="list-style-type: none"> ▪ LLM ▪ Masters of Banking and Finance to be offered in 2003 ▪ Masters of Commercial and Resources Law to be offered in 2003
2	8	<ul style="list-style-type: none"> ▪ Students can undertake Supervised Research Projects which effectively count as two subjects. ▪ Specialisations in commercial law, comparative and international law, dispute management law, financial services law, intellectual property law, litigation, maritime law, property and environment law and public law.

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		<ul style="list-style-type: none"> ▪ To complete a specialisation, students must complete at least five subjects from (at least 10, including supervised research projects) subjects listed for that specialisation. ▪ Masters of Laws (Advanced) which requires an additional dissertation, which effectively counts for two subjects.
3	8 or 6 and a 20,000 word thesis	<ul style="list-style-type: none"> ▪ 5 subjects must be from list for that speciality. ▪ For LLM (Legal Practice) must complete the PLT (which equals 3 postgraduate subjects); two postgraduate subjects from speciality list; two other postgraduate subjects or a dissertation. ▪ The thesis must relate to a specialty in which the student has already taken three subjects in the Masters program.
4	8 or 6 and a 20,000 word thesis	<ul style="list-style-type: none"> ▪ Masters of Law, a coursework Masters of Commercial Law ▪ Masters of Law by coursework and minor thesis (compulsory subject <i>Research Methodology and Critical Analysis</i>).
5	10 plus a 25,000 word dissertation	<ul style="list-style-type: none"> ▪ Students are required to take two “introductory core subjects” (<i>Comparative Legal Systems and Advanced Research Methods in Law</i>), the “core subjects”, <i>Asian Business Law, International Trade Law, Comparative Corporate Law, Immigration Law and Practice, Telecommunications Law and Policy</i> and <i>International Commercial Law</i>. Candidates are also required to complete two electives (from a list of five) and a 25,000 word dissertation.
6	6 and a research essay	<ul style="list-style-type: none"> ▪ Master of Laws (International and Comparative) and (Natural Resources Law)
7	6	<ul style="list-style-type: none"> ▪ Foreign students must enrol in <i>Australian Legal System</i>. ▪ Any student can get permission to complete 1 or 2 15,000 word papers instead of a subject. ▪ With permission students can take up to 3 subjects from another university or from the UNSW LLB program. ▪ Students can elect to complete a major sequence (three courses) in a specialist area: Asian and Comparative Law; Comparative Law; Corporate and Commercial Law; Corporate, Commercial and Taxation Law; Criminal Justice; Financial Services; Human Rights and Social Justice, International Law; Media, Communications and Information Technology Law. ▪ The School also offers masters by coursework in conjunction with other institutions at the same university: for example, the Master of Law and Management.
8	8	<ul style="list-style-type: none"> ▪ Masters of Laws; Master of Government and Commercial Law; Master of Environmental Law or Environmental Law, Management and Business; Master of Intellectual Property Law; and Master of International Law; Masters of Laws (Legal Practice)
9	8 or 4 and a 20,000-35,000 word thesis	<ul style="list-style-type: none"> ▪ The combination of subjects in the general LLM must be approved by the Faculty. ▪ 11 specialist Masters: Banking and Financial Services Law, Commercial Law, Comparative Law, e-Law, Construction Law, Health and Medical Law, Intellectual Property Law, International Tax, Labour Relations Law, Public and International Law and Tax. ▪ Masters by Coursework and Thesis - a minimum of 70 per cent for each subject, and minor thesis must usually build on the subjects completed by the candidate.
10	8	<ul style="list-style-type: none"> ▪ Masters in Dispute Resolution, Masters in Legal Practice, Master of Law (International Business Law), Master of

		Business Law and Master of Labour Relations and Law
11	8	<ul style="list-style-type: none"> ▪ Candidates can specialise on Environmental Resources Law, Commercial Law, Technology Law or Public Law.
12	8	<ul style="list-style-type: none"> ▪ Specialist LLMS in Administrative Law and Policy, Asian and Pacific Legal Systems, Jurisprudence, Environmental Law, Taxation, Labour Law and Relations, International Taxation, Corporate, Securities and Finance Law, Commercial Law, Criminology, International Law, and Health Law. Students must complete eight subjects.
13	8	<ul style="list-style-type: none"> ▪ May choose an appropriate mix of subjects to constitute majors in Commercial Law, Dispute Resolution, Family Law, Industrial Law, Information Technology Law, Internet Law and International Trade Law ▪ Students can get an honours degree if average over 75% and complete two semester <i>Research Project</i>. ▪ Also Master of Law and Legal Practice; Master of Taxation Law; Master of Industrial Property; Master of International Trade Law; Master of Laws (Mandarin International).

Coursework Masters for non-Law Graduates

A further innovation is Masters programs for non-law students, who require an understanding of law, but not for legal practice, as Table 6.2 shows (law schools have been numbered randomly and in no discernable way and the ordering of schools does not represent the ordering of schools in any other part of this report). Again, law schools have been numbered arbitrarily and in no discernable order.

Table 6.2
Masters Level Coursework Programs in Law Available to Non-Law Graduates

Law School	Number of subjects	Details
1	8	<ul style="list-style-type: none"> ▪ Masters in Applied Law ▪ Can be taken by lawyers (eight subjects) and non-lawyers (who must take four additional subjects, including <i>Introduction to the Legal System</i>, <i>Law of Contract</i>, and <i>Law of Torts</i>). ▪ Students can specialise in particular areas of study if they complete five subjects in the list of subjects for that specialist area (see above).
2	8	<ul style="list-style-type: none"> ▪ Masters of Business Law and Master of Jurisprudence for non-law graduates.
3	8	<ul style="list-style-type: none"> ▪ Masters of Commercial Law ▪ Students with a non-law background must complete a compulsory subject (<i>Perspectives in Commercial Law</i>), plus seven other prescribed subjects.
4	12 plus a 15,000 word dissertation	<ul style="list-style-type: none"> ▪ Master of Comparative Commercial Law for graduates. ▪ Candidates are required to take the same eight core subjects as in the School's LLM program (see Table 6.1), plus four electives, and a dissertation (15,000 words, or 25,000 words for honours).
5	4 plus research paper	<ul style="list-style-type: none"> ▪ Masters of Transnational Crime Prevention; Masters of Natural Resources Law

6	6 (48 credit points)	<ul style="list-style-type: none"> ▪ Master of Legal Studies ▪ Students must take three core subjects (worth 16 points) – <i>Australian Legal System and Process</i>; <i>Research and Writing in a Legal Environment</i>; and <i>Elements of Contract</i> and four other subjects
7	8	<ul style="list-style-type: none"> ▪ Master of Government and Commercial Law; Master of Environmental Law or Environmental Law, Management and Business; Master of Intellectual Property Law; and Master of International Law
8	8	<ul style="list-style-type: none"> ▪ 11 specialist Masters Programs (see Table 6.1), open to graduates with a degree in a discipline other than law with significant experience in the specialist area.
9	8	<ul style="list-style-type: none"> ▪ Masters of Legal Studies; Masters in Dispute Resolution, Masters in Legal Practice, Master of Law (International Business Law), Master of Business Law and Master of Labour Relations and Law
10	8	<ul style="list-style-type: none"> ▪ Candidates can specialise on Environmental Resources Law, Commercial Law, Technology Law or Public Law.
11	8	<ul style="list-style-type: none"> ▪ Specialist LLMs in Administrative Law and Policy, Asian and Pacific Legal Systems, Jurisprudence, Environmental Law, Taxation, Labour Law and Relations, International Taxation, Corporate, Securities and Finance Law, Commercial Law, Criminology, International Law, and Health Law. Students must complete eight subjects.
12	8	<ul style="list-style-type: none"> ▪ Master of Legal Studies; Master of Dispute Resolution; Master of Law and Legal Practice; Master of Taxation Law; Master of Industrial Property; Master of International Trade Law; Master of Legal Studies (Mandarin International).

Graduate Certificates and Diplomas

Increasingly in the last decade law schools have begun to offer graduate diplomas and graduate certificates, as Table 6.3 illustrates.

Table 6.3
Graduate Certificate and Diploma Level Coursework Programs in Law

Law School	Number of subjects	Details
1	4	<ul style="list-style-type: none"> ▪ Graduate Certificate in Applied Law (non-law graduates must take <i>Introduction to the Legal System</i>, <i>Torts</i> and <i>Contract</i>); ▪ Graduate Certificate in Applied Law (Dispute Management) (four subjects from a specialist list) ▪ Graduate Certificate in Comparative Law (for lawyers from non-common law countries). ▪ Graduate Diploma in Law (for law graduates or persons admitted to the legal profession for at least three years) ▪ Graduate Diploma in Applied Law to non-law graduates (eight subjects including <i>Introduction to the Legal System</i>, <i>Torts</i> and <i>Contract</i>), and in which candidates can specialise if they take five subjects from a list of specialist subjects in their chosen area (see above). ▪ Students completing these programs can get credit for completed subjects towards other graduate programs

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		<ul style="list-style-type: none"> ▪ Graduate Certificate in Legal Studies to “accommodate people coming from overseas who take a number of subjects in order to gain admission in Australia.” ▪ There are only a handful of students in that program.
2	4	<ul style="list-style-type: none"> ▪ 7 Graduate Diplomas – Diploma in Law; Diploma in Legal Practice; Diploma in Advocacy; Diploma in Corporate and Commercial Law; Diploma in Corporate Governance; Diploma in Dispute Resolution; Diploma in International Trade Law). ▪ 3 subjects must be from the list of subjects for the particular specialty. ▪ Diploma in Common Law, for law graduates and students from civil law systems, with compulsory subject <i>Introduction to Common Law for Civil Lawyers</i>
3	4	<ul style="list-style-type: none"> ▪ Graduate Certificate of Commercial Law ▪ Candidates without a law degree must do <i>Perspectives in Commercial Law</i>
4		<ul style="list-style-type: none"> ▪ Graduate Certificate in Laws; Graduate Diploma of Health Law; Graduate Diploma of Legal Practice, Skills and Ethics; Graduate Diploma of Legal Practice, Skills and Ethics (in practice).
5	8	<ul style="list-style-type: none"> ▪ Graduate Diploma in Comparative Commercial Law ▪ Graduate Certificate in Australian Immigration Law (see above)
6		<ul style="list-style-type: none"> ▪ Graduate Diploma in Transnational Crime Prevention; Graduate Diploma in Natural Resources Law.
7	4	<ul style="list-style-type: none"> ▪ Graduate Diploma in Law ▪ Graduate Diploma in Legal Studies including the three compulsory subjects (see Table 6.3).
8	6	<ul style="list-style-type: none"> ▪ Graduate Diplomas in Law; Legal Practice; Environmental Law; Environmental Law, Management and Business; Government and Commercial Law; International Law; Legal Studies.
	4	<ul style="list-style-type: none"> ▪ Graduate Certificates in Environmental Law; Environmental Law, Management and Business; Dispute Management
9	4	<ul style="list-style-type: none"> ▪ 17 different Diplomas: Asian Law, Banking and Finance Law, Construction Law, Corporations and Securities Law, Dispute Resolution, e-Business Law, Energy and Resources Law, Government Law, Health and Medical Law, Insurance Law, Intellectual Property Law, International Law, International Tax, Labour Relations Law, Media, Communications and Information Technology Law, Tax and Transnational Law. ▪ Open to law graduates and graduates in other disciplines who have significant experience in the specialist area. ▪ 4 subjects from specialist list
10	6	<ul style="list-style-type: none"> ▪ Graduate Diplomas in Law; Dispute Resolution; Legal Practice; Legal Studies; Law (International Business) Business Law; Health Law
	4	<ul style="list-style-type: none"> ▪ Graduate Certificates in Dispute Resolution; Legal Practice; Legal Studies
11	4	<ul style="list-style-type: none"> ▪ Graduate Certificate in Law ▪ Areas of specialisation include International Law, Environmental Law, Commercial Transactions, Planning and Resources, Litigation, Property, Public Law, Criminal Justice, General Practice, Corporate Law and Media and Communications Law. ▪ Candidates must have an undergraduate degree in a discipline other than law and appropriate professional

		experience.
12		<ul style="list-style-type: none"> ▪ 10 Graduate Diplomas, in Law, Jurisprudence, Environmental Law, Taxation, Corporate, Securities and Finance Law, Commercial Law, Criminology, International Business Law, International Law, and Health Law. ▪ Students must complete four subjects within the list of specialist subjects in the chosen area.
13	16 8 6 4	<ul style="list-style-type: none"> ▪ Graduate Diploma in Law (for overseas lawyers) ▪ Graduate Diplomas in Australian Law; Legal Practice ▪ Graduate Diplomas in Legal Studies ▪ Graduate Certificates in Trade Mark Law and Practice; Dispute Resolution; Information Technology Law; Legal Practice

Intensive teaching

Most law schools offering graduate and postgraduate programs indicated that they offer “intensives”, usually in summer and winter sessions, and, in some cases, during other times of the year.

One law school that claimed to have pioneered intensive teaching at graduate level offered subjects over one or two weeks. One interviewee explained the origins of the intensive mode, which was first introduced in the early 1990s at this law school:

Many of our students were part-time, as is so often the case in law graduate programs, and we started at that stage introducing the idea of intensive courses. Instead of asking a whole lot of tired people to stagger up here at 5.30 at night for 12 successive weeks, to meet some equally tired teachers, we decided that in some subjects, and we originally began this in a very small way, we would compress the 24 hours tuition into a week, where students would be expected to ... put their work aside, come and immerse themselves in the subject matter.

Now that worked extraordinarily well and in fact it's worked so well that the rest of the country has subsequently copied us, as well as the New Zealanders and now the Canadians. [T]he week is actually very exciting. People love giving up their work and putting their jeans on again and coming and just thinking interesting thoughts for a week. And it is a great way of everybody in the class getting to know each other and getting to know the teacher.... But it does require a lot of front-end support with good materials, and being distributed in time, and we're also putting a lot of thought into ways in which we can develop mini-websites to help subjects and support them in that way, in advance.

And it also requires a lot of back-end support while people prepare for the assessment, whatever it may be. Typically our subjects are assessed either by some sort of written assignment, which may be an essay, maybe take some other form, or by a take-home exam. We don't give three-hour exams, as a generalisation, in the graduate program. We do take-home exams. Typically a take-home would be six weeks after tuition ends and a written research paper would be three months. And of course the students need to be serviced during that time. Exactly how that happens depends a little bit on the teacher but we certainly encourage as much contact as possible.

The use of the intensive mode also enables this school to use international instructors, who can visit the Faculty for a period shorter than a full semester, and teach a subject.

One interviewee explained the value of intensive programs thus:

People who want to do an LLM are busy, so they look for intensive learning environments, and the school looks to see if it can give additional on-line support. A lot of autonomy is given to teachers. ... But we do suggest they make the subject intensive, and front-end the class attendance part, and then follow up with on-line delivery of materials ... to read, and exercises and activities to complete, including working in groups. This approach is better suited to LLM students, because they are better able to engage in self-directed learning.

One law school that offered half of its extensive graduate program as intensive subjects explained that it has not been very long standing development.

We've always had a few, but we're finding that it's a very popular format and, granted it has its advantages and disadvantages, [but] what it's done is enable us to offer a national reach for people flying [in] for a week or 10 days.

One law school in the late 1990s shifted its teaching in the graduate program from the standard couple of hours per week down to intensive mode.

So just about all of our graduate courses now are taught intensively. [Some teachers teach] a four-day intensive. [Others have] regular two blocks of two days, some people will do it in a single block of four or five days. Other people mix-and-match it that way. And that was really in response to student demand. Local student demand. People from government and from local firms.

It varies but they far prefer it if you've got this single block of time, rather than coming in at nights across a whole semester. The problem with international students of course, is that doesn't suit them. They arrive here to find that the course they want to do isn't going to be held for another month and then it will be intensive and so what are they going to be doing in-between times? And so that's an issue that we have to face.

We have to decide, what market do we want to serve? Do we now need to have two delivery methods for the different groups of students?

With graduate and postgraduate programs being aimed principally at legal practitioners or other professionals intending to develop knowledge of law, as well as to prospective students in other states, some law schools have found it necessary to teach their postgraduate programs in intensive mode.

Research degrees

Although the absolute numbers of students enrolled in postgraduate research programs in law are not as large as those in coursework programs, the percentage increases in enrolments are just as impressive. Enrolments in PhDs in law numbered 52 in 1987 and 216 in 1993 (McInnis and Marginson, 1994: 46). In 1998, 546 students were enrolled in doctorates in law, which presumably included SJD programs (Legal Education Yearbook, 1998). In 1987, four students

graduated with a doctorate in law, and six in 1992 (McInnis and Marginson, 1992: 439). In 1998, 35 doctoral candidates were awarded PhDs in law (Legal Education Yearbook, 1999: 34). In 1987, 12 students undertook Masters in Law by Research, and 11 in 1992 (McInnis and Marginson, 1992: 441). In 1998, 19 students graduated with an LLM by Research (Legal Education Yearbook, 1999: 34).

SJDs

A number of law schools now offer a professional doctorate, the Doctor of Juridical Science (SJD), which combines graduate coursework with a dissertation. The SJD, “a structured, supported Doctorate” was pioneered by one law school in 1991. The degree program at this law school comprises 6 LLM subjects, and a dissertation, usually 50,000 words. At another law school that has also introduced the SJD program to Australia, candidates must complete eight semester long subjects and 50,000 to 80,000 word doctoral dissertation. A third law school offers a SJD to candidates who have an LLB at a high honours standard. Candidates at this third law school must compete four subjects towards a graduate degree or diploma in the Faculty, and obtain a minimum of H2A in all subjects before they can apply to take the SJD dissertation of 70,000-80,000 words, under supervision, “representing an original and substantial contribution to the knowledge of law”. Candidates must also participate in a compulsory series of seminars on advanced legal theory and research in the first full research year. At a fourth law school, candidates must complete 12 LLM subjects, and a 50,000 to 60,000-word thesis. Another law school requires candidates to complete six core LLM subjects (see above), and a dissertation of 60,000 words.

In 2001, one law school “significantly revamped” its SJD program, and “brought it into line with SJD’s offered at other universities”.

We had a look at what other universities were doing and realised that ours was far too stringent to meet the demands of the students and they simply weren’t going to do it. So we brought it into line with programs on offer elsewhere and the number of enrolments has [increased dramatically], mainly from local people.

A number of other law schools also reported that they were offering SJD programs which built on their postgraduate coursework programs (see again Table 6.1).

Postgraduate Research Programs

While the expansion of postgraduate coursework programs in law has been spectacular, at least in the older, established law schools in the larger cities, there has also been a considerable growth in PhD enrolments, although compared to coursework programs

the field of postgraduate research degrees in law remains relatively unpopulated ... Apart from the large universities, very few law programs have more than twenty research students, spread in ones and twos across the great diversity of areas covered within the faculty. Many will have less than ten. Some have none (Manderson, 2000).

Enrolments in PhDs in Law are now quite substantial, especially when compared with the enrolments in the late 1980s and early 1990s. Certainly some of this expansion is due to DETYA/DEST financial inducements for Ph Ds. Manderson (2000) offers some other explanations for why there has been this increase in research degree enrolments:

In part, this maps the growing competitiveness of academic work and might on the surface be denigrated as credentialism. Other factors have contributed towards the developing trend towards postgraduate study. From the 1970s onwards, Law Reform Commissions and cognate bodies around the country have supported and demonstrated the utility of a great deal of scholarly work. Furthermore, there is a growing recognition that a legal academic is not simply a lawyer who happens to work in a university – she is an educator and a scholar. Both these aspects require the development of special abilities, and here a postgraduate degree in law may be of particular help in developing those skills in research and writing which a scholar in law requires.

It appears that Australian doctoral legal scholarship is impressively broad in its focus. Manderson (2000) conducted a General Information Survey of doctoral work in law, and found that

only 20% of all doctoral research projects might happily be described as ‘doctrinal’. A further 20% were characterised as ‘law reform’ work, which might embody, from amore socially normative perspective, a similar approach to the exegetical ‘intricacies’ of legal scholarship. On the other hand, reflecting the great burgeoning of work in the law and society movement, on post-colonialism, human rights, and globalisation, and drawing on legal realist, critical legal and post-structural studies in law 17% were said to be ‘theoretical’ in orientation, and a further 17% ‘interdisciplinary’. The remaining 26% were described as ‘international or comparative’. Clearly there is more postgraduate research being done than ever before, and in more diverse areas. It is not just being done for lawyers. In part, it reflects the undoubted growth of a distinctly academic career path in law. But this research is valuable in its own right and not merely as a means to establish academic credentials. It represents a broad range of scholarship aware of the importance of law to society on many different levels.

Despite these developments, Manderson (2000) outlines a number of factors that inhibit the development of postgraduate research programs in law, many of which have been discussed in earlier chapters. These include the tendency for combined degrees to be taught in parallel, rather than in an interdisciplinary manner (see chapter 2); the strictures of the Priestley 11 leaving little room for “experimental” or challenging subjects (chapter 4); and the absence of an “honours year” in law (chapter 3).

One Dean noted that one difficulty in developing postgraduate programs in law is that:

you’ve got a huge capacity to actually supervise students across a broad array of PhD studies and SJD studies, but at the moment, because non-academic legal jobs are not particularly attractive, it’s difficult to attract students into those programs and because it’s not necessarily rewards flowing to people in the profession for

having advanced research qualifications, they're again not particularly attractive to people who have gone to those particular destinations. And it does seem to me a bit of a pity that we're losing a whole layer of potential people doing research and we need some constructive addressing of why in other jurisdictions there's a much greater take-up, of particularly SJD, professional doctorate qualifications, but also PhD qualifications.

Writing in 2000, Manderson argued that few law schools offered coursework or other programs to support or train postgraduate students, although there were generic university programs fulfilling part of this function. He suggests that perhaps this represents

nothing other than the 'sink or swim' approach to doctoral research common across the humanities. They are, nevertheless, a cause for concern. The qualitative data consistently referred to the need for a 'more structured approach', 'the introduction of a more formal coursework elements', and 'more opportunity for cross-disciplinary training.' At least six law schools during the course of this project claimed a special strength in their Ph D programs, and have started developing mechanisms to support doctoral research students.

One law school that has recently begun to develop its PhD program mentioned that they now have postgraduate rooms in the law school with carrels and a computer for each student. Furthermore, there are "irregular" seminars for Ph D students, and, through both the university and the law school, small amounts of funding to support doctoral research. This school has appointed a Director of Research Degree study "whose job it specifically to talk to prospective students, control admission and monitor student progress".

A law school that has 50 PhD students enrolled in its doctoral program offers new PhD students an introductory *Thesis Design and Writing* subject, holds monthly doctoral "research-in-progress" seminars and an annual PhD colloquium.

Another law school that started funding PhD scholarships in the late 1980s currently has 22 PhD students enrolled. We and work on the science model because the PhDs are involved in research, and work within individual research teams".

A third law school appointed a Graduate Research Degree co-ordinator in the late 1990s.

We realised that somebody needed to keep a closer eye on [the research higher degree program], to look at how we were recruiting and how we were admitting people to a higher degree; making sure the students are okay; keeping an eye on the relationship between the student and the supervisor, not in the way of checking up but just being an ear for either of them to talk to; making sure we're running postgraduate work-in-progress seminars, which weren't happening before; keeping an eye on what's happening when a supervisor's going on study leave and making sure that the student's going to be covered. I guess quality control in a very informal sort of sense.

Then last year there was a big push from the government to more actively manage our research students. There was a requirement that we produce a research student

training plan, so we prepared our first postgraduate research plan last year and our second one this year, partly in response to that.

The other aspect of my work that was necessary was to get our own allocation of money for postgraduate research students. Some faculties just say, “Here’s your \$300. Spend it on books or whatever”. What we do is we get an overview of the needs of students. We try to get them to tell us if they need to go on an overseas field trips, tell us six months ahead of time and they to have to have a research proposal that’s approved by the Faculty Research Committee and know what their budget is so we can plan how we’re going to spend that money. So if somebody’s going on a research field trip, they might just need a couple of thousand dollars. That’s been another important part of my job, has been not just allocating that money but sort of planning for it and making sure everyone knows that it’s there and that it’s allocated according to equity and need. And keeping track of it because that’s always been a bit of a mess. So that’s just another aspect of what I do as postgraduate coordinator and now I think we’ve improved, we’ve lifted our game a bit in the last few years since I have been.

One law school requires its research students to complete three graduated courses in legal theory and comparative research methodology and another requires SJD and PhD students to attend a series of seminars on different aspects of legal theory and research methodology.

In his important, thoughtful and provocative discussion of Australia postgraduate legal education, Manderson (2000) points to the exceptionally isolating nature of Australian postgraduate research in law. As in the humanities, law-based research tends to focus heavily on “individual endeavour and creativity” and many law schools have a very small number of postgraduate research students.

and even where there are several, they are spread across the whole gamut of the subject matter ‘law’. Further, many, if not most, academics charged with supervising PhD students have not themselves completed doctoral research. Law Schools need to do more to integrate students into faculty life and to develop a “research culture” within which higher degree research students can develop their skills in legal scholarship.

This, Manderson (2000) argues, requires “new structures to enhance the collaborative potential between law schools as well as between students”.

In order to build a genuine scholarly community, law schools and faculties must look beyond their own borders and work to facilitate student interaction across Australia. This particularly so if we want to attract international students to Australia, and indeed to develop productive links not just within Australia but around the world. In particular:

- students should be kept better informed of networks, conferences and mailing lists likely to be of particular interest to them
- The National Postgraduate Research Students Conference ought to take its place as a major even of research students around the country
- A National Postgraduate Clearinghouse for Law ought to be established, subscribing Universities providing the small amount of initial funding which will be needed to get it off the ground.

It is notable that we have almost no good data measuring the outcomes of postgraduate research for our students. There is little information on their profile, completion rates, publication rates, and experience and nothing on whether, where, and to what extent their postgraduate education stands them in good stead in their future endeavours. The latter recommendations in particular are intended to address the crying need for more coordination and better information.

Summary

This describes graduate and postgraduate programs in law schools. From the late 1980s the larger, city-based law schools have developed extensive Masters and Graduate Diploma/Certificate programs, with a strong orientation to legal practice. At the same time, Masters and Graduate Diploma and Certificate programs have been targeted to non-law graduates. Overwhelmingly, these graduate and postgraduate coursework programs have been organised around specialist degree programs, with some law schools offering over a dozen specialist programs. These coursework programs have been targeted mainly at the professional development of legal practitioners, and non-legal professionals seeking a knowledge of law to improve their ability to perform their work – with the result that postgraduate programs are dominated by part-time students, in classes held intensively or in the evenings. The law schools with large coursework programs are also targeting interstate students.

Another notable trend, particularly in the larger postgraduate programs, is for considerable flexibility enabling students to build up a program of study gradually – from Graduate Certificate or Diploma programs, to Masters Programs, to the SJD program. There is little evidence of any articulation of postgraduate programs with graduate programs – indeed some law schools have “double-badged” subjects as both undergraduate elective subjects and graduate and postgraduate coursework subjects. There are also claims by some academics that postgraduate and graduate coursework programs are falling in quality, as law schools draw in a wider range of candidates.

The larger law schools also reported that their programs were being taught not only by their own full-time staff and local practitioners, but also by academics from other Australian law schools, and in the case of the very big graduate coursework programs, by overseas law teachers. A few postgraduate coursework programs are even offered in conjunction with programs at overseas law schools.

Newer law schools, and/or law schools based in the regions, experienced great difficulties in developing any form of graduate coursework program, and many have had to abort programs once they had exhausted their local market.

In some law schools, most notably the well-established law schools in larger cities, postgraduate and graduate coursework programs have developed to such a degree that not only do they rival LLB programs in importance, but they provide valuable financial resources for undergraduate programs.

But despite the range of specialist degree programs, and the absence of fetters (such as the Priestley requirements) on such programs, these programs may, at least in one sense, be more homogenous than the LLB programs offered by law

schools – graduate and postgraduate coursework programs generally focus on legal rules and principles, with relatively little emphasis on legal theory.

Finally, there has also been considerable growth in doctoral research programs in law, with half a dozen law schools claiming a strength in their higher degree research programs, and providing greater research training and more methodical supervision than was the case in the past.

CHAPTER SEVEN

‘GLOBALISATION’ AND INFORMATION TECHNOLOGY

Previous chapters have touched upon a number of influences on the structure and content of undergraduate, graduate and postgraduate programs in law. These have included, in the case of the undergraduate programs, the Priestley requirements, and arguably in the case of all programs, the requirements of the legal profession and law students and the funding of legal education. In this and the next few chapters, we examine further influences on the different degree programs.

Two such influences were specified by the AUTC in their project brief : the influence of globalisation and new communication and information technologies on the curriculum. The issues of globalisation and information technology were identified by United States Law Deans in a recent survey as being two of the most important trends affecting legal education in the next ten years. Neither, however, were identified by US survey respondents as being a strength in their law schools (Butler, 2000). Waxman (2001) points out that the rapid growth of world trade means that lawyers seeking to advise clients in the twenty-first century will do so within a growing number of legal systems, and that many legal problems are reaching transnational and international law proportions . Waxman suggests that American law schools have addressed this trend in a piecemeal fashion, with a “loose amalgam” of subjects under an international law heading, without any bridge between these subjects. He argues that comparative law could serve as such a bridge, but to introduce it into the curriculum would require its restructuring away from its current United States/Europe focus, to one that encompasses the diversity of legal systems throughout the world.

In chapter 2, we reported findings from a survey, for which Deans and Heads of Schools were asked to rank a range of factors in order of importance. The 11 law schools that responded were more likely to consider comparative and international law to be relatively unimportant, and seemed not to place importance on teaching issues to do with law and information technology. These findings were not representative, however, and in interviews with law school staff, some law schools indicated that the teaching of information technology skills was very important, and an equal number considered the issue to be of moderate importance . On the whole, however, most Australian law schools did indicated that they have not made globalisation or information technology a major priority. In the remainder of this chapter we outline the ways in which Australian law schools have responded to globalisation and information technology at the level of the curriculum. The chapter does not cover the influence of information technology and multi-media on teaching and learning. This issue will be discussed in chapter 16.

Globalisation

One Dean helpfully defined globalisation as

the breakdown of obstacles to free trade and commerce and capital flows between nations (particularly in this region), movement towards one world, and breakdown of nation-state boundaries and the prerogatives of national sovereignty.

He suggested that globalisation is very important, at least for the law schools in the major cities.

The world in which our graduates will be spending their professional lives is one where the boundaries between national and provincial jurisdictions will be less relevant. Many (though not a majority) of them will spend their lives in a legal practice that has a significant regional content. So for them it must be part of the preparation. The stratification of graduate destinations seemed to have been further strengthened [in the past few years] and our students go into large firm practices or business or policy work. Not many our students go into small to medium suburban or rural practice. It is essentially a CBD destination. A lot of that will be global. For most, therefore, need to prepare them for a world outside [this state]. ... We could do more to internationalise the curriculum – it could take on a more global character. There is a more global character in the LLM than the LLB, although *International Law* and similar subjects in the LLB are always well subscribed. But we could do more. ... Since 1994 ... the aim has been to develop a curriculum that is national, and also to develop a regional orientation and outlook. So, since 1994 we teach Australian Law, not just [the law of this state]. That is, subjects must be alert to the national law in area. This is largely complete. But an international focus is an agenda that is still incomplete, and will be picked up in the forthcoming review of the curriculum.

A head of school observed that:

there is a really strong awareness that we are equipping people to work in any number of places. [Our program] aims to make people think about ways of dealing with [specific issues of law], rather than knowing all latest rules. The influence of globalisation is to make curriculum slightly more attentive to generic skills, and to get people to think. We are trying to produce rounded individuals that can deal with problems they face, not who have latest rules in their head for the exam.

Another interviewee highlighted how other aspects of globalisation were impacting on the law school.

What I understand by this is the perception that the market for legal services and education has ceased to be obstructed as it was by borders. A student can enrol in any place in the world. This has been accompanied by a series of regulatory changes.

For further discussions of the challenges to law schools from “globalisation”, see Grossman (2000), Del Duca (2000) and Sherr (2000).

A few law schools mentioned that they were attempting to give their curricula a significant international focus.

In most of what we do, even in domestic law subjects, we will have an international dimension, a significant comparative component. That is also reflected in the students. A few years ago there would not have been any students who wanted to go and practice directly overseas. They would recognise that they needed to work

here and then transfer. Now we have a number of students who want to practice immediately overseas. Some do overseas Masters and then take the US bar exam. This overseas focus is driven harder here, because we have such an international campus, and their fellow students are international students and they are establishing contacts and want to take advantage of this. I see this as happening in all law schools – there is a much greater focus on international area, and you can see it in the increasing number of international exchange agreements. ... A few years ago we struggled to get Australian students to study abroad. Now they are eager to do so, and that is indicative of their international thinking. Globalisation is hitting us whether we like it or not. Our teachers are drawn from all over the world, and we have a lot of international electives.

Whether all these factors have impacted on the LLB curricula, however, has to be measured against the influence of other factors. One interviewee observed that the restrictions placed on law schools by the Priestley requirements were antipathetic to the challenges posed by globalisation. The Priestley requirements did not include Public or Private International Law, or comparative law, for example.

To meet the Priestley requirements we have to focus on the local jurisdiction, and there is not time in most of those subjects to do much comparative work. So [comparative work] is all at the edges.

Despite such a restriction, however, as noted above, law schools in interviews indicated that they were attempting to respond to issues of globalisation and internationalisation in whatever way they could – by ensuring that their programs and subjects were not parochial, but focused at least on national law, problem solving, with a focus on general principles rather than the detail of local law, and by requiring students to undertake some international-based subjects, such as international litigation, international law, trade law and similar subjects (see also Spiro, 2000). Other law schools raised international issues in individual subjects although, as one interviewee commented, “I doubt that it is being built into the curriculum at a strategic level”. Some law schools are involved in teaching programs in Asia and North America, and some have exchange programs with overseas law schools, thereby enabling their students to study at the overseas law school. Some law schools reported offering international exchanges to their undergraduate students, organised by the law school or the central university administration. Some law schools reported offering international exchange opportunities to their (post)graduate students.

At least three law schools subsidised their students to participate in overseas exchange programs.

Other examples of how law schools addressed issues raised by globalisation in their curricula are as follows:

- One law school mentioned that it has “always had a strong comparative outlook” and this is reflected in their first year LLB subject, *Introduction to Legal Reasoning*. This subject has recently been revamped “to give it a bit more of a comparative orientation, particularly introducing them to

civil law and globalisation more generally". The school also offers an LLM in Global Business Law.

So yes, we are very much alive to these changes and are trying to adapt the curriculum to that insofar as possible but because the Priestley 11 is such a large proportion of the degree and is so highly descriptive and so demanding of time within that semester, there is a limit to how far we can do this.

- A law school has increased its international focus, not so much in developing its international law programs, but more in its focus on countries such as China.
- One law school's response to globalisation appeared to be primarily in terms of its exchange programs and

an increased awareness of the importance of having subjects such as international trade subjects in our curriculum [although the school does not have anyone with expertise in this area] ... and also in the sense that we recognise that in teaching students about any legal system we need to include the international legal system as part of that.

- One law school, in 2001 introduced a new combined degree program, Arts (International Studies)/LLB, in which students are required to go overseas and undertake work experience. This law school also requires all LLB students to choose an international commercial law elective subject.

This university has got, as part of its strategic objectives, internationalisation as a high priority, meaning that we try to internationalise our units. Now that is in law, as you would appreciate, quite often difficult. How can you really internationalise your family law, or your criminal law? It's very difficult.

But as far as it is possible, everybody is trying to do that, even though sometimes it's just through the use of international examples, even the review questions or exam questions are internationalised through the names used. And then we have got a very interesting program that you may be aware of, and that is for the Chinese Commercial Law study tour. Now we take up to 40 students per year to Beijing for a 10-day visit there and we really think that that is a major initiative.

We have just recently concluded an agreement with Manheim in Germany in terms of which they will sponsor two students, fully, for studying law at Manheim. It's through German government money and we have just last week sent the names through of two of our students. ... They are also paid I think 1,100 euros for their travel expenses to get there. So it's a remarkable exchange that we have and as I said I expect that the first group of students going over will go over on that program. Though we also participated in a UMAP program. It is one of the government initiatives in terms of which the government makes money available for some students from, for instance, China, to come and study here and we send over some of our students to study there as well. So in that sense globalisation is very important for us.

- A law school operates within a university that offers students opportunities to study languages and to study overseas for a period commented that the law school meets its universities aims through the combined degree program, the Bachelor of International Studies/Law. This latter program involves three years study in Law, during which students also study a language and culture of their choice. In the fourth year, the student is required to undertake a period of study overseas, for which the university funds the student's airfare. The student returns to Australia in the fifth year to complete his/her Law degree. Students not enrolled in the Bachelor International Studies Program are also able to study a law subject overseas – at a law school with which the university has links. Until 2000, the latter was a faculty-to-faculty exchange, but since 2001, the university has centralised the exchange. The school also offers an onshore Masters of Laws (Mandarin International) program delivered in Mandarin, and is running programs for Indonesians in intellectual property, which is being funded by AusAid. They also have an offshore courses in Beijing and Shanghai, which are all offered in Mandarin. These offshore courses include the LLM and the Masters of Legal Studies.
- One law school that has an explicit international focus, explained this focus in the following way:

We don't think ... in state terms, but in national and international terms. [A] feature [of our program] , which has many dimensions to it, is internationalisation, and that is reflected in the curriculum and in the student body.

It is reflected in the curriculum in two ways. The first [is] underlined in the mid-eighties with the establishment of our Asian Law Centre. We have developed specialist subjects on other legal systems, China, Japan and Indonesia for example. More important than that, ... you'll have a subject which might be really built around a theme, such as particular types of commercial transactions, and it will look across a number of jurisdictions in this part of the world about how particular commercial transactions of that type are legally handled in a series of countries in the region. That's an important part of the curriculum but it's an optional part of the curriculum.

Equally, or more important really, has been the introduction from first year of a strong element of comparative approach into all the core subjects, so that students, as an aid to their understanding of Australian Law, see Australian Law in the context of a wider legal array of systems.
...

Then the third component of internationalisation is at the student body level. We have a significant number, now that's 12 to 15 percent of LLB students, who come from other countries and even beyond that percentage there are others who are Australian citizens or Australian citizens who were born in other countries and may have grown up for a number of years in other countries before perhaps coming to Australia for secondary schooling or their last years of secondary schooling. So we

have in that sense – and we promote the diversity of the student body in terms of their background.

Linked to that is a program which has developed over the last 12 to 13 years of international exchanges whereby our students can do part of their program, either a semester or a year, in a partner institution in [a number of countries, including] Japan, China, Indonesia, Korea, France, Germany, Belgium, Ireland, United Kingdom, Canada, and the United States. I'm sure there are some I've missed. So a number of our students take that opportunity, and of course an equivalent number of students from those institutions come in on a regular basis to our program. So again the idea is to ... promote the regional diversity of the student body and the broader approach to all facets, not add-on subjects, but all components of the curriculum.

Approximately 20 per cent of students participate in the exchange program

and it's quite interesting to see the influence that .. that 20 percent or so of students have when they return from abroad [and] also of course the similar number of students coming in from these other institutions each year.

The law school and the university make a “modest contribution” to student expenses, and it would appear that the financial barrier does preclude some students from participating in the exchange program.

- A first wave law school claimed that one of the distinctive elements of the school was its international comparative focus.

And there's no doubt that our faculty is intensively engaged internationally and comparatively. ... [The] comparative international dimension is very important to us and that's worked into the student experience too. ... In just about any dimension of law there are trans-border and multi-jurisdictional elements. That's certainly true in the commercial field, but it's absolutely true in family law. People do move and their family relations have to be sorted out in consequence of the impact of multiple jurisdictions. International norms are factors. Law is always in the process of reform and refinement, often drawing upon international and comparative models, and lawyers are very strong actors in that process. Lawyers are not just law-takers, they also are very, very much involved in the evolution of law, and in working with that evolution, driving that evolution. And that's abundantly true given Australia's place within the region. It is just very important that there be Australian lawyers with some understanding of the law of the societies that surround us.”

The law school mentioned that it has extensive international law subject offerings at LLB and graduate levels, and has international exchange programs with eight or nine universities around the world, as well as with leading law schools in North America, Europe and Asia. As a result, 77 of its students participate mid-year in inter-university exchange programs “and so the opportunities to study overseas are enormous”.

It also engages in offshore teaching programs in Hanoi and Shanghai, and attracts international students to study in LLB and LLM programs. Overseas academics teach in the school's teaching programs.

In addition, often teaching staff weave comparative material into their standard university material as well, into the subject matter of the course. So, for example, it's pretty tough to teach corporate law well now, without having some conception of the developments in corporations law in the United States for example.

In the words of another interviewee from the same law school

globalisation affects the way we teach law, but I would say that ... it has always had that. ... I think that we're very, very aware of case law in other jurisdictions, thinking in other jurisdictions, developments, law reform ideas. Australia is a country which currently needs to generate its own solutions autonomously to the vast range of issues and so we've always tended [at this law school] to have that international focus in the way we're talked and thought about law. More recently I think that we are seeing an increased emphasis on globalisation and let me give you a couple of areas. [We have] a specialist graduate degree in international law ... which is not [just] in public international law, which has been our historic strength, but in international trade and in private international law as well.

We've also made a couple of recent appointments, in particular of people with international trade expertise, and I think that just reflects the way the world is going. It has affected our staffing complement. But we've had for many years a very strong engagement with Asia, and that's continuing and that's growing. We have, even in the environmental law fields, a very strong connection with Indonesia and with China. In other areas we have Vietnamese Judges who come to us and we train them.

- One law school involves students in an international exchange program, which usually involves taking a subject at an overseas university in another discipline, as part of the student's combined degree, although occasionally the student may complete a law subject. It has a compulsory subject, *International Commercial Law*, and "that is partly a recognition of globalisation".
- One law school ensures that they take a national perspective in most of the subjects teach.

We're not just teaching a particular jurisdiction. We're more focused on a national perspective, which is more possible or easier in some areas than others, but that's one of our guiding themes. We draw our students from a national pool, which is pretty important for a university which is a relatively small regional university compared to the big metropolitan universities.

In 1999, this law school made the subject *International Law* a compulsory subject in the LLB program.

That particular international law course is designed, not only to provide a general introduction to classical international law but also to relate international law to domestic law. We have quite a significant range of elective offerings in international law, and very healthy student interest in studying international law and I think that is a function of globalisation, so we are responding in that way.

Some other examples are the recent introduction of an elective course called International Organisations: Geneva, and that's a course that we actually teach in Geneva, on international organisations, open to both [our] and [other] students. That's been very popular. And we also have an arrangement with the University of Alabama Law School, and we teach two courses in conjunction with the University of Alabama and we have [our] students travelling to Alabama in the Australian summer, and then students from Alabama travelling here in their summer to participate in courses. And in another era, I mean obviously that sort of international engagement was far less common.

[We have] exchange agreements with a large number of universities. In terms of law students' accessibility to exchange places overseas, there are a limited number of destinations that they can go to overseas but [our] law students ... are very active consumers of exchange places and, yes, it's very popular, a very popular path for them

- A law school that mentioned that it was “making a strong push into Asia” teaches graduate programs in Thailand, Singapore and Malaysia. In addition, it has a joint Masters program with a law school in the United States and has student and staff exchange programs with a Spanish and a US university. “It gives our students an edge by going to experience foreign cultures.”
- One law school has established international exchange programs with Chinese and Malaysian universities “which I think has been quite useful in terms of the global perspectives of students”. One difficulty these exchanges have raised, however, has been the “mismatch of semesters”, and the giving credit for subjects taken at another university.

obviously we can't with the Priestley 11 subjects but in the electives, we've been a bit more flexible in terms of giving credit for things that are under the formal exchanges that we've run.

The idea is also looking at ways in which we might be able to incorporate processes of students having some training in terms of other cultures and language training is part of the program. Something we're in the infancy of. I think that's important as well. Because it's a much richer experience obviously if you speak another language and as I said, many of our students already do, or a sensitised to another culture.

The only problem is, our idea of globalisation and where perhaps we'd like them to go, is not always where the aspirations of the students lie. They have a fairly monolithic notion that it would be very good to go to the UK, principally London, more than going to the US, rather than this

diverse nature of experience that we'd like them to have. And even when it's cognate to their language or the other language they've got fluency in, sometimes they prefer to go to America.

As mentioned in an earlier chapter, one regional law school mentioned that its regional location has resulted in a very strong focus on South East Asian Law, and the school has developed LLB electives and a graduate program in that area.

Because of the School's location our student catchment is a diverse one. I think we get a certain amount from [our local area], but probably an equally large amount [two neighbouring states], and some from other places. So that we do always have to have an eye to the fact that we are teaching principles sufficiently broadly not to leave people ill-equipped to cope with legal situations in other jurisdictions and also, even if that were not true, the very fact that our own graduates, even if they were all [local] wouldn't find work placement in the [this area]. So they've got to diversify themselves. So those two factors come to mind and influence us to taking a wider approach to the teaching of the law.

The School mentioned that it has graduates practising in top law firms in London, New York and other international cities. "I know one graduate who is employed with the UN. So [its] not parochial, the type of education we give them."

- Another law school also mentioned that it recognises that its graduates do move elsewhere and therefore it cannot be so parochial as to simply teach [local state] law and practice. It has also specifically recruited an international law expert, and has developed a brace of international law subjects.
- Similarly, one law school mentioned that it reviews the interstate admission authorities on a regular basis because many of its students are drawn from other states, and many go on to practise interstate. It has tested all of its core subjects against the other leading law schools in the country. This national focus has strongly shaped its curriculum.
- For yet another law school globalisation

is subsumed for this faculty by the debate on equipping students with attributes and outcomes that are not just based in substance but in skill and I think we already equip our students generically in a way to take into account any environment, not just an Australian environment.

A number of elective subjects that we teach have international and/or comparative component. It's dealt with in legal theory, it's dealt with in first year law where they look at civil law systems and they look at civil law theory. There are all sorts of areas where they look at comparative and international. Any of the environmental law programs will have to take on an international perspective.

Other law schools also cover international and/or comparative perspectives in dedicated subjects. One law school requires all LLB students to complete the

subject *International and Comparative Law* and another offers a number elective subjects dedicated to international and/or comparative issues – *Public International Law, International Environmental Law, International Trade Law, Information Technology Law* and *Intellectual Property Law* “also have an international flavour.”

Despite all the above attempts to address globalisation in the LLB curricula, some interviewees suggested that “at a strategic level, globalisation is regarded as more of an issue at the graduate level, because the school is acutely conscious that need international students for the revenue”.

Broadening the student base to include students from overseas, however, raised its own issues.

[Drawing in] overseas students increases student numbers, without increasing resources to teachers. Some students may have great difficulty with English, and may not know how to write essays, and may not feel comfortable with interactive teaching, because they are used to authority figures in teaching. So support needs increase. We have to teach international students to participate, to think in class, to write, not to plagiarise and so on, so very resource intensive for frontline teacher with no return for the teacher (although there is obviously a return for the school).

From the description of law school responses to “internationalisation” or “globalisation” outlined above, many Australian law schools indicated that, like their United States’ counterparts, they have not developed coherent strategies to address the demands that globalisation will impose on lawyers in the twenty-first century. While some law schools have taken some firm steps towards “internationalising” their LLB and postgraduate curricula, developing exchange programs, bringing in teachers from overseas jurisdictions, and focusing on a national rather than state-based curriculum, there is little sense of a systematic and co-ordinated strategy to prepare students for the challenges posed by globalisation. One major constraint is the space demanded in the LLB curriculum by the Priestley requirements, which most law schools interpret to require a response based in local law. The other constraint, however, appears to be that most law schools simply do not see the issue as a major priority. Some law schools even chose not to have any strategy to respond to the issues raised by globalisation.

Information Technology

Because legal scholarship and practice is heavily dependent on statutes and cases, as well as the kinds of secondary sources of importance to most disciplines, developments in information technology have dramatically changed the nature of legal research and legal practice. Information retrieval is now a major skill that students need to master from the beginning of their law studies.

The Internet also provides major opportunities for law students to conduct worldwide legal research, as Greenleaf et al (2001: 11) have observed:

The Internet offers the unprecedented prospect of global access to legal information, so it seems the waste of a valuable resource not to be able to use it

effectively. Academic research, so far as it involves comparative research, will benefit from such a capacity.

Australian law schools, on one level, have been major players in the development of the Internet in this regard. AustLII (the Australian Legal Information Institute), for example, has been involved in the development of *World Law*, the largest multinational catalogue of law sites on the internet (see Greanleaf, et al, 2001).

If commentators like Richard Susskind (1996) and (2000) are right in their prognostications about the “future of law” being concerned with a pervasive reorientation from reactive lawyering to proactive “legal information engineering”, then the development of information technology will have further, profound implications for the legal profession and for law schools.

Most law schools indicated that they gave their students a solid (or better) training in web-based information retrieval methods, and, at the very least, place their subject guides on the Internet. They are also increasingly using the web to replace hard copy materials, and student notice. Some law schools have not done much more than this. Others have also put together subjects which directly develop students’ information technology skills, and which address legal issues raised by information technology. Some schools have developed undergraduate combined degree programs where students can study information technology or computer science as their other discipline (see chapter 3).

Other examples of how law schools use and implement information technology are as follows:

- One law school has two compulsory legal research subjects, both of which have a very high information technology component. “Our students are very sophisticated in IT.” There is a research component in almost every subject. There are also a number of elective courses in information technology law, which are taught solely through the web. Recently the law school has established a Cyberspace Law and Policy Centre and some subjects have grown out of that Centre. Some subjects make use of chat rooms, Web Course Tools (Web CT), and have materials available on line. At the most basic level, everyone has subject information, notes and reading guides on the web. The school usually puts take homes examinations on the web, so that students can access the examination paper without needing to attend the university.
- A law school that offers an elective in *E-Commerce Law*, and *Media Law* – “which incorporates elements of technology” – mentioned that the school also has a compulsory *Computer Skills* subject, “which in my view needs to be revamped because when it was devised the needs of students were different, and computer literacy has risen significantly since then”.
- One law school mentioned that it has invested heavily in its information technology. One of the information technology projects undertaken by the

school is a joint project with the University of British Columbia, which involves developing a subject *Globalisation and the Law*. The subject “includes joint teaching through conferencing, [and] has received a funding under the university’s program for multimedia and educational technology and the project will be evaluated as it develops but if it develops it will be very interesting”.

- A law school that no longer gives students hard copy handouts – but rather places them on its website – mentioned that its lectures in compulsory subjects are “recorded and audio streamed”. It is also considering putting all of its LLM subject materials on the web, and is also developing a subject taught largely in “e-learning mode”.
- One law school has introduced a subject called *Technology Law*, and

in terms of terms of curriculum design and delivery it has had a significant impact in that all our materials are available on the web ... and we’ve used IT for other forms of delivery, such as interactive tutorials, on-line tutorials. They are all quite successful but in a limited way.

This use of information technology supplements the small group teaching arrangements introduced by the school, so that “in so far as we use that process, it has impacted on curriculum because it’s seen as another way of delivering more content, more curriculum, so we look at the curriculum and say ‘well this part is suitable for interactive, on-line tutorials’, so you’re developing your curriculum in a different way”. But there were no plans to replace face-to-face teaching with on-line tutorials.

That’s not seen as part of the plan – and students don’t like online-tutorials very much. They like it as a method of revision but they don’t like it as a method of ongoing learning and teaching.

- One law school has an Information Technology Committee within the Faculty, which manages the budget for staff computers. The faculty’s computer databases are run through the library committee or under the research budget. The Information Technology Committee oversees information technology policy issues within the school, including information technology and education, promotion of information technology, dissemination of information on WebCT, and approving information about a variety of special programs. It also oversees and coordinates all of the information technology projects in the school.

These projects require major university funding to develop ... an IT vehicle to complement face-to-face teaching in the delivery of our postgraduate taxation programs, with an idea of really shifting the balance between face-to-face and IT delivered. [N]ot just ... course outlines and reading lists being up on the web, but the actual instructional material delivered through the web, including self-administered tests on comprehension, to aid students in understanding the material so that the class sessions can be used most effectively.

We also have a self-administered kind of interactive legal writing tutorial. It's on-line and I think will be operational for the first time next year probably.

[A torts teacher] takes a particularly historical and theoretical approach to torts law that draws heavily upon materials available through the web and so is largely web driven.

We created a student access lab within the library. ... It's difficult to know what the demand for student access labs is going to be because students' own access to computing services is so difficult to measure and it's extremely difficult to just know to what degree of use a particular group of students are going to make of that kind of resource. So what we did is we wired the floor for 50 additional terminals. We in fact installed 25 to see what would happen, with the possibility of installing more. And it actually seems like at least for the moment, there isn't enough demand for more.

There was also a second computer lab built in the library ... - a library initiative, not a faculty one.

Other law schools have responded to the increasing importance placed on information technology through its elective offerings – one law school offers an undergraduate elective, *Computer Law*, which covers law and information technology, another has developed LLB elective subjects in *Intellectual Property* and *Cyberlaw*, and “we’ve got a couple of people on staff who can provide a constructive perspective on that for lawyers”. A third law school offers electives like *Law and Computers*, and a fourth offers electives in *Information Technology* and the *Law and Cyberlaw*. A final law school has an elective subject *Information Technology Law*, which is taught totally on-line.

Some of the smaller law schools mentioned that information technology has had a minimal impact the school. For example, one law school listed its information technology developments as videotaping some of its legal practice components for the purpose of providing students with feedback. “We have not moved towards any major flexible delivery of online courses in any way”, apart from one subject, *Indigenous Australians and the Law*, “which has mainly been aimed at [non-university] students”. In addition,

the university requires all subjects have a minimal web presence, in the sense that things go up on our intranet, for example, you know, the subject outlines are up there, typically the assignments, handouts, assessment methods, that sort of thing. It is a minimal thing and staff can contact all students very easily by e-mail. Then different teachers might take it further. They might put overheads on the internet. They might even put their lecture notes on the internet. They might set up bulletin boards.

Constitution Law this year has made considerable use of WebCT technology, partly because we've introduced group work into *Constitutional Law*. The idea is that it may become an additional skill. We've got some funding this year to introduce team work or group work into a subject and we've worked hard. With the funding we've been able to design in a way that makes some educational sense, with some educational theory and background, rather than the typical way of someone being

interested and saying ‘I’m going to try group work’ and not really knowing what’s involved. This year with the money we’ve been able to try and meet those problems head on and if it works, we may well carry on with that. The group work has meant making more use of WebCT so that groups can interact much more easily. The teacher can interact with the groups in that way.

So there is incremental movement but it hasn’t had an overall impact on our course structure. There is no sense that every lecturer must use Powerpoint, for example, or that every lecturer must make Powerpoint slides available online. Nothing of that nature.

This school had no policy on the use of information technology in teaching, but was hoping to develop one. One of the issues to be covered was whether lecture notes should be placed on the web.

I am quite against the idea that lecture notes should go up on the internet verbatim. It seems to me that technology has to add value to the classroom experience, not replace the classroom experience. ... This law school has always taken the view that being in class is important. ... The Law School has refused to mandate audio taping of lectures. Its left entirely to the teacher’s discretion.

Further discussion of the use of information technology in teaching may be found in chapter 16 below.

Summary

Both globalisation and information technology are having an impact upon curriculum design in Law, to varying degrees. At least in one respect, law schools have been forced to engage with information technology – the information technology revolution has resulted in most primary legal sources being readily available, and searchable, on-line, thereby resulting in law schools teaching their students to access legal databases as a basic skill.

Some law schools now also offer subjects, and combined degrees in information technology and e-commerce law.

As for globalisation (defined broadly and in multiple ways in this chapter, most law schools now recognise that their graduates are likely not only to practice in other national jurisdictions, but also internationally. Law schools have indicated that the student uptake of elective subjects in public and private international law is expanding, and a number of law schools have made international law subjects compulsory. Furthermore, more and more law schools are providing their students with opportunities to study abroad.

Nonetheless, like their US counterparts, most Australian law schools mentioned that they did not yet have a clear and systematic strategy for responding to the twin (and related) challenges of globalisation and information technology.

CHAPTER EIGHT

REVIEWING LLB AND POSTGRADUATE CURRICULA

In chapter 1 we noted that one of the impacts of the Pearce report was that it spawned a process of acute self-reflection in law schools. In this chapter we examine the mechanisms that law schools have developed to oversee curriculum development.

As has been mentioned at several points in earlier chapters, at one level, a significant influence on the LLB program has been the Priestley 11 requirements, which shape the compulsory subjects within the LLB program. Another comes in the form of the various state and territory professional admission authorities, which oversee the inclusion of Priestley 11 requirements in the LLB programs in their, and sometimes in other, state. Law schools reported that the level of scrutiny and intervention that this oversight function involves, both in relation to the Priestley 11 requirements, and the Professional Legal Training Programs, varied from state to state. In one state, prior to the Priestley requirements, the professional admission bodies tightly prescribed LLB program content to the extent that law schools in that state had virtually no elective programs.

Earlier chapters also covered the extent to which law schools have included legal ethics and professional responsibility, legal theory, legal skills, international and comparative perspectives, and information technology subjects within the LLB and postgraduate curricula. The level of detail provided by law schools as to the incorporation of all the above indicates that curriculum development and review in law schools is a complex and demanding activity.

This chapter describes:

- law school institutions and processes for reviewing and monitoring the undergraduate and graduate law curricula;
- the means by which law schools ascertain the views of students in developing the law curriculum; and
- the way in which universities have influenced the law curriculum.

Changes in methods for reviewing and developing the curriculum

We're being reviewed increasingly and often. You've no doubt heard this from everyone you've spoken to, but we're under a constant pattern of both internal and external review.

A lot of law schools seem to be in the midst of a review, they've just had a review, or they have got a review coming up. I think it's to our credit that we are constantly thinking about what we are doing. It's a real work-in-progress. All the subjects are work in progress, rather than monumental changes from year to year.

We are going to be externally reviewed next year at the Faculty's own motion and no doubt that will lead to some self-reflection..

These comments from interviewees from three different law schools suggest that, for most law schools, reviews are a regular phenomenon. Reviews can be school initiated, faculty initiated (when the school is part of a faculty with more than one school), or university initiated.

Most law schools appear to have similar structures for reviewing and developing their curricula. The more typical review processes are outlined in the following examples.

Case Study 8.1

At one law school, the Undergraduate Education Committee is the primary governance mechanism for the oversight of the LLB. It is the responsibility of the Dean and Head of School to monitor the LLB and its balance, and its compliance with the Priestley requirements. The Head of School, in particular, in partnership with the Dean, looks very carefully at the balance of student enrolments in the electives, and considers whether new courses should be developed and how these new subjects should be staffed. New subjects are then brought before the Undergraduate Education Committee for approval. If there are new areas that need coverage, staffing is then considered, thereby creating a role in the review process for the staffing committee (a separate committee, with ex officio members and many elected members). Otherwise, there is no formal liaison process these two committees outside contact at school meetings. Similar processes are adopted at postgraduate level, with the Postgraduate Education Committee, an Associate Dean for Postgraduate students, and a postgraduate Co-ordinator.

At this law school, there have been two curriculum reviews since 1987 – “one big, and one tinkering”. The ‘big’ review introduced the school’s Masters program, but otherwise has created no fundamental changes. The minor review resulted in the introduction of the subject *Public Law*, cut down on the amount of Contract taught in the LLB, and made changes in response to the Priestley 11 requirements. The school has just commenced a major review that will examine good practices at other law schools, which the law school could then adopt.

The overseeing of law school curricula has changed over the years, resulting in some cases in the rationalising in the number of committees involved in the monitoring and review of curricula. For example, one law school reported that it used to have two committees responsible for curriculum matters – the Curriculum Committee (which had student representation and focused on curriculum development and review) and the Faculty Education Committee (which was “more of a liaison committee between the faculty and students”). These two committee were replaced in 2001 by a single undergraduate studies committee that

has a continuous role of monitoring and reviewing the curriculum, checking for example that we’re meeting the Priestley requirements, continuing to monitor and review our elective offerings, both in terms of student demand and relevance to the outside world – you know, do employers want people who are studying these courses? So it’s both that broad role of monitoring and they also then take on

board individual issues, if an issue comes up in relation to a particular course and it might be one of the staff members who said, “Look I don’t want to change the course, but I want to tweak it a bit. I want to give it a new name and I want to introduce some new streams”, something like that. Well that all falls within the role of this Undergraduate Studies Committee.

The committee makes formal recommendations to the Dean, but important matters can be put up informally for discussion at a staff meeting.

Ultimately it would end up at a full meeting of the faculty where there would be further review and discussion, so there are various ways in which the faculty as a whole can have an input into curriculum development and curriculum design.

Since 1988, the school has been through three major curriculum reviews. The last review took two years – from 1997 to 1999.

The Curriculum Committee spent two years and we had 'tons' of meetings and 'tons' of papers and consultations far and wide within the faculty and the profession. And it was in that process that ideas came through, that *International Law* was part of the modern world of legal practice and legal thinking, and that we were picking up on the general conversation going on through the nineties about ethics in legal practice and recognising that while it’s not just a training course, that many of our students are destined for practice and that the community expects, and the profession now expects, law students before they get to their practical legal training courses to be sensitised to ethics.

So put that together with what was another trend which was clearly coming through in the literature and in conversations about legal education, which is skills, we thought, we’ll try and get this first-year unit thinking about legal practice. So thinking about being a lawyer and what that involves.

Our Curriculum Committee included student members and the committee, which was staff and students, had lots and lots of meetings. Staff and students, but we had lots of meetings with staff and students who were not on the committee. So there were meetings convened and papers circulated, so students played an integral role in the review process.

Not every issues leads to a full-scale review and some issues that are considered to fall short of a full review of the curriculum are dealt with in other ways.

We had a faculty retreat last year in which aspects of curriculum design and so forth were raised there and the Undergraduate Studies Committee came out of that.

Last year, the old Curriculum Committee did a review, not of the full curriculum but of all of those courses, mainly compulsory courses, that have been affected by the faculty’s decision to semesterise all of its courses. So all conveners were asked to submit reports indicating how semesterisation had affected what they did.

In the years before that there was a rolling review of the elective program and that spun out of what was the last major review.

Postgraduate coursework programs at this school come under the gaze of the Board of Studies within the Faculty, which has overall responsibility for

postgraduate coursework programs within each of these areas – international, commercial and environmental.

There's a faculty member who's designated as convener of that area and the role of the convener is to particularly monitor developments in that area in curriculum developments and monitor what courses are being offered and how successfully they're being marketed.

And then they report back to the Board of Studies and then, as a group, the Board will keep an eye on the gaps in the graduate curriculum. So once again it's principally the Board who as a matter of course are saying, "Do you have any ideas about new courses you'd like to put on in 2003? If so, let us know".

The Board of Studies is, in turn, answerable to the University's Graduate Studies Committee.

Case Study 8.2

A first wave school mentioned that it had a wide reaching review of its undergraduate LLB program in 1988, which "then led to a whole series of changes and really provided the model within which we've worked since then". The review recommended wholesale changes to the school's first year program, including the introduction of small group teaching (which was interpreted, in part, to mean classes of no more than 50 students) in the first year program, and a strategy of integrating skills development into the core LLB program. The model established from this review has subsequently been "subject to continuous review ... to achieve continuous improvement". As the Dean observed:

What we have deliberately decided ... since 1988 is that rather than have major curriculum reviews every decade, we would have this process of continuous evaluation and the effort of continuous improvement.

The Undergraduate Studies Committee, which meets between six to ten times annually, is given the task to oversee the continuous monitoring and improvement of the LLB course.

"It does that in various ways. It sets up ... groups to look into particular matters, it puts forward proposals to the Faculty on a frequent basis to change methods of assessment in a particular subject, to introduce new optional subjects, to drop old optional subjects, to change subject descriptions, to restate objectives, and so on.

In its graduate program, there is a Director of Study and an Advisory Board for each area of specialisation that oversee the curriculum in the specialist areas, and provides advice on developments that should be incorporated in the specialist graduate teaching programs. The Directors of Study meet collectively two or three times a year "to talk about issues that are common to all the areas of study", and the Associate Dean (Graduate Studies) also meets individually with Directors of Studies to discuss the program.

Other examples of the use of committees are as follows:

- A law school that has established a Curriculum Assessment Committee, which includes student members, mentioned that it “meets regularly and is fairly active”. Together with the School Board, it is the major overseer of curriculum change and development.

Significant changes [in the school’s curriculum] have come about as a result of extensive and widespread school discussion, usually initiated by a position paper from the Curriculum Assessment Committee. ... Our major curriculum changes have been discussed extensively over two- or three-day long retreats.

- A law school that mentioned that it had a very orthodox structure for curriculum development mentioned that it had a school Education Committee that was responsible for reviewing the curriculum. This committee takes proposals to a weekly staff meeting. Once proposals are “firmed up” they go to the Faculty Committee, and then to the University. “Students, judges and employers are represented at all levels of that process.” The school has just completed a major, and very thorough, review of its LLB programs. This was carried out by a school committee, which included one external academic member, and was based, at least in part, on work of sub-committees and working papers prepared by individuals. The school also has a Faculty Advisory Committee, with employers and judges included among the membership. In the postgraduate program some of the Masters programs have their own advisory committees, but there is no other school structure for overseeing the postgraduate coursework programs.
- One law school mentioned that, since 1990, it has had a Teaching and Learning Committee, “the most important committee we have”. Over 2001-2002, it has been conducting a major review of the LLB curriculum - it is considering how to restructure the curriculum and is looking at every subject in light of the following questions: “Do we want to keep it within the core? Do we want to increase the core or decrease it? Which electives should we get rid of? Do we like grouping the electives? Which groups should we have?”

The Committee meets regularly, it works with sub-committees, and it has a judge and a practitioner sitting on it. It is in constant session. It gets the students’ views. It talks about student evaluations. It looks at the curriculum subjects in detail. It is the engine room of what we are doing. It’s the committee that is constantly working within the university, looking at the combined degrees. ... From 1990 we saw all of this quality audit stuff coming, so we tried to make sure that the old faculty chit-chat committees turned into effective, minuted, working committees which were overseeing, directing and taking responsibility for the curriculum.

- One law school has a Curriculum Committee that considers issues and then recommends changes. The school has strategic planning processes that considers these changes, and these processes sometimes involve

retreats for the staff – to generate ideas and suggestions. Additionally, the school is externally reviewed [by the university but involving external reviewers] every five years and such reviews may result in some recommended curriculum changes.

- A law school that mentioned having an “active” Teaching and Curriculum Committee that oversees its LLB curriculum (including examining new subjects) mentioned that this committee does not meet regularly to review the curriculum. Instead the university has recently established a Board of Studies and part of the function of the Board of Studies in Law will be to regularly monitor curriculum development. Two representatives of this Board will be members of the local and the State Law Societies.
- One law school’s Teaching and Curriculum Committee meets several times a semester, and is responsible for vetting all, and initiating many, curriculum reforms. Issues are then taken by the Committee to Faculty level for approval. The school also creates ad hoc committees to look at special issues, such as whether the school’s approach to Honours is appropriate, and to study the co-ordination and integration of new teaching methods into the first year curriculum.

At the postgraduate level, the Associate Dean (Postgraduate Coursework) convenes the Postgraduate Coursework Committee, which comprises the convenors of each of the individual specialist graduate coursework programs. The graduate coursework programs are run as “mini programs”,

so that the labour lawyers are kind of responsible for their particular area and so on throughout the whole; the administrative lawyers for theirs, the health lawyers for theirs. They all come together on the Postgraduate Coursework Committee and they all are answerable to the Associate Dean for the running of the programs. The Associate Dean gives the overall policy direction, maintaining consistency, maintaining administrative efficiency in its operation, and so on. Curriculum reforms are ultimately approved by faculty. They go before the Teaching and Curriculum Committee, but I really see the Postgraduate Coursework Committee as being the primary place where those issues are worked through.

- Some law schools mentioned that their universities required them to review each of the school’s undergraduate and postgraduate programs. At one law school, this came under the remit of the Undergraduate Program Committee, which regularly reviews the LLB. Suggestions for changes in the curriculum are then taken to the Planning and Accreditation Committee, in turn followed by a lengthy process that culminates in the Academic Board making a final decision. A Postgraduate Course Committee oversees the postgraduate program, and a similar process is followed.
- One law school mentioned that the Undergraduate Studies Committee, along with the Director of Undergraduate Studies, “are really at the heart of the curriculum review process. [The committee] is the engine room for

developing discussion papers that are put before the school for discussion”, although ultimately the University Senate has to approve changes to the curriculum before they are implemented.

There’s a constant review process, in which we take in feedback from students. At the moment this is done in too anecdotal a manner, and needs to be more institutionally done. We had a retreat two years ago, and we are about to have another retreat where we set goals, work on key areas of the curriculum and so on. There is also an external review process, initiated by the University. The Law School is due to be reviewed by an external panel in 2004.

- The law school’s Executive (comprising the Dean, Associate Deans and School Managers) at one school manages the entire law school’s activities, including curricula. There is also an Advisory Board that provides advice to the Executive from time to time. Members of profession make up most of the Advisory Board – the wider profession, alumni, judges, and partners in law firms, accountancy firms and other employers of law graduates. The school also conducts strategic reviews on a regular basis, which involve the entire faculty, and these reviews also examine curricula. The university’s Academic Senate governs the introduction of courses, and curriculum changes, and as such the Executive has to submit changes to the curricula to the Academic Senate for approval. If a curriculum development has budgetary implications, this would go to University Management Group.
- The Advisory Committee that oversees the development of the LLB program at one law school is chaired by a Supreme Court Judge, and includes some law school members, academics from other law schools, and members of the profession. Last year, it conducted a retreat during which curriculum issues were discussed, including the following questions: Where are our values? What skills do we want our graduates to have when they finish? How does the law school relate this to the curriculum set by Priestley?
- As an exception to the rule, one new law school does not have a formal curriculum committee. Instead, because the school is so small, matters are discussed in staff meetings on a regular basis. At these meetings, key curriculum issues are considered. The school’s aim is to stabilise the curriculum, rather than develop it.
- Some law schools had Teaching and Learning Committees, which had a separate function from the Curriculum Committee. At one law school, however, the Teaching and Learning Committee had a broad brief that encompassed all facets of the LLB. The committee meets regularly to follow-up the university’s requirements about subject review. So, for example, in 2001, all first year subjects were reviewed, and in 2002, another group of subjects will be subjected to mandatory review according to the university’s requests. No other committee has been set up by the law school to oversee the LLB degree program. The Teaching and Learning

Committee follows up suggestions from the Dean, which in turn, have been generated by the mandatory subject review process. Other areas of curriculum develop emanate from vigorous discussion within the school.

- One law school reported how it functioned as part of a larger faculty: The “day-to-day considerations” come within the remit of the school executive, while the overall strategic development of all of the programs – not just the law program – is the responsibility of the Faculty’s Senior Staff Committee. The Faculty requires every program to be reviewed on a regular basis – every three years. The Dean also mentioned,

We also have a School Advisory Committee, which is external. It includes people from the profession and I guess the array of employers of legal graduates, and they meet irregularly but as we evolve I’ll be getting them to meet more regularly. In terms of also the program and its integration with other cognate programs, [we have] FOSAC, a Field of Studies Advisory Committee which, given universities might have particular disciplines across a number of different faculties, is a way of bringing that together at the university and meeting and exchanging ideas. ... Whoever is the Head of the School at any particular point of time would be the connecting thread [between these various institutions].

Increasingly, law school reviews have not just involved discussions amongst law school staff and students, and input from employers and other stakeholders, but have sometimes led to a serious engagement with teaching and learning theory. A good example is provided by Case Study 8.3.

Case Study 8.3

Major changes to one law school’s LLB curriculum were driven by two curriculum reviews in the early and late 1990s. From 1998, the law School has been reviewing its whole LLB program to develop “an integrated and incremental approach to the development of both generic and discipline-specific capabilities” in its core LLB curriculum. This began with an internal review of its first year program in 1998-1999 that considered the following:

- The first year objectives for a modern law program and the consequent redesign of a holistic integrated first year program (eg, issues such as the first year’s status as the foundation of the course which requires that certain content and skills be desirably addressed);
- The balance of skills to be inculcated across the first year curriculum;
- How to make explicit to students what was to be achieved in terms of skills development by the end of each unit and also at the end of the year;
- How to change the teaching and learning approaches to ensure that the process of instruction, practice and reflection could be embedded within the new units;
- The redesign of the assessment criteria and methods to facilitate this teaching and learning approach.

(Kift, 2002a: 3)

Recognising that this exercise could not be done in a vacuum, the school thought it was necessary to develop and embed generic skills development in an integrated

and incremental package, within a “whole of program” context (see Christensen and Kift, 2000), and with an integrated framework for the teaching and assessment of conceptual knowledge and transferable skills. The aim of the curriculum redesign was to develop these authentic learning environments for students through the adoption of appropriate learning objectives, teaching and learning approaches and assessment methods (Kift, 2002a: 4).

The project has been developed under two university-based Teaching and Learning Development Large Grants – in 2000-2001 and 2002 respectively. The first project sought “to design an integrated and incremental approach to embedding “graduate capabilities” in core curriculum and to develop teaching strategies for facilitating student acquisition of the generic and legally specific (i.e. discipline specific) skills that underpin those capabilities in the undergraduate law program”, and the second sought to “examine and address the challenges of re-formulating assessment and feedback practices to assure their validity and reliability in this new teaching and learning environment”.

Another law school had a major internal review of its teaching and learning programs in 1997 to 1998, which resulted in a “Blueprint” Five Year Academic Plan. It was also subjected to an external review in 2000, which reported in 2002.

Case Study 8.4

While most schools at its university only have Research Committees and Teaching and Learning Committees, as a result of a Pearce Committee recommendation, one law school (which is part of a larger Faculty), also has a Curriculum Committee. This committee acts as an advisory committee to the Head of School, who has sole decision-making responsibilities in the school. If the Head accepts recommendations about subject changes, the recommendation then goes to the Faculty Board of Studies, which administers the programs. A program change has to go on to the University’s Academic Board. The committee keeps all of the curriculum (postgraduate coursework included) under review “to ensure that it meets present and future circumstances, considers proposals for new subjects and reviews the implementation of the new curriculum” developed after a review in 1998-99. The committee has a large academic staff membership, and includes a student member, “as well as external members at times of significant review, especially for the LLB”. These external members include representatives from the Barristers’ Board and the Solicitors’ Board, and representatives of other schools. The committee, which meets monthly, will be reviewing compulsory subjects in the LLB and JD programs in 2002 to 2004, and in particular the broader issues such as “questions of sequencing, gaps in content and overlap”.

Most law schools therefore reported having a committee or committees (usually the former) to oversee the LLB and Masters Programs, although in schools with small graduate programs, the programs might be overseen by a board of studies established for that purpose.

A few law schools that had become integrated into larger faculties, reported that the school's curriculum management and review committee had to report to a larger faculty committee. For example, one law school mentioned that that its school committee feeds into a faculty committee first before its suggestions are sent to a central university committee for consideration. "It's a three-tiered arrangement."

The involvement of a university, was of course, not uncommon, in decisions for change and some, if not most, law schools furthermore reported that their review processes were dominated by university requirements.

Case Study 8.5

One law school reported that it was subject to a general university policy requiring all schools at that institution to review their curricula every five years. The first "Stocktake Review" was undertaken in 1997, which produced some changes, most notably a greater semesterisation of subjects. The second "Stocktake" took place in 2002 and this second review has led to even greater changes than the first. The committee in charge of overseeing such reviews at this law school – the Stocktake Committee – includes members from other faculties in the university, as well as from other law schools, and also includes a practising lawyer. The Committee additionally conducts focus groups and consultations with students.

In addition to reviews of curricula, the law school is also subject to university's quality control procedures, which have changed over 10 years. Now, the school is required to do program reports for each degree each year, based on entry scores and attrition rates. It is not so much a content review as "a strategic review of how the degree is travelling". These annual program reports do not require any external membership.

Furthermore, the university requires the law school to have external members on planning teams for any new programs. The school in addition has a visiting committee which meets three times a year, and which does sometimes, if requested by the school, advise on curriculum.

The school is also engaged in a rolling internal review of its core LLB subject content and, at the time of writing has reviewed first and second year and was considering fourth year. Such a review process involves the convenors of subjects in that year, and then the convenors from the courses on either side of the year being reviewed, to check that there are no duplications or omissions.

The development of new teaching programs (for example an LLM Program) is largely left to the school. The university requires a submission if a school puts up a new program, or changes subjects. Such a submission would include information about whom the school has consulted and what marketing processes have been adopted. The school would usually include at least one practitioner on planning committees for new degree programs.

As an exception to the rule of using specialist committees to review curriculum, one law school instead has staff meeting where individuals are able to raise curriculum issues.

And certainly at staff meetings individuals have raised concerns about particular subjects and indicated what they're doing and/or what they feel should be occurring and so on. And they can often lead to a free and frank exchange of views and very robust discussion. ... And that means that people are aware of what others are doing.

The university of which this law school is a part has a central Academic Board that has standardised the procedures for reviewing schools. This is done on a four-year rotating cycle. The law school will be reviewed in 2003.

Essentially it will involve the setting up of a review team, which will be drawn from the Academic Board, two external law deans, and a representative from one of the other faculties who we twin with in terms of our combined degree programs and some external people drawn from the profession.

They will all basically look at our programs, go through what we do, they'll interview staff, they'll interview students, and hold focus groups with students and other staff. They will look at, review, work that students have handed in, synopses, materials that are provided, the whole raft of stuff. So basically anything in relation to assessment, delivery, and so on, will all be considered by the committee. The committee will then produce a draft report. That draft report is circulated within the school and also within the university and ultimately reaches the Academic Board. The Academic Board then makes recommendations as to how the school should direct itself towards things and the school may then choose to change direction, seek guidance from external forces to where it can improve itself, seek additional funding towards addressing some of the concerns and so on. And basically respond to the recommendations in some details. The process itself takes about eight or nine months from start to finish so it's quite detailed in its scope.

A law school that once used to be an autonomous law school but which a few years ago became part of a large faculty mentioned that the constituency of the curriculum review group changed with its status.

At one time we had [on the law school executive] members of the judiciary, members of the Law Society, members of the Bar Association, so that there was a real integration on at least a quarterly basis and sometimes more often than that, where the representatives of these professional bodies would [attend meetings] and they felt that they were both achieving input into the decisions that were being made at the highest level, and also that they were being well informed and that our proceedings were transparent from their point of view.

Now we've had interposed between ourselves and the profession the whole monolithic structure of the university, and they feel out of it. ... I think in a way the profession feels that it's been a reflection on them as a profession, that somehow they no longer have that sort of recognition, that the academics have pushed them to the side.

It now has a curriculum committee, which includes members of the Law Society and which oversees the development of the curriculum. Occasionally the school

will also set up an ad hoc curriculum review committee to review aspects of the core or elective program. In addition, every four years the school is subject to an accreditation review of the LLB degree and the school was last reviewed in 2000. Furthermore, the Law Society has recently approached the university to form a working party to conduct another review of the school.

we are in a fishbowl here. I mean the fact is the Law School had a review as part of the faculty review last year. The Law Society's working party was probably a response to again this overall impression of: well look, we're not happy with the fact that the Law School has become subsumed within a faculty. We therefore are not happy with a review of the Law School in terms of its review only as a component of the faculty review. We'd like to do our own review.

We're getting reviewed out. The fact is, we've had the faculty review last year, we'll have a working party Law Society review this year, and then next year, or at the end of 2004, 2003 or whenever, we'll have the reaccreditation again. So I mean certainly in terms of curricula development, we're developed out.

One thing is for sure. You cannot say that we are unaccountable. We are right out there in the wind and rain.

In summary, most law schools indicated that they have committees overseeing the development of their LLB curriculum, which, in turn, are guided by a central university unit, whose approval is required for any changes to curricula. In some of the new, smaller, schools, the review task is performed in full staff meetings rather than by a dedicated committee.

Consulting Students

As will be presented in greater detail in Chapter 10, the responses by many students to changes in higher education has been consumerist in nature. This part of the chapter examines the way in which law schools consult with students when reviewing and developing their law curricula.

A few law schools reported that they regularly carried out formal surveys of students. Sometimes this was at the behest of the university.

Examples of how law schools consulted students, and about what issues, are as follows:

- One law school consulted its students a few years ago, via a survey about "areas they would like to study, when they would like to lectures scheduled, and so on". This law school plans to conduct a survey of its students in the near future to get information "on a range of issues".
- The task of consulting students at one law school falls within the remit of one staff member at the school, who conducts an annual focus group with students. The students consulted have either just graduated or are about to graduate. The aim of the focus group is to obtain feedback on the entire LLB program.

- Another law school both regularly surveyed students about specific issues in the curriculum, including the range of electives available to them, and met regularly with student representatives. The law school is concerned to find out what students want to study and what they think the balance in the curricula should be. This law school reported that they found students to be highly suggestible “they want to do what we have got”. The school also reported that there is always a small group of students demanding that human rights and social justice subjects be taught, “but then when these subjects are offered they don’t enrol in them”.
- At one law school, the Dean consults regularly with representatives of the student body.

I am particularly interested in finding out from them whether there is a problem with the way the school is teaching, or whether they particularly like the way the school is teaching so the school continues to teach that way...we particularly encourage students to let us know when they think somebody’s teaching really well and that they want to make sure that’s fully recognised.

- In addition to regular student evaluations at the end of each subject, one law school writes to each student graduating from its LLM program to obtain feedback on the program. The school, in particular, monitors student demand for graduate subjects, by asking students what areas they are interested in.

We also talk to various professional organisations and private and government organisations, asking them what legal areas they are interested in. That is how we develop new subjects. ... What we offer depends on what expertise we’ve got available, as well as what students want.

- One The Head of School reported meeting informally with students every month, “and any student can turn up and they can debate and argue and raise any issues they like”.
- Another law school reported that the university, not the law school, has been interviewing graduates of five to ten years’ standing, to ask them to comment on their degrees in the light of their experience in the workforce.

In addition to whatever added efforts to consult students, all law schools also have two regular sources of data about student views of the curriculum and of teaching - the annual Course Experience Questionnaire (CEQ) conducted by the Graduate Careers Council of Australia (GGC), and student evaluation of teaching surveys, which most law schools, again, often at the behest of their universities, would either require, or encourage their staff to conduct at the end of each subject. Staff views on the latter types of surveys are presented in greater detail later in this report.

Influences of universities

As mentioned above, some law schools were induced to review their teaching programs by their own universities, often after external reviews of the school. For example, one law school was required by its university to retreat from its position of only permitting students to take the LLB program as a combined degree, with entry to the program based solely on university results.

At another law school, a university-led review in the mid-90s led to widespread changes, including one that gave other faculties in the university an opportunity to shape the law school.

The other difficulty is that I think over the 1990s, there has been a lot of interest from other schools and faculties in the LLB, and they haven't always been informed. I can recall the Head returning from a meeting where a Professor of Social and Preventative Medicine was strongly advocating for a compulsory feminist element in all LLB subjects. Now this professor had never set foot in the [law school], had not made any contribution to the LLB, and of course there's no association between the law school and the medical school. She's a social reformer and she sees the development of the law curriculum as a key element of social reform. So there seems to be a lot of external interest in the LLB, that has led to university pressures on us to change curriculum.

[We had to engage with these views] because as you go up, say from your working party to your Curriculum Committee to your school, to your faculty, to the Academic Board, and they're all there in the Academic Board and they have a say. You lose control of what happens once it goes out of the school. Once it gets to the Academic Board, even your faculty is a significant minority.

[That] particular exercise occurred in the administration prior to '96 when there were very significant political problems between the Dean of Law and other senior executives. So of course the rest of the Law School is tagged with that, including the law curriculum.

There was tremendous pressure. The Law School had a number of problems, in teaching and curriculum. One of biggest problems was seen as its very conservative nature and there was tremendous pressure from the review group as well as from other sectors of the university to transform the Law School into something maybe like the progressive law schools that other people have. They were not [aware of] the professional demands [on the law school].

Interviewees from other law schools also mentioned the constraints that their own university processes imposed upon curriculum development.

It's just one of the problems caused by academic structures that are imposed on all academic units, where you have to use credit points, you have to use subject names, you have to have individuals who are responsible for individual subjects, and that compartmentalisation creates problems that every law school has to fight against.

Over the years I've spent some time at ... a private law school. There are no university impositions. So they can just play with things as much as they want. They don't have credit points, if they want to merge three subjects into one, then they merge three subjects into one without having to go running over to administration and saying, "Well actually it's going to be a 23 and a half credit point subject. It'll be taught over two semesters and for some reason that might breach a university rule".

And so there are things that we would like to do, but the inherent infrastructure and the systems that are imposed on us that we can't break out of will lead us down to do certain things that we might not choose if we had autonomy to do.

Question: Well do you think it has teaching and learning implications?

Oh God yes, absolutely. No question. For example, for years we've been talking about integrating the first-year program so that there are overall objectives. In second semester they do Contracts and Perspectives on Law and in the first semester they do Law in Society and Communication Skills and they've always been seen as individual subjects, with individual subject coordinators. Now as much as everybody agrees that there needs to be greater integration of material and cross-fertilisation of subject matter and use of contract law as examples of whatever, the systems and the processes that we have, and the responsibilities of the individual subject coordinator in fact separate these things out, so that you can try to join things together but ultimately you have to decide what does this person have responsibility for?

An extreme example of the influence of the university has over law school curricula comes from one law school that reported that it currently offers no electives in the LLB program in order to comply with a university policy. At the time of writing this report, the school was conducting a review, which it hopes will recommend that some student choice of subjects be restored to the curriculum.

Summary

The modern Australian law school curriculum, particularly the undergraduate curriculum, is subject to regular reviews. Although institutions and practices vary between universities and law schools, most law schools have set up committees to take on the responsibility of reviewing and overseeing program curricula. Membership of the committees usually includes students, and occasionally members of the profession. The functions of these committees vary from school to school, but in the main they are charged with the responsibility of ensuring that the Priestley requirements are met, that new elective subjects are vetted, and that the overall direction of the curriculum is monitored. In a few of the newer, and smaller, law schools, these matters are dealt with in full staff meetings and not by a dedicated committee. Increasingly schools are establishing external advisory committees, which also include students and members of different arms of the legal profession, with whom the Dean, Head of School or a dedicated curriculum could consult.

At many law schools, any changes to curricula requires approval from a central university unit; these law schools and faculties do not act autonomously in instituting changes to curricula.

Law schools indicated that they made a greater effort to consult students now than in the past. Many Deans and Heads of School reported meeting regularly with student representatives – either formally or informally – in addition to administering formal student surveys.

As this chapter shows, for some law schools, reviews of law school curricula and teaching are initiated by larger faculties of which they are members, or by their universities. In some cases, universities have imposed significant constraints upon the operation of law schools – including restricting elective programs and determining student entry policies.

Employers of law graduates are another major influence on law schools. This is the subject of the next chapter.

CHAPTER NINE

LAW SCHOOLS AND EMPLOYERS

We are aware that most of our graduates are going into practice, so we are keen to do things which will help them to get a job. (comment by one Head of School)

Law school staff who were interviewed for this project indicated that some of the major influences on the undergraduate curriculum, outside were the Priestley 11 requirements, were the profession's perceptions of the LLB, and, in relation to the electives, students' pragmatic choices. A number of law schools thought that students' and employers' views, in the current funding climate, should not be ignored. As Brand (1999: 122) observes.

By the early 1990s the place of employers as legitimate stakeholders in the education enterprise was accepted, and the necessity of taking into account their expressed needs recognised. Students found themselves in a similar position. The move to charging students fees in the form of a HECS payment altered law student consciousness towards a consumer orientation.

In response to the reforms to the higher education sector from the late 1980s (see chapter 1), law schools have increasingly had to seek alternative sources of funding, including revenue from fee-paying students, alumni, and sponsorships (McInnes and Marginson, 1994: 29; Brand, 1999: 120; and Tarr, 1993). As Brand (1999: 120) further notes:

Implicit in these developments was a closer link between law schools and the profession, a partial return to the close reliance that had been in place until the 1960s. For a part of the higher education sector which had been slowly moving away from dependence on connections with the profession and which had begun to debate in earnest the most appropriate model of education, this represented something of an about-face. It also represented a marked increase in the direct impact of government policy on law school culture.

Given these developments, we asked law schools about the extent to which the views of employers and students influenced curricula. This chapter:

- describes how law schools have built relationships with employers, and sought the view of employers about the law curriculum;
- describes data collected from employers about their expectations of legal education, their level of satisfaction with the curriculum and student competence, and their views of the employability of law graduates.

The relationship between law schools and employers: The law school perspective

As illustrated in the previous chapter, most law schools, by virtue of including members of the profession on either their curriculum review committee or advisory board, indicated that they were not impervious to the views of employers, particularly law firms. To varying degrees, law schools indicated that the views of the profession influenced design of curricula and teaching. A Dean of

a first wave law school described the nature and extent of the profession's impact on his school:

We are a traditional law school in the sense that most of our students expect to be able to qualify for practice, and they expect to be able to compete for the best firms in articles. So that sets certain limits as to what you do in the curriculum. I don't think it does so in the kind of explicit way in that we might sit down and discuss where we are preparing people for practice, but the truth of the matter is that running pervasively through the curriculum is the acceptability of your degree to the profession. Not merely the acceptability but, in their eyes, how well your students appear to be equipped once they get into the profession.

And that doesn't mean that they have to be people who've done trade subjects but it does mean that they are looking to see that not only are the students bright but they are well equipped in various respects. And that's, I think, an underlying objective of ours, to maintain not merely the acceptability but the high desirability among the profession for our graduates.

But there is of course another objective, and that is to ensure that, so far as is possible, they approach law in a scholarly and academic way. Now obviously there continues to be the old "Pericles and the Plumber" tension between the law degree which is highly educative and academic and the law degree which is practical to be acceptable, indeed thought highly of, by the profession.

Many of our staff will say [during their LLB studies] is the only time that people doing law have to think more broadly than the timesheet. And of course it's true. On the other hand they will be filling out timesheets and if they've emerged with a "legal studies" LLB then we're going to be getting messages from the profession and ultimately from the students about the nature of our degree. So it's a compromise but when you look across the subjects, people have a choice of subjects, and different subjects are taught in somewhat different ways, not merely in terms of instructional technique but in terms of how practically oriented they are, how academic they are.

For new law schools, building up a relationship with the profession was particularly important.

If you have a new law program we've got a greater need than probably some others to find out what prospective employers might have as views. The problem is, first of all given that the legal profession is not going to be able to absorb all the graduates coming out, so identifying where the employers are is a difficulty. If the employers are simply seen in that, you know, conventional sense as legal firms, I do, like every Head of School, talk to the profession quite regularly, by visits to their law firms, through also our Law School Advisory Committee, which has a fair range of people from large corporate firms to small- and medium-sized local firms to public sector employers, and that's a way of also ascertaining the prospective employers' views and feeding it into the curricula process. So we have got some systematic ways of ascertaining their views and perceptions. The difficulty is who the employers are and, as I say, we can't cover the field because that's evolving over time.

One law school reported that its LLB curriculum was originally designed by a group of practitioners and their suggestions have been maintained in the LLB program. The school consults regularly with the profession, and always

accommodates their comments and criticisms of the program “because the aim of the law degree is to produce legal practitioners”.

The Head of School of a third wave law school observed that:

I suppose our overall practical orientation is to some extent profession driven, although it's partly driven by the students who are in expectation of joining the profession. We feel that our school is in a community where we're providing to some extent a community service. Our role in the community is to train lawyers and we have a social obligation to do that reasonably well. On that basis we should make sure that we're servicing that end and that market.

We have good relations with the [local law associations]. One of our staff members is actually the outgoing Secretary of [one of the law associations], so there's quite strong involvement. And our relations with the judges are very, very good. And we have an arrangement with the courts so our students can use the Supreme Court library. The relationship is extremely positive and extremely good. So consequently if we detected the profession are concerned about something, naturally we would react to it. They haven't been particularly concerned about, or expressing a dissatisfaction about, anything since I've been here and as far as I know they weren't particularly concerned about anything. So they're satisfied with our product and our approach. If they're satisfied, we're happy because they're important to us.

But, as another Head of School noted,

I think it is important to be aware of what not only what [the profession] needs, but also their perceptions of how things are done. Sometimes there's a bit of a gap between what the profession wants and thinks it needs and what academics think. Nevertheless, you still need that input. That doesn't mean that we're ruled by it, but we certainly need to consider it.

Law schools perceptions of the needs and opinions of employers are made more complex by student perceptions of employers' demands on graduates. One Dean mentioned,

a few years ago, the Law Society interviewed employers and asked them what they wanted. The law firms said that they did not mind as long as students are learning to think and are educating themselves, and learning to analyse. We hear from students that employers want them to do things, but employers don't tell us that. Students have a narrow focus, and get overly worked up about what they perceive they need for a job. [S]tudents think that they can't get into a big firm unless they have done certain subjects, but this has not been our experience. Informally, ...partners will say that they look at a student's CV to see if they are an interesting person. The threshold questions are marks, can they deal with clients?, will they fit into the firm? That is my strong impression – so what students do in the elective program really does not matter. ... If they were just market driven, the range of electives would be much narrower

Ascertaining the view of employers

The following are examples of how law schools ascertained the views of employers:

- Most indicated that they informally sought views from employers. One such law school has a number of practitioners appointed to adjunct professor positions, and rely on these practitioners to canvass the views of the profession.
- One law school mentioned that it had regular contact with the profession, that again, was informal

The consulting process used to be more substantial before we amalgamated into a super faculty. Now as a super faculty, the input of the profession is a little more muted.

- A few law schools mentioned that they engage in the uncommon practice of conducting formal surveys of the profession. One first wave law school engaged a consultant in the early 90s to conduct a major national survey of the legal profession “in a very broad sense, not just private law firms”. The survey obtained information about the qualities and attributes employers looked for in law graduates – “it was a ranking exercise”. The law school asked employers to rank the school’s graduates according to a list of attributes using a five point Likert scale. This data was then subjected to a “gap analysis”, which identified areas where significant differences were found between the level of importance attributed to the area by employers and the employers’ perception of the law school’s graduates performance in the area. “This was a very influential step in the process of integration of skills into the curriculum.” The survey has not been repeated, but the law school has monitored progress in these areas informally.

We do this through quite a variety of mechanisms: meetings with people from ... national and international firms; and meetings with government legal officers and seeking their views on how our graduates are viewed in the marketplace.

- Another law school also surveyed employers, during a recent comprehensive review of their LLB program

Their responses were taken on board. But we take a broader view of employers than just [the large law firms]. When we think of employers we think of all potential employers of our graduates, non-legal as well as legal.

- A third law school mentioned that it has had “long term plans for a survey to be done of employers ... to get a sense of how they feel about the place”. In the meantime, the school collects anecdotal information about the views of the profession. “The survey is meant to be more methodical”, but has been delayed because the staff member intending to carry out the survey has had his attention diverted by other activities.

Rather than survey employers, many law schools prefer to maintain regular contact with the employers, although this usually means that efforts are focused on the practising profession, and often principally on the large law firms.

- One law school mentioned that it had developed “a very close relationship with the profession”.

We are in constant and close contact with the profession to ask what they require of our students. As the Head of the School, I, along with the Dean of the Faculty, visit all the large commercial law firms, their HR people and some partners, at least every second year and ask them what they think of our graduates and whether they’ve got any suggestions. And we also meet with them at lunches. We’ve got a lunch with about 30 practitioners [soon], where we once again tell them what we are doing and ask them whether they would like to give us feedback on our students. This one is going to be the first one that we’ve done so far, but we will do that every second year as well. We also have what we call a “Report to the Profession”. So last year I invited people from the profession to attend a session, where I told them how we’ve changed the degree and what we’ve done. And I report to them as to what we have got in mind with our programs. Primarily we are concentrating on the private firms.

I’ve got a very close relationship with the [local] Law Association. I’m a member of the Law Association, attending their meetings, and I’m in constant contact with the Law Association.

The most important feedback that we normally get from the firms on the whole program is that they really think that our practical orientation is remarkable and that they see our students as being superior to students coming from other universities, because they’ve got not only a good theoretical background but they can really do some of the practical aspects.

We were advised by the firms that they were worried, not only about our students, but generally, that the research skills are not very good and that is why a major part of *Introduction to Law* deals with research skills.

We have asked our librarian pay a visit to some of the large commercial law firms. She worked very closely with the firms, the librarians of the firms, to establish what they expect of students and we have incorporated all these aspects in our programs. So we really cater for the needs of the profession.

In 2001, this school established an advisory panel, comprising a judge, members of the state’s law association, barristers, partners from large law firms, and an external academic, to provide advice about the LLB curriculum for accreditation purposes.

One thing is sure, and that is that at this law school we do not sit in ivory towers. We don’t. Because of [our] practical focus we reach out to the firms and you can, if you want to do that, go to some of the large

commercial law firms and you will find that in comparison with some other schools and faculties, I think that we do a little bit more.

- As mentioned in the previous chapter, as well as earlier in this chapter, many law schools have set up advisory committees that comment on all aspects of curriculum changes, and that such committees often, if not always, comprise members of the legal profession. At one such law school, this committee judges, legal practitioners and members of the Attorney-General's Department, representatives of the Law Society The school also has strong alumni of former students who have entered the profession, with which it is in close contact.

- One Dean described part of his responsibilities in the following way

The Dean's job is to talk to law firms and other employers to get a sense of the match between expectations and our graduates. I keep in contact with firms in a variety of professional ways, and we get positive messages. Its really through the Human Resources people from the firms who do the recruiting of law students – we have pretty structured contact through them. ... We don't survey the law firms about our students, but we get a fair bit of feedback though. Sometimes I get feedback that we could do more of this or that, but it is not about our students, it is about law students generally.

- A Dean at another law school conceived his role in similar ways to the Dean above:

We are visiting the firms all of the time, trying to find out all the time whether our graduates are suitable/satisfactory, and what we can do to improve them. We survey graduates once they have left and are in practice, to find out what should be in curriculum that they did not cover in their time. It is a comment type survey – we get qualitative feedback about gaps in the curriculum, and we will modify the curriculum to remedy these gaps.

- Other law schools kept in contact with the profession in other ways. For example, the dean at one law school is a member of the state's professional admission authority, and through that body “you can get a sense of what the profession is thinking”. The Dean of the other law school in the same city thought that this body could make some comment on the school's curriculum “but not in fact a great deal”. In particular, he found that employers often did not make any significant comments about what they wanted in the LLB program. Instead, he thought,

employers can formally comment on the curriculum as members of the [professional admission authority], as part of the accreditation process, but not in terms of saying this is what employers want, because they are starting from the Priestley requirements and asking whether [a subject and the program as a whole] fulfil the Priestley requirements.

- Contact with the profession at one law school has recently taken the form of the establishment of a Professional Relations Committee, which is

made up of members of the profession and other stakeholders in the school. The Dean meets with this committee six times a year

We keep them informed, to let them know what we're doing, run various ideas by them, get input from them and ideas. They are quite useful in just keeping the lines of communication open and taking particular matters into account.

A law school that has established a Faculty Advisory Committee that includes employer and judicial representatives mentioned that

we are interested in employers' views of our graduates ... We obviously want to turn out people who are adapted to the market. But we get a lot of feedback that employers don't want narrow graduates. The school has less involvement with the profession than other law school, but that is an area we are working on.

- Some law schools, as already indicated, have multiple contacts with the profession. For example, one law school has established "a whole series of advisory boards in particular areas, particularly for its many teaching programs". In addition, the Dean meets regularly with major firms

just simply to let them know where we're going, what we're doing, what are the developments in the Law School and to find out from them what their perceptions are. Whether they think our students are good. Whether there are problems we should be attending to. Whether they have needs that we haven't anticipated yet that they would like us to contribute to.

- Increasingly law schools are keeping in touch with the profession by sending them literature about the school and its developments. One law school sends out a bi-annual newsletter "that we self-consciously made newsy and accessible ... to really give people a flavour for what's going on around the faculty".

Another law school produces a newsletter three or four times a year and mainly distributes it in the local catchment area.

It comes out at particular months, it has a particular format, it talks about what the school is about, it talks about changes and things like that. Now that is read and it can sometimes produce input. We encourage staff with interests that coincide with interests in the Law Society to serve on Law Society committees in their subject areas. There is also a professional representative on our peak deliberative body, the School Committee, and the Faculty Council as well, and that meets at least twice a semester. And then there's this Practitioners' Advisory Panel, which is a body that has met at least once a semester, every semester since we were established, which is made up of senior lawyers from a range of legal practices, from government, a number of judges, most recently a representative from our elective training program. There's no fixed character to their agenda, no fixed things that it addresses, but rather from time to time as issues come up that I'd like their advice on in that form, I will raise it.

So we've discussed the upshot of our last school review. We discuss curriculum with them, because that's part of explaining to them what our graduates do, and that gives them the opportunity, and they're invited from time to time, to submit their views to us about what they think we're not teaching that we should be teaching or things we are teaching that they think we're over-teaching. They're usually better on the former than they are on the latter. Sometimes that will lead to a specific course proposal. More often it will lead to something that will influence how we teach. When we were developing the idea of improving our teaching and writing program, we discussed with them how we might do that and they were very keen on the idea, not simply of having a separate course, but of making sure that we maintained something the university required of us anyway, which was significantly non-exam-based assessment. And they were surprisingly supportive of that.

And then every three years we formally survey employers about how they find our graduates. We [also] survey a graduating class who've gone through the articles mode about how easy they found it to get work, to get an offer of articles, and what they encountered in the interview setting. It's an indirect indicator because if we started to see serious problems, which we haven't yet, with students obtaining work, the first question to ask is why? Does it have something to do with what we're doing in the school? And the same questions would be asked about what they're getting in interviews. Is there a pattern in the kinds of questions they're getting at interviews which would suggest something we need to attend to in the curriculum?

And finally, although this is not a constant or scheduled or systemic thing, we have been, by Australian law school standards, fund raisers. By that I mean we've set fairly substantial fund-raising targets on a couple of occasions. I justified both to the school and the university, on the basis that by going out and asking people for serious sums of money, particularly with the profession, you will get a lot of home truths about whether you were worth giving money to, and that's how it has worked out. Both times. You get some interesting stuff that is very pointed and, generally speaking, is pretty sensible.

- Some law schools reported having unusually intricate relationships with the profession. For example, one first wave law school explained:

To a large extent the LLB is dictated by externalities and I'm constantly surprised how frequently they arise. ... [These external factors include] the professions so far as the admitting agencies are concerned, but the profession actually has little interest in law school curricula, despite what might be said from people in law schools. You know, "We won't do this because of what the profession will think of them". Maybe on isolated issues, yes, but by and large the profession is not interested. The Law Society and the Bar Association have almost no interest in curriculum matters. The admitting authorities have initiated changes simply by changing the rules. They have inevitably done that without consulting universities. The other externalities though I'd say primarily come from elsewhere in the university.

The law school's commitment to close links with the profession, government and industry has been crystallised by the appointment of twenty-six Adjunct Professors who are distinguished persons from the ranks of retired judges, partners in major legal and accountancy firms, the practising Bar, the Australian Taxation Office, company directors and the public sector. They are involved in a structured way in the School's teaching and research programs and afford an excellent sounding board for new initiatives and proposed programs.

Then there are informal exchanges, quite a lot of them. We have been a school which has had very close links with the profession and the judiciary. Sometimes formal links through structures such as the Law Graduates Association, but also a lot of informal contact [through cocktail parties and dinners].

In this law school you can't overestimate the establishment connection, and leverage from the profession much more commonly comes informally than formally. So it's hard to explain how it happens but there are certain ways that things might be done, either because of judicial representation on the [university] Senate or through the admitting authorities or something like that. There's some sort of pressure or some sort of adjustment might be made. It's a very exposed law school in the sense of the profession finding out what's going on because so many students are children of lawyers or end up clerking for them or being judges associates, and the information gets to them and then there are very often comments, proposals, suggestions, criticisms that come from them so that means the school has become very sensitised to the perceptions out there.

This is very different from the way it used to be when we were a separate faculty and the faculty structure was very different. We had a Faculty Board, and there were members of the profession and the judiciary on that board who would actually turn up for a cup of tea and then actually make contributions on all kinds of things. The judges argued against International Humanitarian Law and they argued against Ethics and Professional Conduct.

From my personal point of view the input of the profession is a bit out of proportion in that sometimes they're not always a progressive factor in the development of the Law School. It has not been appreciated that they have stifled development within the schools. "It's not the way it was when I was there."

This law school confessed to having a fraught relationship with the professional admission bodies in its state.

We have found with curriculum development that dealing with the [professional admission] boards is somewhat unpredictable. [This state] is unique in having a profession divided at the point of admission. There is the Barristers Board that looks after barristers' admissions and Solicitors Board that looks after solicitors' admissions. They actually have the same rules, but the Priestley rules in this state are taken as a minimum and that's how they're drafted.

We have found that the application of the rules has been different by the boards and we have found that the boards have sometimes imposed conditions on us that they have not imposed on other universities. It is the Barristers Board that is the typical problem in that respect and it's part of the establishment connection. All of those men (and women) on the Barristers Board are graduates of this university and they pay closer attention to what happens here than they do to our sister institutions in this state.

So we found, say with the JD, that we were having a lot of trouble persuading the Barristers Board to accredit the JD, even though it covered the Priestly 11 and was three years of law content. That was despite the fact that the Solicitors Board had accredited the JD and despite the fact that the Barristers Board had accredited the graduate LLB of three years [in the two other law schools in this city].

Now pointing out the inconsistencies in that doesn't help. They just seem to pay much more attention to what's happening here than perhaps at the other places because [it is their] alma mater. That's presents a real difficulty.

It is interesting to note that some law schools, particularly those in small states or territories, through no effort on their part, have very close relationships with their local profession. A small third wave regional law school explained:

This is a small community and a lot of information and feedback is obtained informally. {we used to have] a very close working relationship with the profession. The profession were on our boards and committees. We were on their boards and committees. They taught here. We did CLE stuff for them. So there was a very close interaction. So we got very good feedback on an informal basis from the profession – of course that's the major employer – but also with the public service, which is probably the next major employer, for the same sorts of reasons.

In the last few years, however, the profession's involvement in curriculum matters has waned as a result of the law school's integration within a large faculty. The profession is not represented on faculty committees.

Likewise while once the school's operations were closely scrutinised by the local Law Society, this is no longer the case.

The Law Society here knows a lot about our degree program, the Society has far more of an impact on the law school than I can imagine in any other place in Australia. I'm sure that the Law Society [in another state] most of the time has no idea what's going on at [the law schools in that state]. Whereas here, and it's happened once or twice in the past, if a student has a particular problem with the Law School they go to the Law Society.

So in terms of curriculum development, one ethos of this particular school [is] the importance of making the law degree practicable. Now that's because of our close relationship with the Law Society that it is, and I suppose that affects curriculum development as well. [There have been a number of instances where] our curriculum has altered specifically in response to the Law Society saying "can you

sort this?’ so you don’t have this ongoing need for justification of the subject. They keep a very sharp eye on this.

So far in this chapter, we have documented the mechanisms law schools have used to keep abreast of the profession’s views of their law curricula. The remainder of the chapter analyses data from the profession’s point of view.

Employer expectations of legal education and their satisfaction with law graduates

One law Dean observed in an interview that the profession had become more sophisticated consumers of legal education and training, and were more willing to express dissatisfaction with aspects of legal education, to discuss how law should be taught, and what could be gained from legal education – both practically and pedagogically. This Dean reported that the legal profession’s biggest complaint about law schools is that they produce graduate lawyers who are not committed to legal practice and who either leave after a few years, or are not ‘well-rounded’. It was felt that law schools did not sufficiently prepare students for the realities of legal practice.

Other law Deans thought employers were able to indicate whether they were very happy or unhappy with what law schools were doing, as one Dean commented “but it is not my experience that employer will say why are you or aren’t you teaching X or Y”.

As mentioned in Chapter 1, 52 employers were interviewed for this project (see Chapter 1 to find out how employers were selected and the range of employers interviewed). Specifically, employers were interviewed about what they looked for in law graduates and whether they thought law schools were providing graduates with the knowledge, skills and attributes they were looking for, and furthermore, whether they thought it was the role of law schools to provide these knowledge areas, skills and attributes.

As with the law school visits, we were less concerned about obtaining representative views from the profession and, instead, were more interested, in the short time available to conduct these interviews, to obtain information and opinions from those from the profession with access to facts, statistics, and knowledge of the process, and furthermore, who were willing to give their time to the project.

Consistent with what has been mentioned by some law staff, interviewees – both HR personnel at large law firms and the recruiting partners at all sizes and regions of firms – tended to comment about legal education and the LLB only in terms of their recruitment needs. They were therefore able to list the knowledge areas, skills and attributes they looked for in graduates but were not able – and often not willing, even when prompted – to indicate more specifically how these skills and attributes could be met by the LLB. This is not to suggest that interviewees did not think they had a role to play in advising law schools about curricula. Paradoxically, most interviewees thought they did possess enough of the necessary expertise to make comments about curricula. They thought that their

position as practitioners gave them a special insight into what law students needed from their legal education, insight which some of them thought academics lacked. Furthermore, most interviewees were already involved, or wanted to be involved, in consultations held by law schools about curricula and teaching. But while interviewees held strong views about legal education and the LLB, these views tended to be general in nature; most of them did not offer specific suggestions for curricula or teaching.

Two points should be noted before interviewees are described in greater detail. First, the smallness of the sample interviewed for this project means that we could not be certain that interviewees' views are representative of the legal profession. Second, despite the comments in the previous paragraph, the interviewee group was by no means a homogeneous one, and given this, it is perhaps unsurprising that they, in fact, expressed a wide variety of views about legal education and the LLB.

Examples of these views are as follows:

- Some employers located in rural areas mentioned that while good academic results was important, they also looked for recruits with a connection to the rural area in which the firm is located. Specifically, they were looking for recruits with a willingness to get involved in community activities and to take on a leadership role in the community. It was their belief that if a person had no country living experience or country connections, they were unlikely to stay in country. Such firms were quite happy with the education that law schools were providing law students – “they’re getting the basics and we do the rest”. The firms make time to mentor and coaching new recruits, and as a result, were quite happy for law schools to exclude any practical component (such as work experience) from the LLB. What they hope is that law school would provide graduates with good communication and client care skills. “The [recruit] needs to have compassion, sympathy and the capacity to listen.” The furthermore thought that new recruits need to have a basic foundation from which to begin, basis that they believe law schools are providing. These types of firm often had no direct contact with any law schools, due to their physical isolation; however, senior partners did have contact with the local law society and any failings in potential recruits would be mentioned to this local law society (the managing partner at one of these rural law firms was the past president of the local law society).
- Two large law firms mentioned that they were looking for in new recruits was an employment history that showed some form of employment stability – a factor that was outside the control or influence of law schools – but this was less important than a good academic record “with a high GPA – we are looking for a distinction average”. Extra curricula activities during studies would also be viewed extremely favourably, especially volunteer or community work. Work experience while at university was also seen to be essential as it was seen to contextualise the legal knowledge obtained at the university level. “Also it would help them pick up admin and typing skills, teamwork skills and ability to handle conflict.”

This they thought was within the control of the law school and both interviewees from these two large law firms thought that law schools should teach and encourage students to interact well with others, as well as free up students time to enable them to undertake curricula activities while studying.

Both interviews from these large firms mentioned that they were not aware of any major changes to law degrees but one recent change that had come to their attention and had been welcomed was the introduction of “practice courses”. One interviewee had direct contact with one of the law schools in his city as structured training is offered in-house by lecturers from this law school, who pay monthly visits to the firm to update knowledge in specific legal areas that the firm specialises in. New recruits have the opportunity to attend seminars run by these external lecturers, many of whom would have taught these new recruits. “So there is continuity of a form.”

- Two law firms located in the same city had very similar (and seemingly inaccurate) information about the two law schools in their city. In the words of one of the partners at one of these two firms, the difference between these two law schools are as follows:

One is a sandstone, traditional and conservative, offers combined degree and a theoretical approach to, for example, Constitutional law, whereas the other is a red-brick that offers a practical course, useful electives, where students can specialise in specific areas, for example, immigration, native title – 21st century courses. Where we would recruit from would depend on the position open within the firm.

Both interviewees mentioned that irrespective of the law school attended, what they look for in recruits is “how they’ve done in degree – we are looking for a consistent academic record, outside activities and interest areas”. They each listed favourable attributes, including social competence, intelligence, ambitiousness, a strong interest in and commitment to the firm, and a willingness to be a good ambassador for firm with clients and other members of the profession. While they did not think the law school could foster all such attributes, they thought that providing students with excellent communications and “high standards” would foster the attributes they were looking for. One interviewee from one of these two law firms thought there was a gap in written skills (“structure and content, punctuation and grammar”) and work skills (“how to delegate, treat secretary, manage time, interact with peers, partners etc”) – “new recruits lack an understanding of how the real world works and how to communicate in that world”. The interviewee from the second law firm thought new recruits straight from law school had “underdeveloped work skills and habits, for example, they don’t know when to write a letter or memo or how to answer the telephone”. The firm does attempt to provide this type of training but felt that basic training should be provided from law schools that firms could then build on. Both firms thought law schools were not providing this basic training.

The interviewee from the first of the two firms further added that he was involved with Law Review Implementation Committee at one of the law schools:

Law schools teach what lecturers want to teach... what they think students should know...they should look at what students and employers want. Students would benefit from management skills training program in their 4th year, similar to the training accountants receive, for example, to teach them how to resolve conflict, understand individual difference, diversity and develop their interpersonal skills.

Both firms did express some misgivings about the quality of Practical Legal Training offered at one of the universities in their state – “it is not regarded highly or relevant to us when recruiting”, particularly because in-house training provided by the firm. “We are concerned about lack of uniformity between both universities - of late, there has been too much upheaval ...students do not speak highly of the PLT”.

Otherwise, both interviewees thought the LLB met their firm’s needs and was “happy with the academic content – both universities provide students with a well-rounded knowledge of law”. Furthermore, he thought that the quality of lectures was good - “no complaints”.

- An interviewee that mentioned that her firm looked for applicants with good academic results, added that the types of subjects that students undertook was equally important. “Criminal law is not suitable for our firm.” Her firm, too, was in favour of students undertaking part-time work at university, as well as travel and community involvement. “And, unlike other firms, we make no specifications about students’ second degrees...only to check if they’ve done reasonably well in that degree.” She mentioned that her firm “dealt with clients at the top end of the market. New recruits therefore need to be well-balanced individuals.” In fact, a good cultural fit is considered to be important, even if a high academic achievement and the types of subjects studied qualify potential recruits to enter the second stage of the recruitment process. When told that all these attributes the her firm looked for, seemed to fall outside the influence of law schools and the LLB, this interviewee responded that she did agree with this assessment “to a point – law schools would help potential recruits by teaching them good communication skills and encouraging students’ contact with the profession. Otherwise, “it really all comes down to the student [and potential recruit]. The firm, furthermore, did not have a preference for students from any particular law school – “this is totally irrelevant. Any particular concerns I’ve raised are concerns that all law schools, and not any particular law school, have failed to address. And these concerns are few.”
- Some firms were concerned there was not enough of a practical element to the LLB. As one such interviewee explained: “pure academic degree doesn’t equip law graduate to think logically – it’s a piece of paper acting as a pre-requisite to [practice]”. These law firms thought that law

graduates lacked the ability to know where to look for answers and make practical applications of law to a given legal problem – “clients don’t want an explanation of the law, they want a way to solve (their problem)”. Such firms, on the whole, claimed to not to look for good grades, but instead, like the previous interviewee, did give some importance to the subjects studied at law school, as well as to students’ involvement in part-time and “community work” during their undergraduate years. As one interviewee – a recruitment manager – explained, “we steer away from high distinction and distinction students if they don’t exhibit good interpersonal skills”. The firm additionally thought that an enjoyment of the practice of law was also important. He thought law schools could foster this by providing students with “practicals”, thereby “killing two birds as these practicals would give them the necessary skills for real world work”. Another interviewee echoed these sentiments by stating that “what is most lacking from law school training is that students are not given any enthusiasm for the law. Not that I think the law teachers per se are to blame. The problem is the curriculum – it does not enable the any practical application of the law.” Another recruitment manager commented:

My expectations are too high. A law degree provides a great basis for practising law but for any job, an enormous number of practical aspects have not been dealt with [within the degree]”. There needs to be more practical application – dealing with people, communication, interpersonal skills, for example, writing a decent letter, having a conversation, dealing with difficult clients/partners.

Similarly, another interviewee thought that law students were “not taught the practice of law as opposed to this is the law”. He thought there needed to be a greater integration of theory with practice within the LLB – “there needs to be a bridging of the gap”. In particular, he thought greater emphasis needed to be placed on communication skills (and the ability to listen), a questioning approach, organisational ability (and for recruits to use their initiative, to not assume and to ask questions), the ability to meet timeframes and deadlines and the ability to share work and consult. This interviewee further mentioned that he did not have contacts with any law schools but mentioned that he would welcome any opportunities to interact with law schools about curricula, however informally. When told that many law schools had reported that they consulted the legal profession about curricula in various formal and informal ways, he commented, “this is good to hear. We never hear about these activities.”

- While other law firms also placed an emphasis on skills, what they mentioned they were primary looking for in recruits is “an ability to think on their feet and react in situations under pressure. We also need them to demonstrate interests beyond law.” None of the firms who made these types of comments chose recruits according to academic results. Instead, “we’re interested in a person who is likely to be a good lawyer, fit into the firms’ culture, and identify with people who have come from less privileged backgrounds.” In the opinion of one interviewee, “students who had to struggle to get through their degree, who showed initiative,

community involvement and/or a prior non-law employment history” all appeal to us. When asked what role they thought the LLB could play in providing the attributes they were looking for, if at all, one interviewee mentioned that he thought law schools offered only limited training in communication and management skills. This, he thought, was particularly true of certain law schools and for this reason, the firm preferred recruits who had studied at the newer law schools in the state rather than at the sandstone law school. He explained that he was also being guided in his opinion by potential recruits – graduates from the newer law schools seemed particularly interested in the area of work in which the firm specialised – commercial law.

- Other law firms offered who mentioned that they had a formal in-house training program for graduates “to bring recruits up to speed”, they were hoping law schools would place a greater emphasis on business and management related skills “to teach students management skills, real life skills, how to relate to other people, gaining trust of client, to get commercially good result. . . which will produce the best outcome for everyone”. One such law firm had a senior member of staff who was in contact with one of the law schools. When these ideas were shared with the law school, this senior staff member reported that he was told that the law school’s curriculum had been set and was difficult to change. By contrast, another interviewee who also hoped business skills would be given greater emphasis at law schools nonetheless thought the LLB provided:

an excellent grounding for young people wanting to move into business. Teaches them a discipline, a way to think, a way to research, a way to deal with a mountain of information and a way to really cut to the heart of things. That kind of thinking is very necessary in the corporate and government world.

He did, however, think there were key skills that the LLB failed to teach, most of which should be taught “on the job” but some of which needs to be foreshadowed by the LLB:

[Employees] are required to judge a situation right from the moment [they] start. . . [they] will be under pressure, with people demanding answers, demanding a ‘can – do’ attitude. Students are not taught to be savvy. [It is] necessary [that this] be added into degree somehow.

- One employer was involved actively with one of the universities in his state – as a guest lecturer at the law school and as an Adjunct Professor at another school – thought that it should be remembered that a good number of law graduates will never work in the profession at all. “I think they need the tools to move into other areas. . . need something more than the LLB presently gives them.” He added that these comments were confined to the law schools in his state; he was not familiar with other law schools. He mentioned having lived in Europe for 20 years and found that graduates in Europe were “rounded off much better. . . they spend more time in their university. . . [doing] postgraduate study. He further added

that in Australia, the private law schools were creating a particular kind of graduate:

and this is fine but the traditional law schools need to be scrutinised more, to ensure they deal with core subjects (constitutional law etc) adequately. The generic lawyer is not receiving adequate preparation by the LLB degree. We can do more to equip those people for the tough world out there.

- One interviewee mentioned that he knew that the “top ranking” law firms in his region are signing up employees ahead of time, “literally creaming off the system and the rest are disadvantaged from this point on - they don’t get a fair deal”. He has noted that most graduates are hired on basis of academic results and observed that it is an academically based system that doesn’t give justice to a vast number of students. He thought this was particular unfair given that, in his opinion, the LLB:

provides good general legal knowledge in academic sense and skills needed to gain that knowledge – research and analytical. It engenders ability to articulate thinking but doesn’t provide the legal practice skills. But then you wouldn’t expect it to do this. This is the role of PLT over and above LLB. The LLB purpose is to educate students in the academic discipline in law and it does this. If we were to lose sight of this primary objective with a view to turning out people suited to the profession I think we would lose a lot. Law graduates do many other things than practice as lawyers.

- One interviewee from a commercial law firm thought that the LLB does not equip law graduates to commence professional life. She was concerned about changes that have occurred to the curriculum, for example, semesterisation, which she believes does not enable students to pick up all principles of law. “With these changes, no other skills can be picked up with the exception of IT skills. Tools to research questions of law so they understand what the principles of law and where to go looking for them – this is receiving less focus because full-year subjects have been squashed into single semester subjects.” She does, however, think that the law graduates that her firm are coming into contact with “are very impressive in terms of their capacity for learning”. She is a member of local law society and has raised concerns about the level of skills that law graduates are coming out with, and is aware that there has been some discussion by her law society of conducting a review of the LLB at one of the law schools in her state. She thinks that one of the main questions that would be raised by such a review is: can students learn enough in one semester about the principles of law?

Another employer from a commercial law firm thought that law schools gave students an understanding of the law – how to apply the law, analytical skills and conceptual skills. He thought, however, that law schools fail to teach the graduate to collaborate, manage time, deal with people (work with supervising partners and support staff), clarify expectations and timeframes, communicate effectively (business

etiquette). In looking for employees, therefore, asks potential candidates about their level of exposure to work experience that has enabled them to develop their project management skills, conceptual thinking skills, ability to work under pressure, ability to clarify and communicate with people. While the graduate's academic record is given considerable weight, outside interests and work experience – particularly graduates' involvement in work that required some responsibility for management and organisation, community groups and public speaking – were also considered to be essential. It was the firm's opinion that only through such experience were law graduates able to acquire the skills their law schools were failing to provide them with.

- A group of interviewees thought that law graduates did not come out with good research skills, in turn a result of the quality of education having slipped. They expect graduates to have an understanding of basic legal principles and research skills; however, they have increasingly found that law graduates do not meet their expectations. One of these interviewees further mentioned:

They do not know how to use law library to maximum effect. They go first to the Internet. There is a lack of understanding about how to look for index, words, phrases. [The law schools] must give more of emphasis on Internet rather than library skills. Yet the Internet is too broad and things get missed...

Three of these interviewees thought that law graduates had been equipped with legal principles and a certain "legal logic" that they looked for in graduates but all three agreed with the above comments, that graduates' research skills were poor.

- One interviewee mentioned that his firm was looking for graduates with skills in planning and organisation, and collaboration and teamwork, as well as interpersonal and communication skills. They were also looking for graduates with "client orientation, initiative and legal excellence". They thought of the two law schools from which the firm had employed graduates, the older law school gave more of an emphasis on black letter law and graduates from this law school seemed to have greater exposure to commercial subjects. These qualities were appealing to the firm. The firm, however, thought the newer law school provided subjects that were more contemporary and broader, and therefore were equipping law students with skills and a way of thinking about the law that the firm found to be useful.
- Another interviewee thought there was a great degree of variation in quality of graduates, which he thought "was driven by a small percentage of able students in each year". He does not think the LLB "delivers – particular the practical skills required, for example, letter writing". He is conscious that these skills would be developed to a large degree in the workplace "and it is not important for them to be focussed on too much in the LLB"; however, he thought they should be given greater emphasis in

the LLB than what is currently given. He thought the main purpose of a law degree should be to encourage students to expand their legal thinking “rather than doing a typing course. There need not be an over-emphasis on the practical. But certainly more than there currently is.”

- Some employers thought the LLB should provide general coverage rather than making students experts in any particular area of law. One of these interviewees mentioned that his firm looked for candidates “who had focused more on commercial subjects and less on Family Law, for example. They should make appropriate choices during their degree to have an idea of where they are going.” He further thought law schools should give students the possibility to concentrate their attention in this way. His firm does engage with one university about curricula and the managing partner is involved in the law school’s curriculum review. The firm’s involvement was initiated by the university. The interviewer mentioned that because he was not personally involved in the review, he was not able to comment on which aspects of the curricula the firm was asked specifically to comment on. He was, however, aware that all the law schools in his state intermittently request input from firms like his – that is, commercial law firms – about the balance of commercial law in the LLB and what should be covered in commercial law subjects. The law schools either approach these commercial law firms either directly or through the law society. Furthermore, the firm’s Legal Education Committee has an on-going link with all law schools in one way or another. “Hopefully through all this contact, we will be able to encourage law schools to strive for legal excellence and to stretch and stimulate good students.”
- Some interviewees mentioned that they were more than pleased with the “theoretical focus of the LLB”. As one interviewee further elaborated: “What is a university there for? To produce graduates capable of thinking at a high level. And this is the role of universities – to turn out people who are capable of original thought”. Another interviewee mentioned, contrary to comments reported in dot points above, that she did not want to move towards becoming “a commercially based training institution. Let’s remember that some law graduates go into other sectors of work. We also do not want to lose the quality of education we have now.” One other interviewee who echoed these views furthermore added that if he had concerns about the quality of law graduates applying to his firm that these comments would best be addressed to the students/graduates themselves rather than to the law schools – “my concerns have little to do with the LLB”.

While a multitude of views were expressed by interviewees, there clearly were some common themes, not the least being the importance of practical skills. While most employers interviewed thought particularly communication skills should be given greater emphasis in the LLB, there were some who thought that skills training in law schools was adequate. Others still did not think practice-related skills should be given too much emphasis in the LLB, given that law graduates went to a multitude of career destinations and/or because the interviews

were loathe to see law schools be converted to trade schools. Education of the type that was being fostered by law schools was training graduates to think “at a higher level” and “be problem solvers” and this, to these latter interviewees, was equally important to the workforce as practical skills.

Summary

In this chapter, we describe what efforts law schools made to consult employers about curricula, and show that these efforts are variable. At many law schools, members from some or all levels of the legal profession are invited to join committees responsible for overseeing the curricula, advisory boards and/or review teams. Furthermore, at some of these law schools, the Dean or Head of School sees it as part of his/her duties to liaise with the profession, seemingly on an informal basis. Other law schools have contact with the legal profession or the state or local law society, but this is not of their own choosing.

Employers who were interviewed for this project did not all have contact with any law schools; however, irrespective of the whether they had such contact, most employers interviewed expressed similar views to each other about the emphasis given in the LLB to practice-related skills - they thought it was insufficient. This view was held even by those interviewees who had no other criticisms of the LLB. Most commonly, interviewees thought there was not enough of an emphasis on communication skills and “team work”. Employers from commercial law firms were furthermore dissatisfied with law graduates’ lack of business-related skills, and thought that most law graduates could not “hit the ground running”.

While all those interviewed looked for very specific sets of skills and attributes (and areas of knowledge – some employers looked carefully at what electives graduates had “specialised in”) in new recruits, very few employers interviewed expressed a preference for particular law schools.

Most of the employers interviewed, whatever the size or location of the firm, mentioned that their firm had set up courses for new recruits to orient these recruits to the nature of the firm’s practice. Such courses were not viewed to be a comment about any perceived deficiencies in LLB programs.

We are not sure how representative of the rest of the legal profession the views of interviewees were, especially of non-law firms (who were poorly represented in the interviewee sample group). These discussions with interviewees, however, did reveal that employers can have firm views about the LLB – either positive or negative – although not all, perhaps only a very few, can translate these views into specific suggestions for teaching or curricula. For very good reasons, many employers did not think this was their role.

CHAPTER TEN

STUDENTS' ASSESSMENT OF THE LLB

This chapter marks a slight departure in style and format from all other chapters in this report, first, because it reports data collected from law students, while data reported in other chapters was obtained from law teachers during law school visits. While student learning represents the most important aspect of legal education – its *raison d'être* – for very good and obvious reasons, students lack the educational expertise to critique legal education in any great detail. Instead we found – and students themselves thought this – that while students, much like employers, were able to make general comments about what they thought “worked” and what did not, and what they thought there was too much or too little of, they were unable to convert these opinions into specific suggestions for curricula or teaching. Also similar to many of the employers’ interviews, students tended to frame their opinions about their legal education almost solely in terms of what knowledge and skills they thought they would be required to have to participate and function in the workforce. This is not to dismiss the opinions of students (or employers, for that matter). On the contrary, their opinions are not only valid but also important; however, their suggestions for curricula and teaching are not comprehensive, and will need to be converted by law teachers into practicable modifications to curricula and/or teaching (if this is what is perceived by teachers to be required).

The second way in which this chapter departs from other chapters in this report is in the nature of its content, which is largely numerical or based on analyses of numerical data – the main source of student data for this AUTC project was collected through a written survey. As mentioned in Chapter 1, penultimate year law students were asked to complete a written questionnaire in class about various aspects of their legal studies. The survey design that was adopted is described in greater detail in Chapter 1. It is, however, worth mentioning at this point that the research paradigm that informed the design of the written survey necessitates representativeness, to ensure the data’s validity. In this case, the respondent group needed to be representative of all penultimate year law students in Australia, in the year 2002. By contrast, the research paradigm that informed the design of the law school visits does not require representative findings, for the data’s validity to be ensured. The contrary recommendations of the two different research paradigms, does not enable the data obtained from the student survey to be compared and contrasted with the data collected during law school visits.

The written survey of students, however, was not the only source of data from law students, although it was the main source. Interviews and focus groups were also conducted with 67 (primarily) penultimate and final year students, who were asked to comment on the findings from the written survey, as well as to comment more generally on their expectations of, and satisfaction with, their legal education. Data from these interviews and focus groups will also be reported in this chapter. The sample of students, however, who participated in the interviews and focus groups was not only small but participants were chosen in a purposive and ad hoc way, rather than in the representative way they were chosen for written survey. These interviews and focus groups largely came about because some participant law schools were not able to administer the student survey (this is also mentioned in greater detail in Chapter 1).

The interviews and focus groups were therefore largely added to the overall project design at later stage to give students from the five law schools who did not administer the survey some opportunity to participate in the project. The design of these interviews and focus groups, although ad hoc, was, by contrast to the written student survey, informed by the same research paradigm that informed both the law school visits and employer interviews. As such, the data collected from students in interviews and focus groups forms a useful and interesting juxtaposition to the data collected from both law teachers and employers.

The written survey of penultimate year law students

The students who participated in the survey

Penultimate year law students were chosen for the written survey because it was thought that penultimate year students were close to the end of their LLB degree and were therefore able to comment on large parts of the LLB program. Furthermore, it was thought that, in their responses to items in the questionnaire, penultimate law students would be less likely than their final year counterparts to be influenced by their hopes and fears about their fate upon completion of their degree, which for final year students was closer at hand. Nonetheless, while penultimate year law students seemed the most ideal group to target for our research purposes, from a logistic point of view, a number of law schools had difficulties identifying such students at their school. For this reason, eight law schools were unable to provide a figure for the number of penultimate law students in the LLB program at their school. We do, however, know the numbers of penultimate year law students who participated in the survey through a question in the first part of the questionnaire. By comparing this figure to the projected number of penultimate year students at the law schools that yielded the lower to middle range response rates, we conservatively estimated that the response rate to the survey was 36.6%; it may have been higher than this.

The representativeness of the respondent group (of the wider penultimate year law group of which they were part), however, was better than what the lower than expected response rate would suggest. By comparing the figures to the enrolment figures reported in the various Centre for Legal Education figures (mainly the Legal Education Yearbooks, 1995-1999, which are, at the time of writing, contained the latest comprehensive national law student figures), we found that no sub-group of students was over-represented among respondent group – according to age, mode of study (full-time enrolment, etc), type of program (straight LLB, BA/LLB, BEc/LLB, etc) – except women. And even then, women were only over-represented by approximately 5-6%. By comparing the results to the Centre for Legal Education's Career Intentions (Roper, 1995; Armytage and Vignaendra, 1996) and Career Destinations reports (Vignaendra, 1998; Karras and Roper, 2000), we also found that the respondent group also did not seem to vary to any great extent according to their reasons for choosing law and their career intentions.

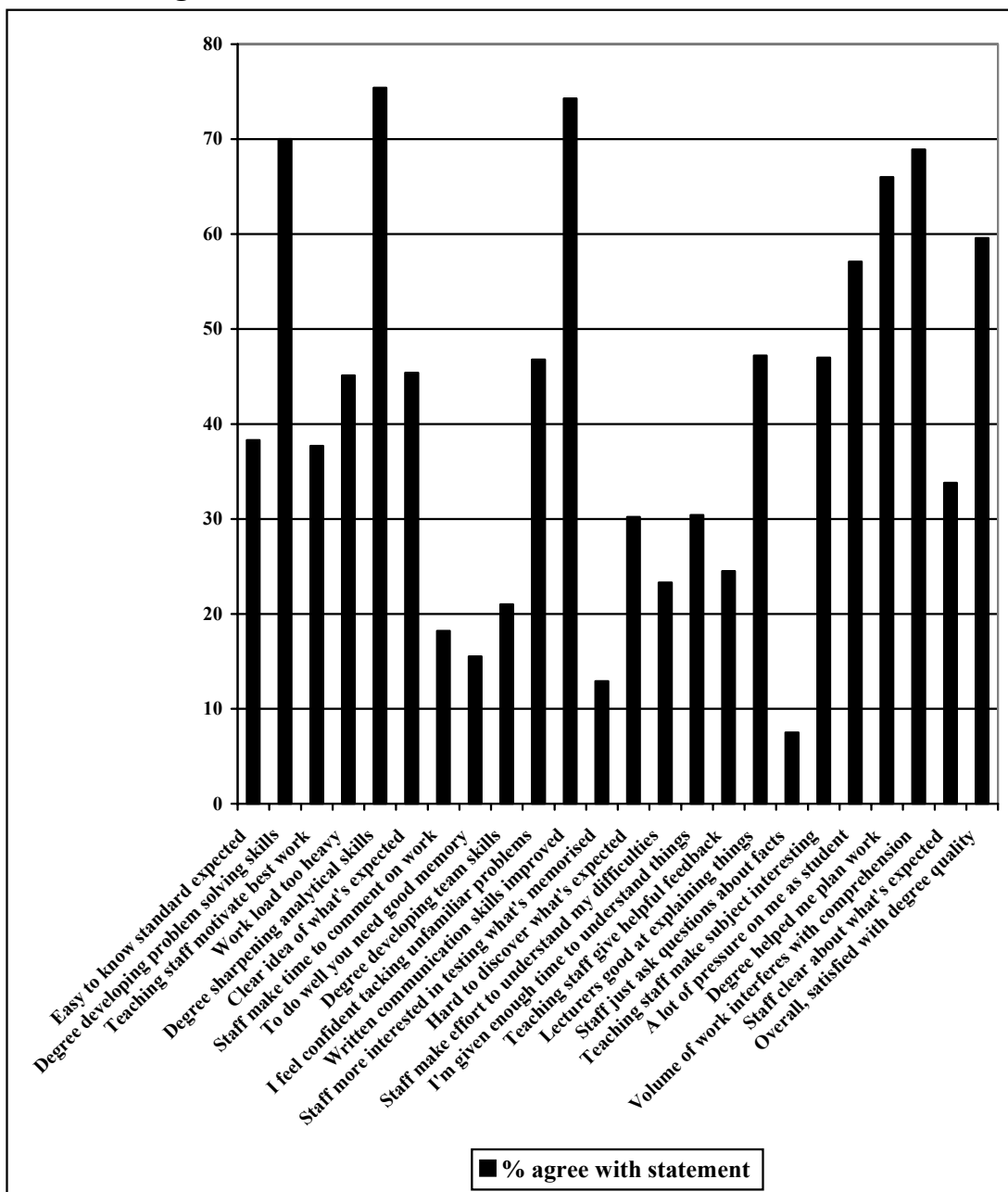
National and institution-based responses to all items in the questionnaire

Figure 10.1 below shows how students' level of agreement with items in the questionnaire that were modified versions of items used in the Graduate Careers Council of Australia's (GCCA) Course Experience Questionnaire (CEQ). As this

figure shows, what students agreed with most was that their LLB degree was sharpening their analytical skills, improving their written communication skills and developing their problem solving skills – 70% of respondents or more agreed with each of these items. Over 60% also thought that their work planning skills were being developed. By contrast, only a little more than 20% agreed that team-building skills were being developed.

There was a low level of agreement for statements suggesting that the LLB program was about memorising and regurgitating facts; however, over 60% thought that the volume of work students were required to undertake interfered with comprehension of the material.

Figure 10.1
Level of agreement with items based on the GCCA CEQ – overall results



With respect to their opinion of teaching staff, over 30% thought staff were clear about what was expected and motivated students to their best work and over 40% agreed that staff made lectures interesting. Just over 20% thought staff gave enough time to comment on their work and less than 20% thought staff made time to understand their difficulties.

Figure 10.2 shows institutional differences to four items in the questionnaire that were based on the GCCA CEQ. The institutions are presented in a random order not intended to be discernable to the reader. The aim of Figure 10.2 is to show that there were considerable institutional variations in the level of agreement to certain items. Furthermore, at any given institution, a high level of agreement with one item on the questionnaires did not automatically result to a high level of agreement with another.

Figure 10.2
Level of agreement with items based on the GCCA CEQ – institutional differences

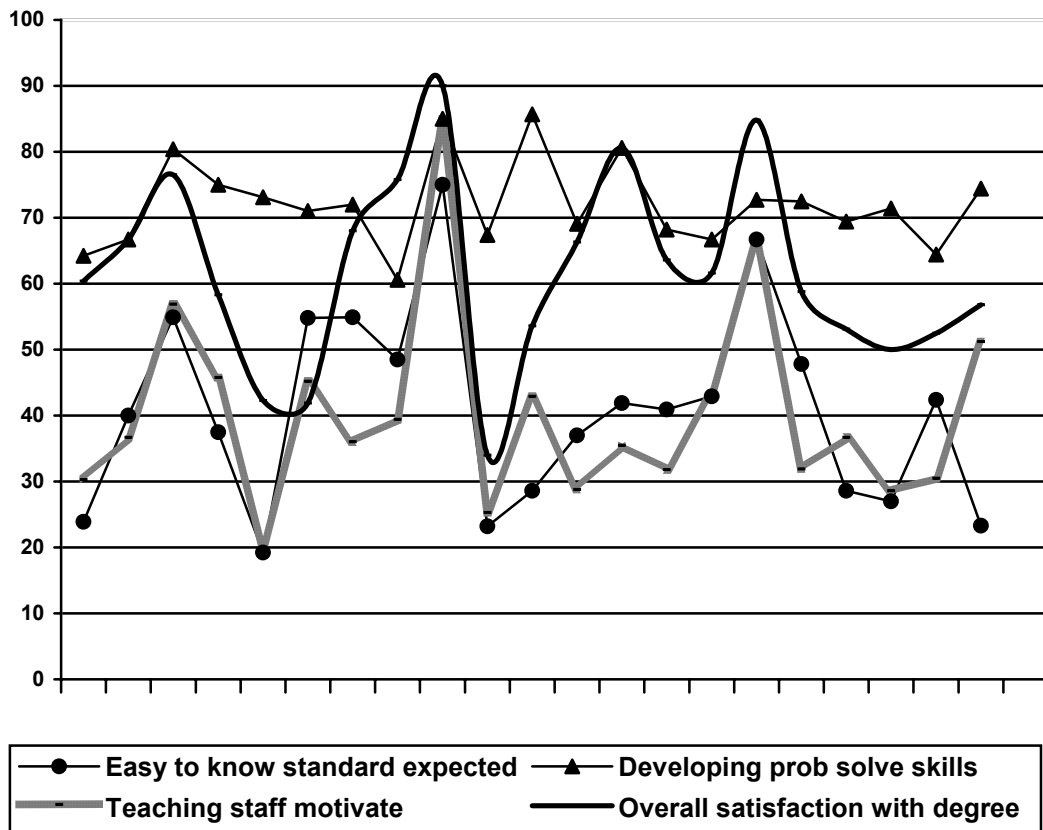
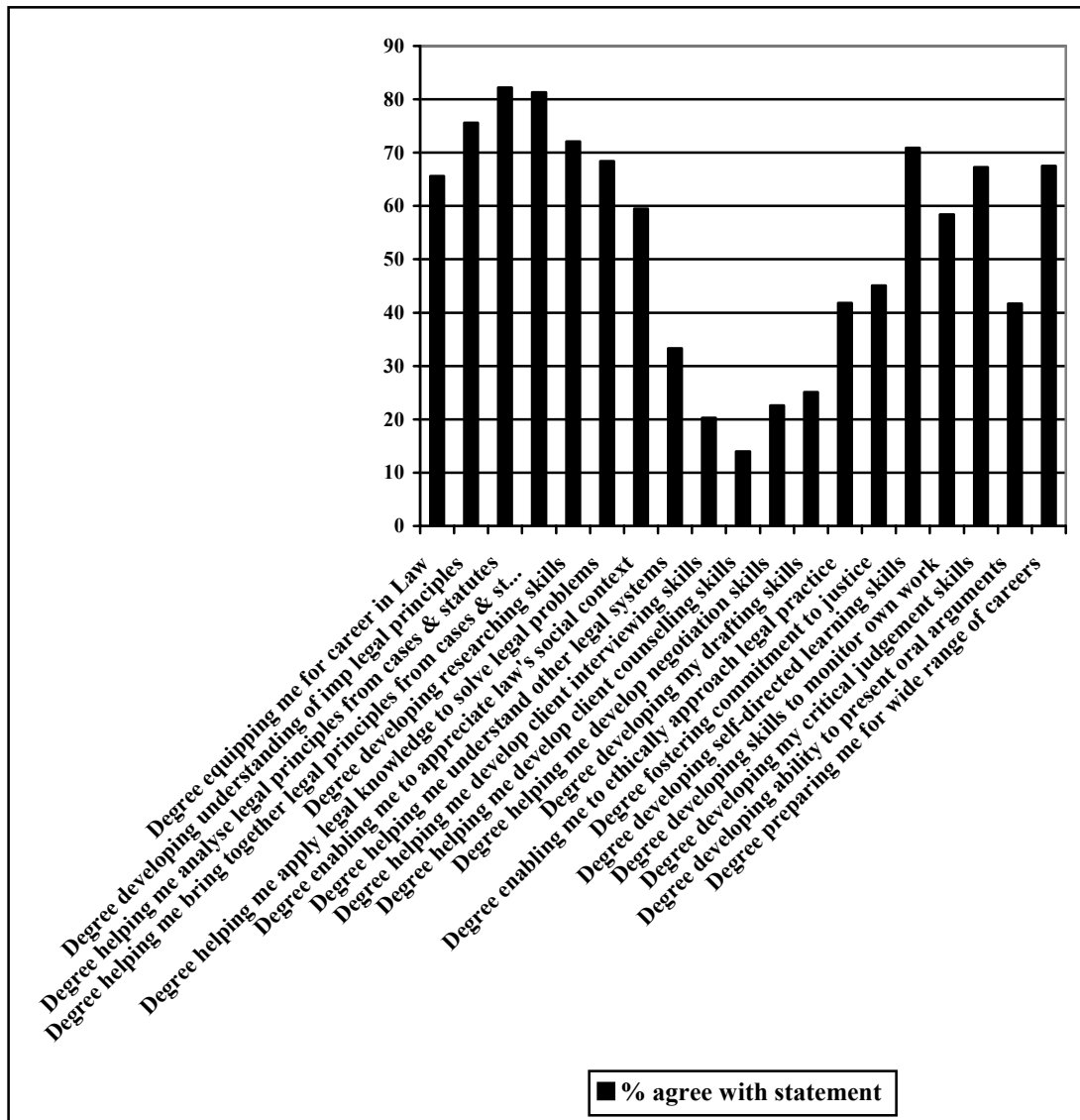


Figure 10.3 shows the overall level of agreement to LLB-specific items in the questionnaire. As can be seen, there was a high level of agreement that the LLB enables students to develop an understanding of legal principles, to analyse legal principles from cases and statutes and to bring together legal principles from cases and statutes – 75% of respondents of more agreed with each of these statements. Over 60%, each time, agreed with the statements that their research, critical and self-directed learning skills were being developed and that they were being taught legal skills to solve legal problems.

Figure 10.3
Level of agreement with LLB-specific items – overall results



Interestingly, an almost equal proportion of students – again over 60% each time - thought that their law degree was preparing them for a career in Law and for a wide range of careers. As for specific skills required for legal practice – client interviewing, client counselling, negotiating, drafting – just over 20%, or under 20%, of respondents agreed that the LLB was providing them with such skills. Over 40% thought their

LLB was giving them an ethical approach to legal practice and a commitment to justice.

Figure 10.4 shows institutional differences to four of the LLB-specific items. Again, the institutions are presented in a random order not intended to be discernable to the reader. And again, the aim of Figure 10.4 is to show that there are institutional variations in the level of agreement to certain LLB-specific items. The institutional variations, however, are seemingly less than they were for the GCCA CEQ-based items. Also by contrast with what was found with the GCCA CEQ-based items, within institutions, level of agreeing to one LLB-specific item did, in some cases, predict level of agreeing with another LLB-specific item.

Figure 10.4
Level of agreement with LLB-specific items – institutional differences

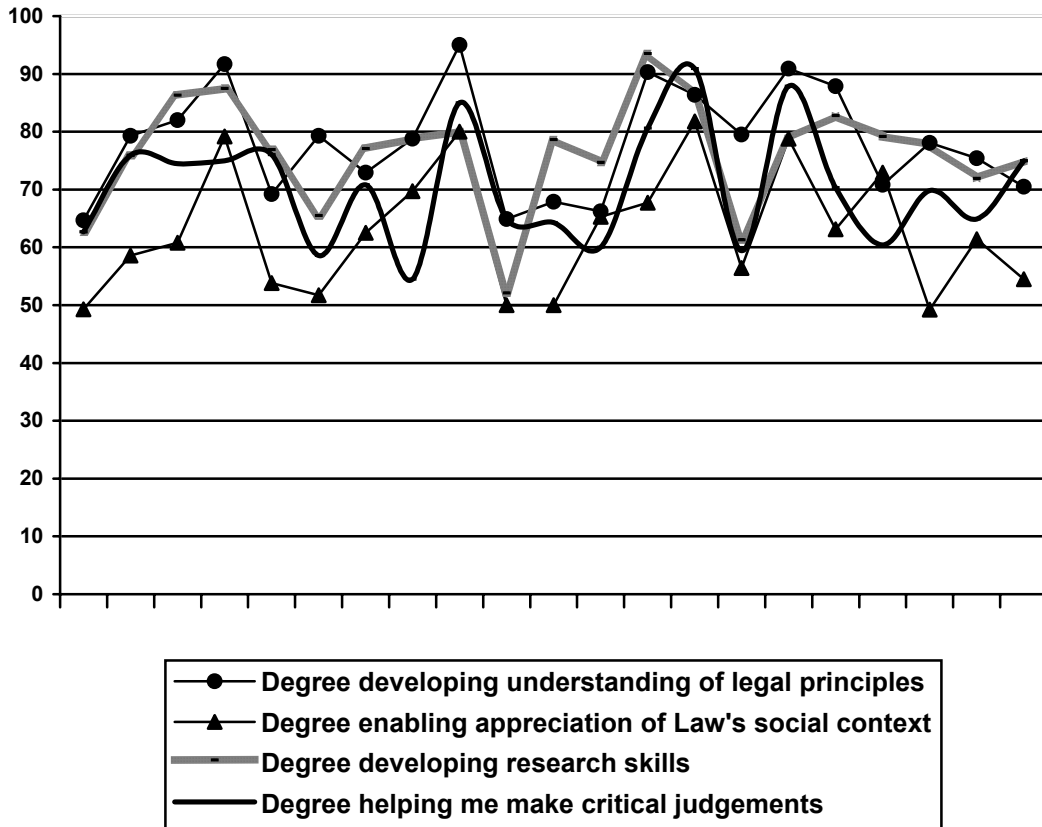


Figure 10.5
Frequency of teacher-led formal learning activities – overall % that thought each of the following occurred regularly

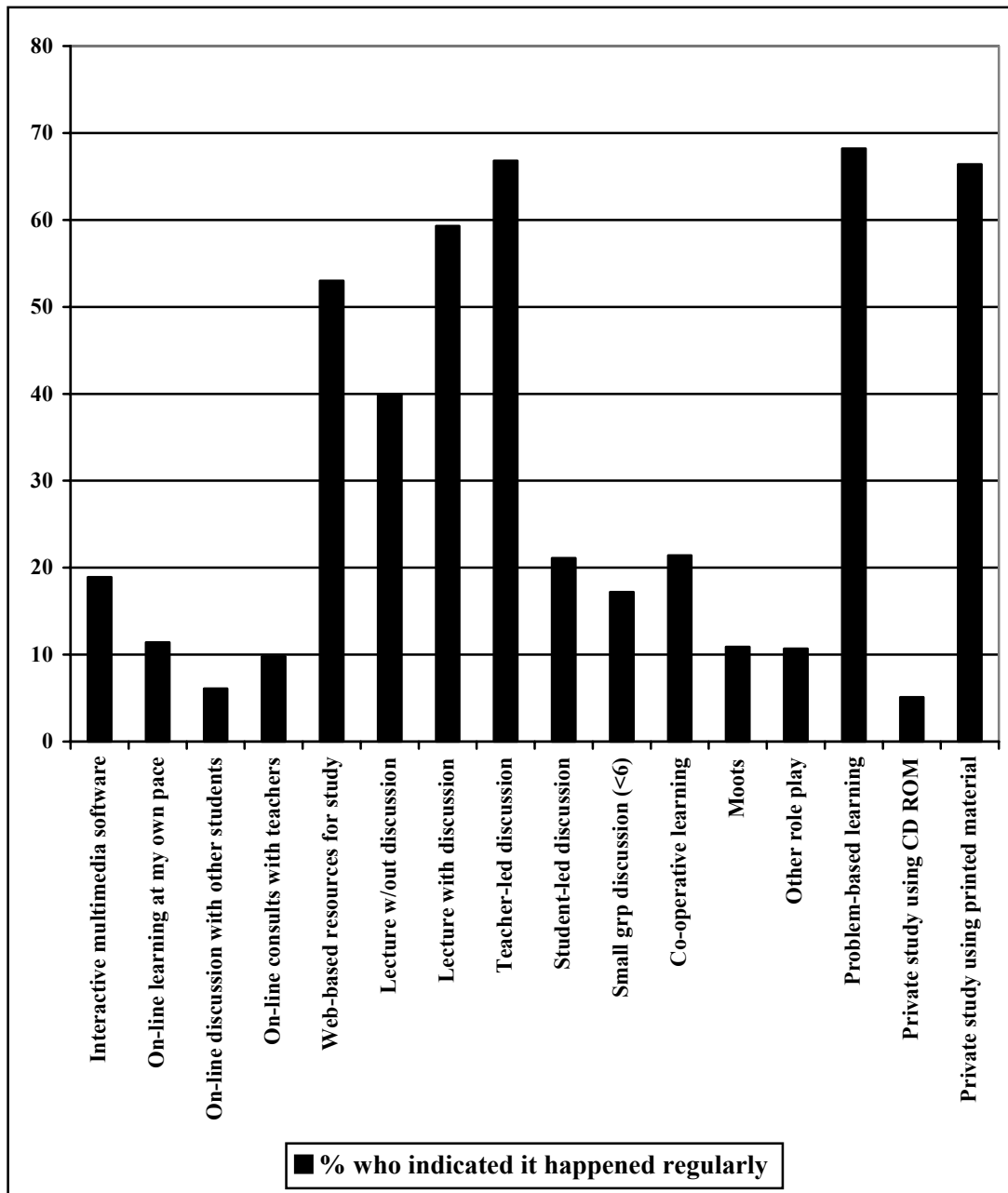


Figure 10.5 shows that students indicated that teacher led discussions, problem-based learning (although it is unclear what respondents thought this meant, as we did not provide a definition for PBL), and private study of printed material were the most regularly used formal learning activities. For each of these three items, nearly 70% of students indicated that it was used regularly at their law school.

Web-based resources for study and lectures with discussion were also considered by students to be used regularly at their law school – for each of these two items, between 50-60% of students indicated that it occurred regularly.

The least frequently used formal learning activities included on-line learning at the student’s pace, on-line discussions with other students or the teacher, moots and other role play, and private study using CD ROM – for each item, 10%, or just a little less than 10%, of students indicated that it occurred regularly.

Approximately 20% of students, each time, indicated that each of the following occurred regularly: interactive media software, student led discussions, small group discussions (of less than 6 students), and co-operative learning.

Figure 10.6 shows the variations between law schools in students’ perceptions about the regularity of the use of four teacher-led formal activities (again, law schools are randomly ordered in no discernable fashion). Considerable variation may be found between and within law schools.

Figure 10.6
Frequency of teacher-led formal learning activities – % at each law school that thought each of the following occurred regularly

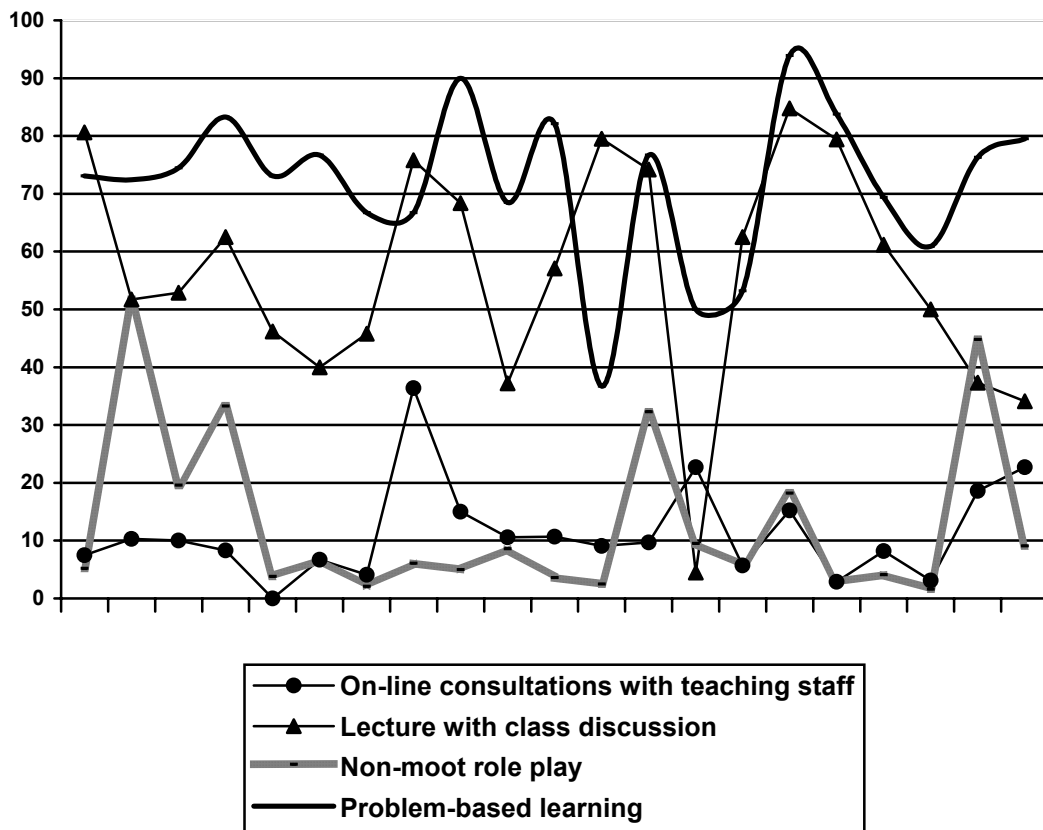


Figure 10.7
Frequency of informal learning activities – overall % that thought each of the following occurred regularly

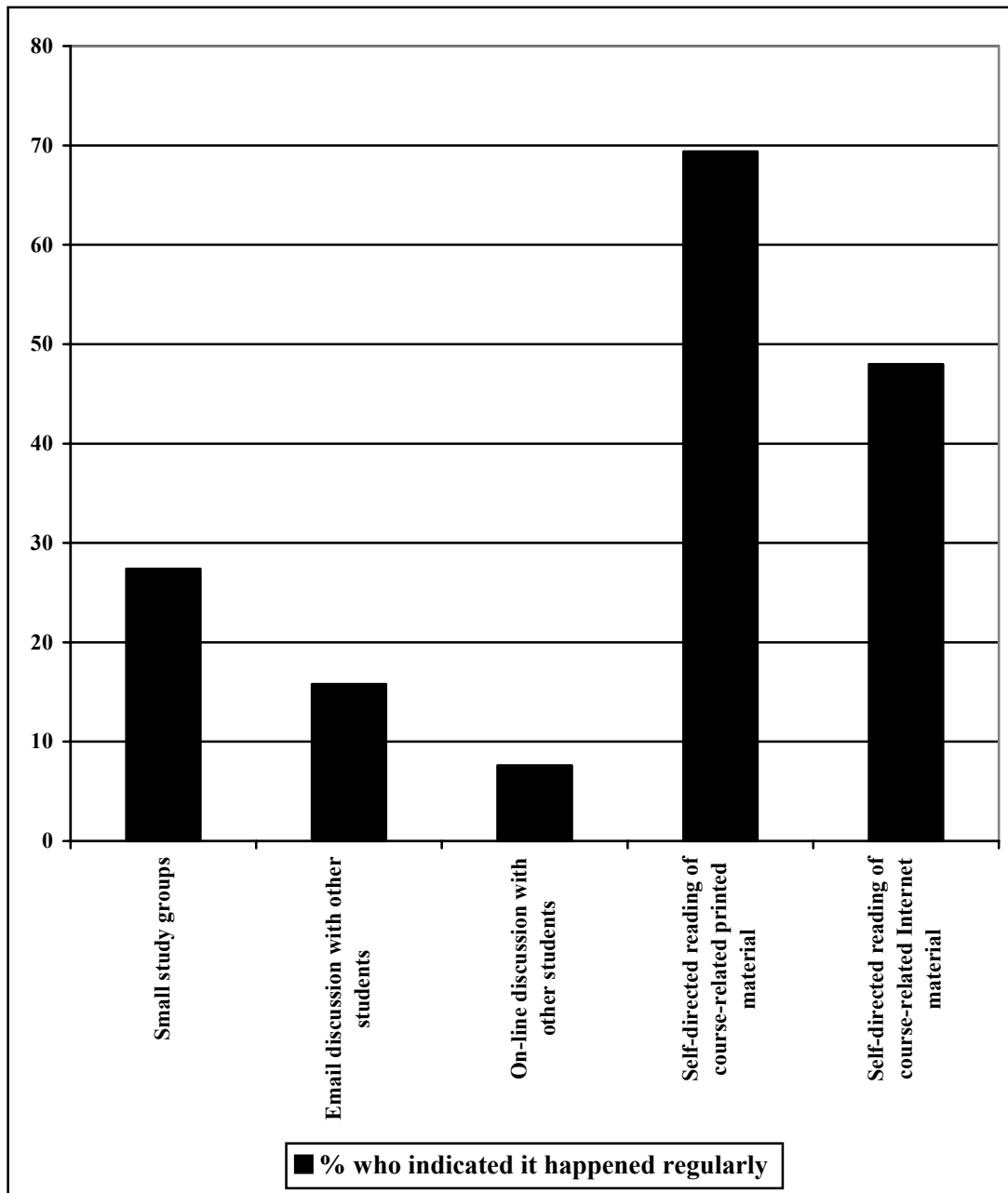


Figure 10.7 shows the regularity of use of *informal* learning activities. As is shown, nearly 70% of students indicated that self-directed reading of course-related printed material occurred regularly, and that nearly 50% indicated that self-directed reading of course-related Internet material occurred regularly. Very few students regularly met in small study groups, had email discussion with other students about course material or on-line discussion with other students – less than 30%, 15%, and less than 10%, respectively.

Figure 10.8 shows institutional variance in the regularity of use of informal learning activities (again, law schools are randomly ordered in no discernable fashion).

Figure 10.8
Frequency of informal learning activities – % at each law school that thought each of the following occurred regularly

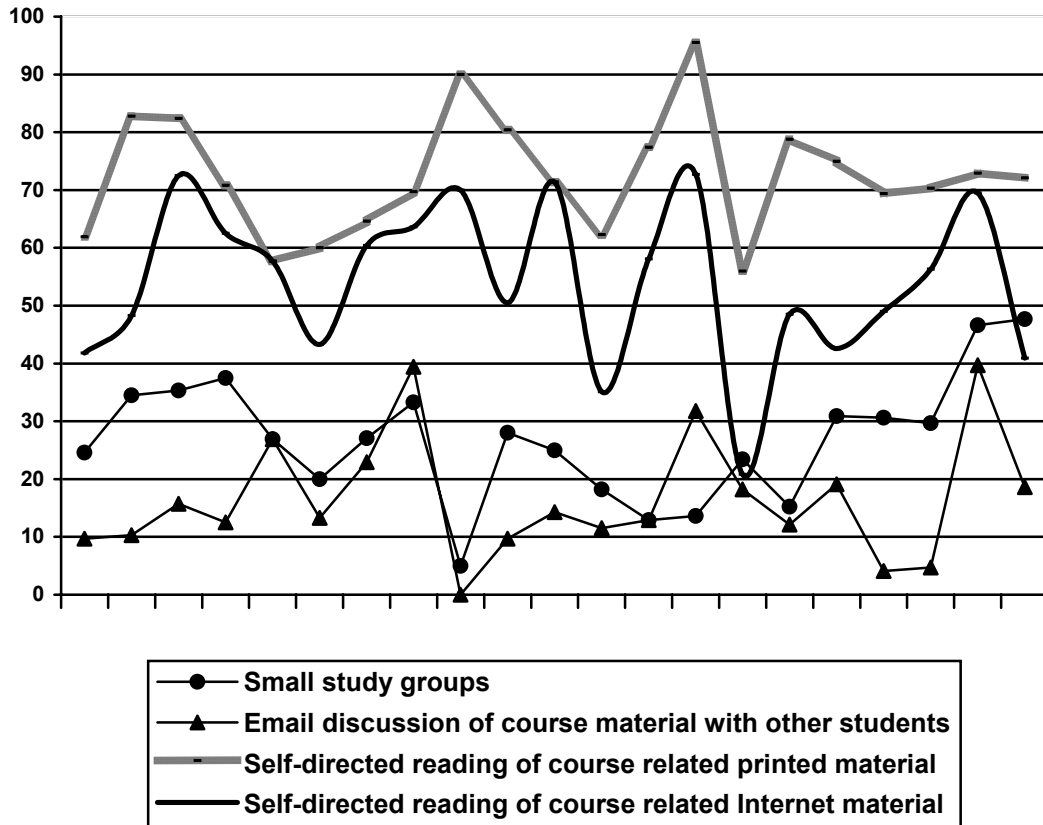


Figure 10.9
Frequency of experience of assessment methods – overall % that thought each of the following occurred regularly

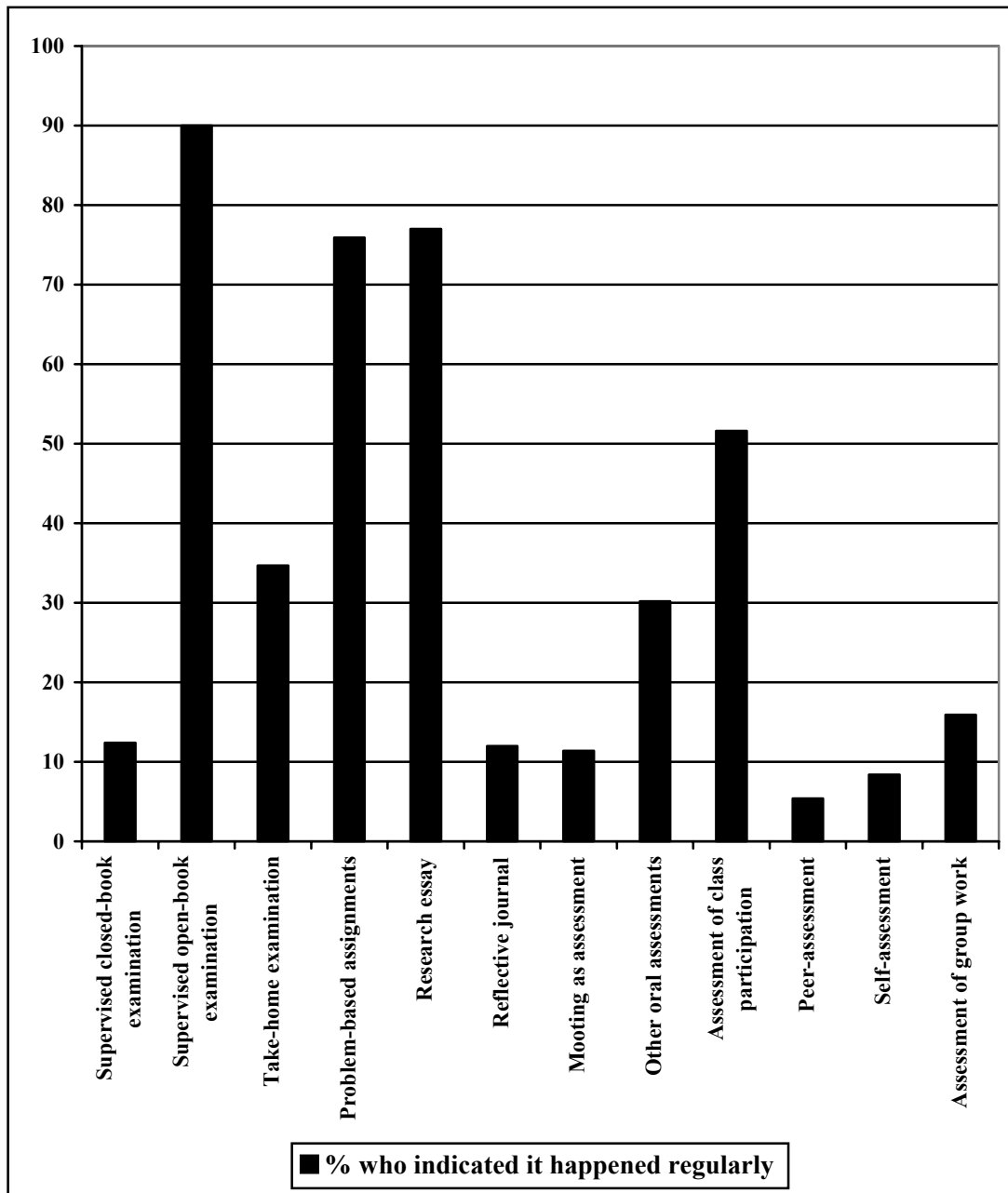


Figure 10.9 shows the regularity of experience of a range of assessment methods. As is evident, supervised open book examination was considered to be the most frequently used assessment method – over 90% indicated that it was used regularly by their law school.

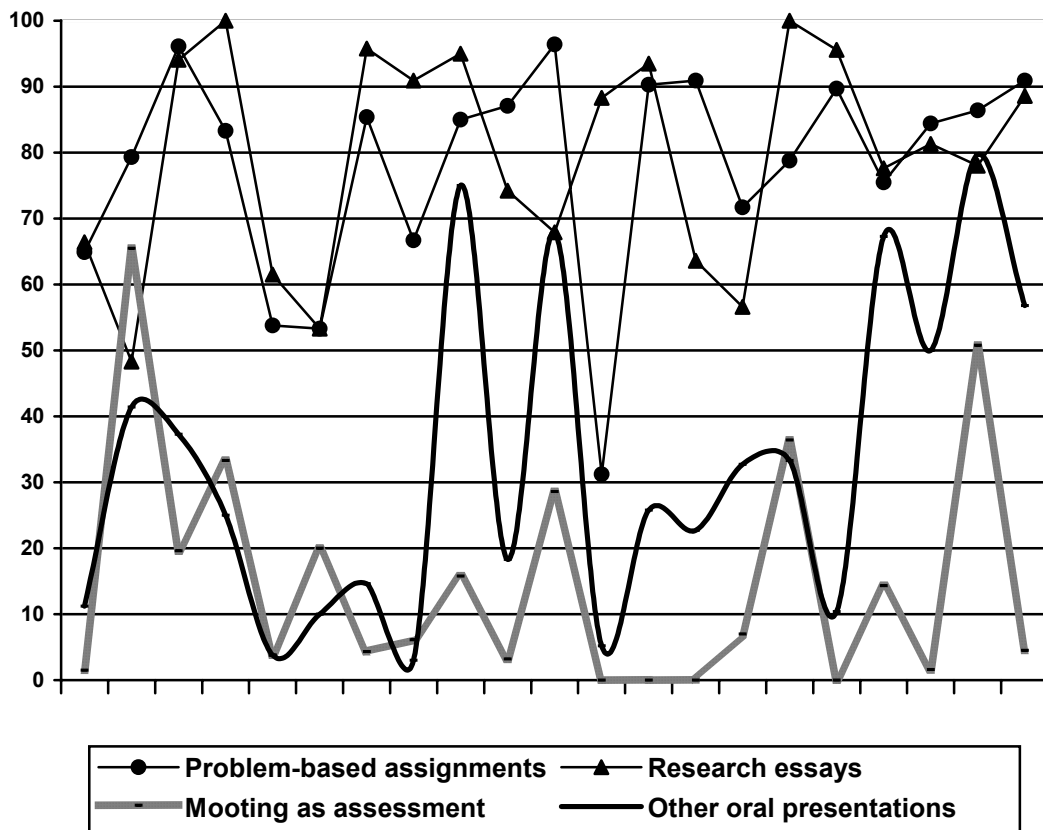
Problem-based assignments and research essays were also fairly frequently used – for each of these two items, over 75% of students indicated that it occurred regularly.

A little over 50% of students indicated that assessment of class participation occurred regularly at their law school and 30% and a little over 30%, respectively, indicated that non-moot oral presentations, and take-home examinations occurred regularly.

Supervised closed-book examinations, reflective journals, mooting as assessment, peer (student)-assessment, self-assessment, and assessment of group work occurred least frequently – under 10%, over 10%, indicated that each of these assessment activities occurred regularly.

Figure 10.10 shows institutional variance in the use of four assessment methods. Again, law schools are randomly ordered in no discernable fashion.

Figure 10.10
Frequency of experience of assessment methods – % at each law school that thought each of the following occurred regularly



Best predictors of whether respondents agreed with GCCA CEQ-based items and LLB-specific items

This section of the chapter identifies the best predictors of whether students were likely to agree with *each* of the GCCA CEQ-based items and *each* of the LLB-specific items.

The full list of GCCA CEQ-based items used in the questionnaire is as follows:

- It is always easy to know the standard of work expected
- The degree course developed my problem-solving skills
- The teaching staff in this course motivate me to do my best work
- The work-load is too heavy
- The degree course sharpened my analytical skills
- I usually have a clear idea of where I am going and what is expected of me in this course
- The staff put a lot of time into commenting on my work
- To do well in this course all you really need is a good memory
- The degree course has helped me develop my ability to work as a team member
- As a result of my degree course, I feel confident about tackling unfamiliar problems
- The degree course has improved my skills in written communication
- The staff seem more interested in testing what I have memorized than what I have understood
- It is often hard to discover what is expected of me in this degree course
- The staff made a real effort to understand difficulties I might be having with my work
- I am generally given enough time to understand the things I have to learn
- The teaching staff normally give me helpful feedback on how I am going
- My lecturers are extremely good at explaining things
- Too many staff ask me questions just about facts
- The teaching staff work hard to make their subjects interesting
- There is a lot of pressure on me as a student in this course
- My degree course has helped me to develop the ability to plan my own work
- The sheer volume of work to be got through in this degree course means that it can't all be thoroughly comprehended
- The staff make it clear right from the start what they expect from students
- Overall, I am satisfied with the quality of this course

The full list of LLB-specific items used in the questionnaire is as follows:

- The degree course is equipping me well for a career in the Law
- The degree course is developing my understanding of the important legal principles in the major areas of law required for legal practice

- The degree course is developing my skills in analysing legal principles from cases and statutes
- The degree course is developing my skills in bringing together legal principles from cases and statutes
- The degree course is developing my legal research skills (i.e. identifying and clearly formulating issues which need researching, identifying and retrieving up-to-date legal information)
- The degree course is developing my ability to apply legal knowledge to provide accurate legal advice to resolve legal problems
- The degree course is enabling me to develop an appreciation of the law's social context
- The degree course is providing me with the means to understand other legal systems
- The degree course is developing my skills in legal interviewing
- The degree course is developing my skills in client counseling
- The degree course is developing my skills in negotiation and dispute resolution
- The degree course is developing my skills in legal drafting
- The degree course is enabling me to develop an ethical approach to legal practice
- The degree course is fostering in me a commitment to justice and fairness
- The degree is developing my ability to undertake self-directed learning
- The degree is developing my skills in monitoring and improving my own work
- The degree course is developing my ability to make critical judgments of the merits of particular arguments
- The degree course is developing my ability to present an argument orally
- The degree course is preparing me for a wide range of careers

A full list of possible predictors, of agreement with each of the statements mentioned above, is as follows:

A Teaching and Assessment Methods:

(i) Regularity of Formal Teaching Methods

- Interactive multimedia software used in teaching and learning
- On-line learning at my own pace
- On-line discussion with other students
- On-line consultations with teaching staff
- Web-based resources for study purposes
- Lecture without class discussion or questions
- Lecture, but with some questions and contributions from students
- Teacher-led class discussion
- Student-led discussion
- Small group (6 or fewer students) discussion

- Co-operative learning, where students work through assigned material together
- Moots as part of the teaching method in a subject
- Other role-play or simulations
- Problem-based learning
- Private study of material on CD-Rom
- Private study of printed teaching materials

(i) *Regularity of Informal Teaching Methods*

- Small study groups
- Email discussion of course work with other students
- On-line discussion of course material with other students
- Self-directed reading of course-related printed material
- Self-directed study of course-related internet material

(ii) *Regularity of Assessment Methods*

- Supervised closed-book examination
- Supervised open-book examination
- Take-home examination
- Problem-based assignment
- Research Essay
- Reflective Journal
- Mooting as part of assessment for a subject
- Assessment of other oral presentations
- Assessment of class participation
- Peer-assessment
- Self-assessment
- Assessment of group work

B *Law degree-related factors*

- Mode of study (f/t vs p/t vs externally)
- Type of law degree (straight law degree vs law degree combinations)
- Prior degree
- Grade Point Average (GPA) in 2001

C *Agreement with the following Reasons for Choosing Law*

- I chose to undertake Law because I wanted to practise Law
- I chose to undertake Law because of an interest in the subject matter of Law
- I chose to undertake Law to contribute to the community
- I chose to undertake Law because it would prepare me for a wide range of careers

D Agreement with the following Career Intentions

- I would like to work in the private legal profession as a solicitor or barrister
- I would like to do legal work in the public sector
- I would like to do legal work in private industry, commerce or finance
- I would like to do non-legal work in private industry, commerce or finance

E Demographic Profile

- Sex
- Age
- Ethnicity
- Overseas Student status
- Highest level of education completed by mother
- Highest level of education completed by father
- Type of secondary school attended in final year of secondary school
- Hours of paid work/week undertaken during semester

All these predictor items were considered together to determine which predictor was the best predictor of agreement with each of GCCA CEQ-based items and each of the LLB-specific items. The results are given below. Each of the underlined items were the best predictors of agreement with the item/s below it.

Of interest, the perceived regularity of certain teaching and assessment methods were more likely than demographic characteristics, career intentions, etc to be the best predictors of agreement with many of the GCCA CEQ-based items and LLB-specific items. This suggests that, in students' perceptions, there is a strong link between regularity of certain teaching and assessment methods and satisfactions with various aspects of their LLB and law teachers, with greater regularity of certain teaching methods likely to elicit greater satisfaction. And this is irrespective of students' social characteristics and intentions. Of interest, too, is that students' Grade Point Average was also found to be the best predictors of agreement with certain evaluation items, also independently of demographic and/or other variables. Among students' demographic characteristics, only sex was found to be the best predictor of agreement with certain GCCA CEQ-based and LLB-specific items, and only two such items at that.

*A. Teaching and Assessment Methods**(i) Formal Learning Activities (organised by teacher)*

- Regularity of Problem-based learning

Students who thought problem-based learning was undertaken regularly at their law school were **more** likely to **agree** with the following statements than students who did not think it was undertaken regularly.

- The degree course developed my problem-solving skills
- The degree course sharpened my analytical skills
- The teaching staff work hard to make their subjects interesting
- The degree course is developing my ability to apply legal knowledge to provide accurate legal advice to resolve legal problems
- The degree course is enabling me to develop an appreciation of the law's social context
- The degree course is developing my ability to make critical judgments of the merits of particular arguments

Students who thought problem-based learning was undertaken regularly were **less** likely to **disagree** with the following statement than students who did not think it was undertaken regular.

- The degree course is enabling me to develop an ethical approach to legal practice

- Regularity of on-line consultations with staff

Students who thought that on-line consultations with staff occurred regularly were **less** likely to **disagree** with these the following statements than students who did not think on-line consultations occurred regularly:

- The staff put a lot of time into commenting on my work
- The staff made a real effort to understand difficulties I might be having with my work

- Regularity of co-operative learning with other students as organized by law teachers

Students who thought that co-operative learning with other students occurred regularly were **less** than to **disagree** with the following statement than students who did not think co-operative learning occurred regularly.

- The degree course has helped me develop my ability to work as a team member

- Regularity of lectures without discussion

Students who thought that lectures *without* discussion occurred regularly were **less** likely to **disagree** with the following statement than those who did not think such lectures occurred regularly:

- It is often hard to discover what is expected of me in this degree course

- Regularity of lectures with class discussion

Students who thought that lectures *with* class discussion occurred regularly were **more** likely to **agree** with the following statements than students who did not think such lectures occurred regularly:

- My lecturers are extremely good at explaining things
- Overall, I am satisfied with the quality of this course

- Regularity of non-moot role play or simulations

Students who thought that non-moot role-play occurred regularly were **less** likely to **disagree** with the following statements than those who did not think such role-play occurred regularly:

- The degree course is developing my skills in legal interviewing
- The degree course is developing my skills in client counseling
- The degree course is developing my skills in negotiation and dispute resolution
- The degree course is developing my skills in legal drafting

(ii) Informal Learning Activities

- Regularity of self-directed reading of printed material

Students who claimed to do self-directed reading regularly were **less** likely to **disagree** with these statements than those who did not do such reading regularly:

- The degree is developing my ability to undertake self-directed learning
- The degree is developing my skills in monitoring and improving my own work

(iii) Assessment Methods

- Regularity of assessment of non-moot oral presentations

Students who thought that non-moot oral presentations as assessment occurred regularly were **less** likely to **disagree** with the following statement than students who did not think such assessments were given regularly:

- The teaching staff in this course motivate me to do my best work

Students who thought that non-moot oral presentations as assessment occurred regularly were **more** likely to **agree** with the following statement than students who did not think such assessments were given regularly:

- The degree course is developing my ability to present an argument orally

- Regularity of research essays

Students who thought that research essays were given regularly were **more** likely to **agree** with the following statements than students who did not think research essays were given regularly:

- The degree course has improved my skills in written communication
- My degree course has helped me to develop the ability to plan my own work
- The degree course is developing my legal research skills (i.e. identifying and clearly formulating issues which need researching, identifying and retrieving up-to-date legal information)

- Regularity of mooting as assessment

Students who thought that mooting assessments were given regularly were **less** likely to **disagree** with the following statement than students who did not think mooting assessments were given regularly:

- The teaching staff normally give me helpful feedback on how I am going

- Regularity of problem-based assignments

Students who thought that problem-based assignments were given regularly were **less** likely to **disagree** with the following statement than students who did not think such assessments were given regularly:

- The staff make it clear right from the start what they expect from students

B. Law degree-related variables

- Grade Point Average (GPA) in 2001

Students with a lower GPA **more** likely to **agree** with the following statement than students with a high GPA

- The sheer volume of work to be got through in this degree course means that it can't all be thoroughly comprehended

Students with a lower GPA were **less** likely to **agree** with the following statement than students with a high GPA.

- I usually have a clear idea of where I am going and what is expected of me in this course

Students with a lower GPA were **more** likely to **disagree** with the following statement than students with a high GPA.

- It is always easy to know the standard of work expected

Students with a lower GPA were **less** likely to **disagree** with the following statements than students with a high GPA:

- The work-load is too heavy
- The staff seem more interested in testing what I have memorized than what I have understood

- Law degree type

Students who were undertaking a combined law degree were **more** likely to **disagree** with the following statement than students who were undertaking a straight law degree.

- To do well in this course all you really need is a good memory

C. Reasons for choosing Law

- Chose Law because of interest in the subject matter

Students who chose Law because of an interest in its subject matter were **more** likely to **agree** with the following statement than students who did not choose Law for this reason

- As a result of my degree course, I feel confident about tackling unfamiliar problems

- Chose Law to contribute to the community

Students who chose Law to contribute to the community were **more** likely to **agree** with the following statements than students who did not choose Law for this reason

- There is a lot of pressure on me as a student in this course
- The degree course is fostering in me a commitment to justice and fairness

Students who chose Law to contribute to the community were **less** likely to **disagree** with the following statement than students who did not choose Law for this reason

- The degree course is providing me with the means to understand other legal systems

- Chose Law to either practice Law or because of an interest in the subject matter

Students who chose Law in order to practice Law, as well as because they had an interest in its subject matter, were **more** likely to **agree** with the following statements than students who choose Law for one reason or the other but not both, who, in turn, were **more** like to **agree** with these statements than students who did not choose Law for either one of these reasons.

- The degree course is developing my understanding of the important legal principles in the major areas of law required for legal practice
- The degree course is developing my skills in bringing together legal principles from cases and statutes

- Chose Law to be prepared for a wide range of careers

Students who chose Law to be prepared for a wide range of careers were **more** likely to **agree** with the following statement than students who did not choose Law for this reason

- The degree course is preparing me for a wide range of careers

D. Career intentions

- Would like to work as a solicitor or barrister

Students whose career intention was to work as a solicitor or barrister were **more** likely to **agree** with the following statements than students who did not have such a career intention

- The degree course is equipping me well for a career in the Law
- The degree course is developing my skills in analysing legal principles from cases and statutes

E. Demographic profile

- Sex

Women were **more** likely than men to **disagree** with the following statements:

- I am generally given enough time to understand the things I have to learn
- Too many staff ask me questions just about facts

Interviews and focus groups with penultimate and final year law students

This section comprises data from interviews with one or two law students from each of the five participating law schools that did not administer the student survey, as well as data from three focus groups of law students from a range of law schools. The number of law schools represented in the focus groups ranged from 5-28. In total, 67 law students were either interviewed or attended a focus group. As mentioned in the

introduction to this chapter, given they represent only a small proportion of law students, the data from these students cannot be seen to be representative.

The format of these interviews and focus groups followed the format adopted for focus groups with teaching staff during the law school visits. Two sets of questions were put to student/s at the beginning of the interview/focus group:

1. Teaching and learning
 - (a) What do you think your teachers are trying to do when they teach? How do you understand their role?
 - (b) How do you think different teaching methods inhibit and/or encourage learning?
 - (c) How do you think different assessment methods inhibit and/or encourage learning?

2. Factors that inhibit or promote good teaching and learning
 - (a) Which factors (*at school, university, government policy or any other level*) encourage or inhibit your efforts at effective learning?
 - (b) How do you think your learning can best be facilitated?

These questions formed the basis of a discussion about the LLB. Four main (largely student-driven) themes came out these discussions:

- Students' expectations of their law degree
- Students' satisfaction with their law teachers and law school experience
- Anticipating employers' needs
- Undertaking paid work and work experience while studying

Students' expectations of their law degree

Most of the students interviewed thought that their expectations of their law degree were only partially formed at the commencement of their law degree and were being shaped as they progressed through their law course. Some of these expectations were shaped by course content but a large number of interview and focus group participants gave the impression that their expectations were being shaped by their growing knowledge of what potential employers expected from new recruits. Furthermore, often this knowledge was not obtained from the law school but rather from sources outside the law school, including from legal employers. "We are all really clued up about what employers want – we have to be."

Other interview and focus group participants indicated that their expectations of their law degree had been, and were continuing to be shaped, by their law teachers – by what and how they taught and by how they designed the curriculum. For example, one student mentioned that his expectations had been guided by which subjects were taught in first year and by the level of enthusiasm that his first year law teachers had for the subject/s they taught. He mentioned being aware of his teachers' "politics", as reflected by the "inclusive way in which they taught" and which parts of the subject they gave special emphasis to. He claimed that this, in turn, had steered his expectations of his law degree. He thought his comments should be taken in light of

the fact that he had entered law school as a school-leaver – “I who had no previous contact with legal studies. All I knew when I got here was that I wanted to practice in a firm...I wanted to be a solicitor...I had no expectations beyond this”. Over time, he began to contemplate applying for work at the Legal Aid Commission of NSW in Sydney. When asked whether he thought this was in some part related to what he thought his degree best prepared him for, he responded:

I think my degree prepares me for Life – not just work. We cannot ignore the work aspect, though...we cannot afford to study for the sake of it, very few people can...so, yes, I do think my degree is preparing me for work. And, yes, maybe it's more 'touchy-feely' type of work but this has as much to do with my politics...corporate law doesn't appeal to me...I don't think other students at my [law school] have the same aspirations and my law school also caters for them, their aspirations...

Other students' expectations of their Law degree were utilitarian in nature to begin with and this only strengthened over time – their expectations continue to be that their law degree would assist them with successfully finding a job as a solicitor “preferably in a firm that paid well and provided some security. You hear about these nightmarish work situations. Frankly I could do without this, after studying for this long...”.

Another student from the same school added: “to be honest, I don't really care what Life skills I learn. If it happens, if I do learn some, then this is a bonus but it's not why I'm here”. These feelings were echoed by a student from another law school attending the same focus group:

Like someone said a few minutes ago, finding a job is not just necessary, it's essential. None of us...well, no-one I know...is like the dilettante of previous centuries, who go to university for something to do, to improve the mind. I think nowadays there are many ways of improving the mind. We're all mainly studying Law to become solicitors, to learn a set of skills which will help us function as solicitors...

A significant number of students attending the same focus group at which these comments were made – none of whom were studying at the same law school – shared similar expectations. These expectations about their law degree seemed to have been, in part, guided by fear – of not obtaining post-qualification employment that would suit their financial and other needs. Furthermore, they thought that these expectations were not unique to them. In fact, the fear that guided their expectation came, in part, from a perception that many of their fellow students would be, or were already, competing for the same limited number of desired jobs. One student added that he thought that:

I knew before I started my degree that I would have to get into the 'right' law school. But it doesn't just end there. Once you're in you have to make sure you're GPA is high and that you are making sensible choices...

Q Such as?

Such as choosing the right electives...I mean electives that would look good on your CV when you send it to the top 10 firms...What I find frustrating is that I have to

make these decisions without much help from my teachers or [the university's] careers counsellors...this is not what I expected. I'm on my own, we all are...

It turned out that a high proportion of interview and focus group participants were expecting their law degree to provide them with a set of skills to obtain a job as a solicitor, one that offered good remuneration, security and status to their liking, as well as enable them to function effectively in this position. "I don't just want to get the job because if I don't have the skills to do it very well then this would be stressful as well".

Other students' expectations of their law degree were equally work-oriented to begin with; however, while they had not shaken off these expectations over time, they did appreciate that they were not just obtaining a passport to a good job but were also broadening their minds and learning "intellectual" skills that were "invaluable":

And I don't think this is unimportant. It is a more complex picture of what I want out of my Law degree. OK I know, like you said earlier, we all seem to be very job-focussed, outcome focussed rather than focussed on what's happening while we're actually studying, or whatever. But we are not completely oblivious to what's happening. I know I'm learning to argue points intelligently, and be able to talk on my feet, to analyse and be intellectually rigorous in my responses to [legal] problems. I'm also learning to be aware of other perspectives. And all of these [skills] will also help me get a good [legal] job and be good at that job...

Other students still, while recognising that their degree was leading them towards employment, were not "hung-up about the job market". They thought that studying Law would help them "understand a complex legal system and this in itself is rewarding – it's not something you can do without undertaking Law at a tertiary level. It's not something just anyone off the street can do."

Some interviewees and focus group participants were told that the student survey results showed that just over 50% of law students indicated that they chose to study law to practice law, and an equal proportion to contribute to the community. However, nearly 80% indicated that they undertook law because of interest in the subject matter and an equal proportion because they thought Law would prepare them for a wide range of careers. Most of these students were not surprised by the last result but were surprised by the former three. They thought a much higher proportion than 50% of their fellow students would have chosen Law to practice Law and that a much lower proportion than 80% would have chosen Law because of an interest in the subject matter:

So many people moan about how boring it can be that these figures really surprise me...it's like we all knew it would be pretty tedious before we all started...But perhaps, like me, people think that the concept of Law, rather than the subjects per se, [is] interesting. Yes, I can see this...also each subject has its interesting parts. I guess with the amount we all have to get through, you can forget how interesting it can be...and it depends on the enthusiasm of the teachers and what assignments they give you...and there are some fantastic moments when everything gels...

Other students were less surprised by the results:

Don't forget this is what people thought before they started their law degree. Also we don't talk about how fascinating it can be but in our private moments, every now and again, you can see that you're learning interesting things. And this also links to many people thinking Law can prepare you for many careers. It's not all about practice, often it is about learning rules and learning to think in a legal way. Or just learning to think. Law is challenging in this way.

Another student added:

I'm not surprised only 50%...wanted to practice Law. We all don't want to be solicitors and barristers but many of us are here because we want a good job. And in the process what we knew before we started that what we would be learning would be interesting. Again, I cannot believe anyone would choose do to a course, whatever the course, if they thought it would be tedious. And this is [borne out by] the enthusiasm you sometimes see in class and the enthusiasm of some of our teachers. We can leave class feeling quite 'pumped up' about what we've learned, you know, and during those moments we're not thinking about the job situation once we leave.

Students' satisfaction with law teachers and the law school experience

When student were asked whether they thought their expectations of the LLB were being met, they would often answer by (a) discussing individual teachers and their teaching methods, and the experience of going to university, and (b) framing their responses in terms of what they thought the profession wanted in new. This section describes (a) and the next (b).

Quite a number of interviewees and focus groups participants mentioned that law teachers at their law school had been adopting new teaching methods – which they identified as being something other than the straight lecture format. For many, these new teaching methods had been adopted without much success. When asked what they meant by this, students explained that teachers were not providing them with the information they needed to understand and pass subjects; instead they were being forced to undertake some unorthodox exercises in classes that involved small group discussions with other students who had an equally poor understanding of the subject. Participants did not think that their teachers were to blame but instead they thought that these new methods had been “thrust” upon their teachers against the their teachers' will:

It's quite obvious. You can see that some don't believe in what they're doing but do it anyway because it's what the law school expects. Some teachers do it well but then again it depends on the class. Classes which deal with [social perspectives of the Law] sort of help small group discussions in class because everyone has some knowledge of the topic or, at the very least, have opinions...you can then learn from each other without involving the teacher. Other subjects, forget about it! We're all at sea before we go in and when we come out. How can students teach other students about contracts? It's stupid.

A few participants did not completely agree with this assessment of law teachers and teaching methods and thought that if the teaching was unsuccessful it was because students were not prepared before class – or because some students had “attitude” about the process or were “too stressed about getting a good grade” to allow certain teaching methods to work. These students agreed that some teaching methods were

better suited to particular subjects and that, for example, subjects that were about “human relationships, like Family Law”, generated material that had to be discussed in class to be understood. “While subjects such as commercial law, the lecture is more than enough. It’s what we want, what we need. Why don’t they just give it to us?” They did, however, add that discussion within commercial law subjects did aid understanding of the material “but the teacher needs to be involved, to answer questions put by the students”.

As the discussion teaching methods progressed in all three focus group discussions, students began to move away from, and refine, former attitudes. So, for example, they moved away from the theory that teaching methods had to be matched to subject type, towards a theory that teaching methods failed because the law teacher either lacked the know-how to “pull it off or that they did not believe in [the teaching method] in the first place”. Rather, as mentioned above, “they were adopting such methods without actually believing in them – they’re forced to follow a teaching fad that the law school has set in place”:

And this makes things all the more difficult for us. Yeah, you do come into university thinking your teachers are experts in whatever they teach. And then you find out that they’re not...or they’re claiming that they’re not and asking you to discuss things in class even before they’ve given you the lecture. You’re meant to read and from the readings, understand the topic completely. It’s insane. I just don’t have time for this. Maybe if I only had one class per semester...They need to be better at guiding us. I’m fine with a straight lecture, however boring. You can then learn what you need to know.

This participant, like many others, did not think her teachers were helping her learn what was required “in the real world”. Another student added:

I don’t mind having to do practical exercises to help me learn the material but it should all follow a sequence...Practice and discussions and all that needs to come after you’ve been given the knowledge. Not before.

Other students vehemently disagreed with this and thought that class discussions, student participation, practical exercises, providing the teachers knew what they were doing and knew their material, really helped the learning process, whenever it was introduced in the subject:

Yes, it means putting in the work to do the readings before hand. But this is pretty straightforward – you just have to read material before class. And whether it’s a lecture or something else, you always get more out of the class if you prepare beforehand. All these people are just whinging because they couldn’t be bothered or because they’re running to and from work to class...If they weren’t, they’d find the time to do it. It’s not that everyone’s lazy; they’re just doing too much as well as studying.

Anticipating employers’ needs

As mentioned above, when interviewees and focus group participants were asked whether they thought their expectations of their law degree were met, many of them framed their answers to this question according to what they thought employers

looked for in new recruits. Much of the discussion in the focus groups, in particular, was therefore employment driven and not about the LLB degree per se.

To summarise, many of these students thought employers looked for someone who was knowledgeable in certain areas of law (depending on the practice), as well as a “well-rounded person”. Given this, students thought there was seemingly, not so much a mismatch between teaching methods and subject type, but rather teaching method and what they thought employers wanted law graduates to experience in the LLB. In particular, they thought “the new teaching methods” that law teachers were adopting would not necessarily equip them to be the sort of employee that they thought employers wanted; “employers would scoff at what we are being asked to do. The profession is looking for people who are able to do the work, not to think.” While this opinion was met with laughter when expressed, some participants did feel quite strongly that this was the truth of the situation.

Of interest, was the interconnectedness, for some students, between what they thought employers wanted (i.e. their level of satisfaction) and what they thought some of their fellow students wanted from the LLB. It was quite difficult to move these students away from the topic of other students’ hopes and fears. Even if they did eventually move on to other topics, they would always return to this one. This could well be the most important aspect of some students’ experiences of their legal education – their level of satisfaction with their LLB (as well as their impressions of whether their expectations of their LLB had been met) was framed in terms of their perception of employers’ needs, which in turn, was framed in terms of what they thought other students expected from the LLB. As such, they continually referenced other students when discussing their degree, which pointed to a high level of competition among law these students. This in turn meant that anything that interfered with their ability to do as well or better than other students, pointed to difficulties in the LLB – to the way teachers taught, to the amount of subject information they had access to, to the use of “the bell curve to determine marks, which I think is a disgrace”, etc. Group work, in particular, was viewed unfavourably by these students, whose attitude to their law studies was that it was an individual pursuit, one done in competition with others. It was a pursuit for high grades, which would, in turn, ‘land’ them either a highly competitive, lucrative or a prestigious job “or any job which would let me clear my [tertiary] debts”. It was thought that group work therefore interfered with “what the law degree should be about”.

Paid work and work experience

This was not an issue raised by students but rather one that was raised for the students – in response to the concerns expressed by law teachers about the amount of paid work that students engaged in during semester (which is covered in a later chapter). Students agreed with some of their teachers that it was no longer possible not to work, not only during semester breaks, but also during semester. They also agreed that time spent at work was competing with the time spent on their studies. Furthermore, the amount of time spent in paid work, and the affects of this on their studies, was perceived to exacerbate the pressure they felt was on them (and their fellow students). Some students thought that many of their fellow students spent far too much time at work, as did they (“although less so than some others”), and thought this may have

been a result of these students' mismanaging their time, or allowing their ambition to over-ride "the enjoyment, space and time you need to get through it all properly".

Most interviewees and focus groups participants, however, recognised that undertaking paid work was not a matter of choice for many students, including themselves, because of the cost of undertaking tertiary studies at the moment – "not only for tuition but also the cost of living. It adds up to quite a lot. And I don't want to be in debt when I get out there. I'll have other financial commitments then."

Some students thought that mature-aged students – particularly women – with financial dependents "have little choice but to juggle a very tight schedule of paid work and study. I know a few of these students and it's such a struggle for them."

Like their law teachers, some students expressed regret that their generation of students no longer had the luxury of time to spend almost the entire period of tertiary education either devoted to their studies and/or involved in extra-curricula activities on campus "or even just spouting pseudo-intellectual rubbish in the 'caf'". They thought "university life" would have the multiple effect of enhancing their appreciation of their courses, focussing their thoughts, and turning them into the well-rounded individuals that not only employers desired but what they themselves hoped for:

Yeah, I know we started this session talking about work after uni, and employers, and all of that but, yeah, part of me was hoping that uni would improve me a bit, smooth out the rough edges, help me mature and think and read and appreciate what I was reading...and talk with authority and just really have fun doing all these...things...

Other students were more than happy to forego these "extra bits". They thought that having multiple "calls" on their time – that is, from their paid employment, their studies, their work experience and/or their extra-curricula activities undertaken to enhance their employability after graduation – "focussed" them. "It forces me to work harder, knowing I don't have the luxury of time to loiter and postpone studying, completing assignments, and all that." A small minority of interviewees also thought these competing demands fitted in well with their new role within the tertiary sector – "we're consumers now and like consumers of other products, we don't have the time to hang about. The university is forced to focus their teaching, their delivery of the product and frankly, my university does it pretty well. They don't 'faff' about."

Nonetheless, law students who thought that competing demands on their time had some advantages, did agree that "things have gotten out of control". The number of demands on their time did reduce the amount of time they could spend "assimilating and understanding things. And it has also increased our stress. Let's not forget stress. There are students out there having break downs left, right and centre." Despite this view, however, many interviewees and focus group participants seemed to accept the situation as a *fait accompli*. Despite being asked several times what they thought could alleviate their stress, and generate time more time for their studies, many did not think much could be changed to improve their situation. For some, this, in part, was linked to a perception of "high competition" that existed among law students for a select number of jobs. As long this competition existed, and the financing of higher education remained the same, "there's no other option but to take it all on. The thing

to do is just cope with it all until you finish. My main concern, and I'll be really honest about this in front of all my peers in this room, which isn't easy...my main concern is that I'll finish my degree and be unemployed. Or I'll be in this shit job that won't be fulfilling. I don't really want to get on a treadmill that will last my entire career."

Summary

This chapter solely describes legal education from the point of view of law students. The first part of the chapter describes penultimate year law students' responses to items on a written questionnaire. Most of these students thought that their law degree was sharpening their analytical skills, improving their communication and work planning skills, developing their problem solving skills and helping them understand, analyse and bring together legal principles from statutes and cases, and furthermore, apply these principles to legal problems.

While they thought their law degree was not forcing them to memorise and regurgitate information, many did agree that the volume of work was too great.

For students' responses to other evaluation items in the questionnaire, please refer to Figures 10.1 and 10.3.

Teacher-led discussions, problem-based learning, private study of printed material, and self-directed reading of course-related printed material were perceived to be the most common forms of teacher led formal, or informal, learning. Supervised book exams, problem based assignments and research essays were seen to be the most common forms of assessment.

On-line learning and assessments, and group learning and assessments, were not regularly undertaken.

For students' responses to other learning and assessment items in the questionnaire, please refer to Figures 10.5, 10.7 and 10.9.

There was considerable institutional variance in responses to certain items, both in relation to students' evaluation of their law degree, and the relative frequency of learning and assessment tasks (see Figures, 10.2, 10.4, 10.6, 10.8 and 10.10).

The chapter also identifies the best predictors (e.g. demographic characteristics) for agreement with each of the evaluation items in the student questionnaire – please refer to the second section of this report for more details.

The chapter ends by describing the data from interviews and focus groups with 67 students. Students tended to frame their expectations of, and satisfaction with, their LLB degree in terms of their hopes and fears about post-graduation employment. Many of these students thought that some of the "new teaching methods" that their law teachers were adopting were proving to be unsuccessful, because they interfered with students' preparation for the world of work, particularly for legal practice. Some students, however, did concede that other added pressures, in the form of paid work

during semester, prevented them from making best use of these “new teaching methods”.

CHAPTER ELEVEN

QUALITY TEACHING

In this and remaining chapters of the report we consider teaching and learning in law schools. We begin with a brief discussion of what are generally accepted to be the principal characteristics of “effective teaching” in this chapter, and in chapter 12 we provide an overview of the major developments in teaching and learning in law schools since the late 1980s. In chapter 13 we discuss factors inhibiting good teaching. The remaining chapters of this report document developments in law schools’ approaches to teaching and learning, focusing particularly on program objectives, subject design, and the management of and support for teaching.

In this short chapter we briefly outline what we understand to be “effective teaching”. As Paul Ramsden (2003) argues:

The reality, as opposed to the mythology, is that a great deal is known about the characteristics of effective university teaching. It is undoubtedly a complicated matter; there is no indication of one ‘best way’; but our understanding of its essential nature is both broad and deep. Research from several different standpoints, including studies of school teaching, has led to similar conclusions.

Rather than be prescriptive about how law teachers *should* teach, or provide an ideal “model” of law teaching, we summarise the key ideas that emerge from the literature on teaching and learning, and illustrate them with examples drawn from interviews and focus groups with law teachers for this project. These principles provide the fundamental yardsticks that guide the discussion of teaching and learning in the remainder of this report. In this chapter we also let Australian law teachers describe in their own words the approaches to law teaching taken by reflective law teachers. Finally, we introduce the notion of scholarly approach to teaching – a “scholarship of teaching”.

Identifying good teaching in law schools

What is ‘Effective Teaching’?

Research into learning, whether it is based in the constructivist or phenomenographic traditions, shows that it is possible to identify the elements of good teaching (see Ramsden, 1992: ch 6; Ramsden, 1991: 150-4; Ramsden, 2003: chapter 6; Biggs, 1999: 12-13; Martin, 1999: 33-41, Prosser and Trigwell, 1999: chapter 8). Most importantly, teaching and learning could be seen as the opposite sides of the same coin. The aim of teaching is quite simply to make learning possible. As three participants in a focus group put it, their aim in teaching is:

to facilitate student learning. The end product is not what comes out of my mouth, but what goes into their heads. It is very much a client-based thing. You have to accept that if do your job properly your students, probably because they are more energetic and inquiring than you are, will probably end up knowing more about the area than you will. So it is about getting them to learn, rather than merely imparting information.

You can add to that – that it is not just to get them to learn, but to position them to learn. That’s true in law, because everything we tell them is wrong, or at least will be pretty soon (when they pass another Act or another decision from High Court comes down). So it is pointless trying to cram them full of today’s knowledge – if they only know about law today they will be useless lawyers in a few years’ time. Rather we try to show them where the knowledge fits in with the world, and to position them in the law, and then to indicate to them, as far as we can, the direction in which things are liable to move, and enliven them to the ways in which they can work these things out. So we should help them learn how law develops, where to look for bits and pieces, and how to approach the whole thing in the future. ...

For me what is most important is to *facilitate an understanding*, or an ability for the student to understand. I don’t just mean understand the content, but also the process – the skills to self-learn the content. The biggest thrill for me is seeing the student’s eyes light up and say “I understand it now”. That is what I am aiming at all the time I am teaching. Getting that light to come on. The understanding component of the learning is so important.

Good teaching therefore depends on an understanding of how law students learn, and how their learning is affected by teaching (Burrige, 2002). If teachers have a critical awareness of these aspects of learning, then they are better able to facilitate high quality student learning.

Further to this, effective teaching:

- involves being at home with the subject and being enthusiastic about sharing a love of the subject with others (see especially Martin, 1999: 33):

I teach subjects I am passionate about. I hope to communicate that enthusiasm, and instil enthusiasm in [students].

I have heard students say they hate to hear teachers say ‘this is a boring topic’, because as soon as they hear that, they feel they are getting boring material. On the other hand, if my enthusiasm comes across it is infectious, and they pick it up from there. If you are bored with what you are teaching, you communicate it to them, and they pick it up, and are not inspired to learn. If teacher is not enthusiastic, [she or he] can’t expect student to be.

- requires teachers to motivate students to feel the need to learn the subject material:

I suppose my main approach is the belief that unless you enjoy what you’re doing, you’re not going to learn much. I think one of the things that always spurs me to rethink what I’m doing is if I see bored faces in front of me I think well, they’re not really learning anything.

- requires making the material of the subject genuinely interesting, so that students find it a pleasure to learn it:

The core issue for me is to *generate interest*, or hopefully intellectual passion, so that people feel intellectually inspired. The best teacher I ever had was a person who could have described a tomato sandwich with so much passion that you

wanted to make one, or eat one or buy one. It had little to do with what went into it.

- involves showing concern and respect for students, recognising the diversity within the student body (see Lustbader, 1999, and chapter 12 below), and being available to students:

I had a little exercise with my first-year tutorial. I said to them, ‘Now I want you to write down five things that you expect from me and then the five things that I can reasonably expect from you.’ At the top of their list is for us to be nice to them. It was way down on the list that you actually have some knowledge about the topic you’re teaching. So it was a real eye-opener. ... They actually intend you to treat them with respect, not necessarily that you love them.

we are accessible to students here – if we are not, it inhibits learning. You will find a lot of engagement between staff and students here, and it is very rare that a student falls through the cracks and fails. A member of staff will be contacting the student within weeks: ‘we haven’t seen you. Is everything OK?’

In my view it is accepted now that in order for a student to learn they must feel welcome, safe and respected in the classroom, and I don’t know that that was the case when I was a student. Not always. If students don’t feel safe, welcome and respected in the classroom I think it is much harder for them to learn.

- involves making it clear to students where they are expected to go in their learning, what is ‘appropriate’, and what they are expected to be able to do:

Students are looking for clues as to your expectations, and they think they can be helped if there are clear learning outcomes or objectives and they’re given permission to be linking their learning with some clear statement of what it is that they should be doing. And I think that defining the assessment and the criteria for the assessment is difficult and there has to be an alignment, I think, between the criteria reference and what you’re doing. I think alignment is very difficult and very important.

To ensure that students are clear about what is expected of them in tutorials, from beginning I set out my expectations of students, and invite questions about expectations of me. Students expected to participate and can’t sit there and say nothing. I used to model a tutorial in the first semester. Members of staff would take on different roles (for example, a smart student, a quiet student, model students and so on), and we would give them marks and explain why got the marks they did.”

- requires clear explanations, using a variety of appropriate techniques, like anecdotes, diagrams, role-plays etc, which are relevant and which illustrate key points to students (see Hativa, 2000)
- focuses on key concepts, and students’ misunderstanding of them, rather than on trying to cover a lot of ground;
- uses a variety of valid methods for assessment that focus on the key areas that students need to master, encourages students to engage deeply with the task,

avoids forcing students to rote learn or merely reproduce detail, and avoid unnecessary anxiety:

I find that the light bulb goes on with students most often when they are given fairly difficult assignments to do. If you give them plenty of time to do it, all the resources they need, let them work when and where they want to work, not under exam pressure, and not competing with each other in tutorial conversation, so its just their work, it is amazing how many students will come to you and say that as a result of doing this assignment the penny is beginning to drop. As a result of having to do this, things began to click into place. With a lecture, they can just let things sail over their heads, in a tutorial they can let someone else do the talking. But when they have to produce something at the end of the day, usually the process of putting it together helps them to learn. (Focus group participant)”

We don't have 100 per cent exams, and that promotes learning. We recognise that different people excel in different types of assessment (some excel in exams, some in assignments, some in a tutorial context). Some don't put 100 per cent on any one of those, and assessment is made up of several different components, each emphasising different capabilities. So we give all students some opportunity to shine in the areas they do best in. And that promotes learning.

Some assessment methods better enable students to engage with the material. An exam may do that, and they engage in material in one way, but different assessment methods help them to engage in deeper sense, and they get feedback, which nobody gets on an exam.

- enables students to work collaboratively (see Dominguez, 1999):

If you can encourage students to engage with each other that is when a lot of learning takes place.

- involves “a dialogue between teacher and learner”, (Laurillard, 1993: 94) in which the teacher seeks evidence of student understanding and misunderstanding.

it is important to encourage a sense of rapport and interest which encourages students to speak out even if they haven't done the reading – at least by speaking out you can explore some law issues.

Some focus group participants spoke of a teaching model that began with the proposition that:

the reason that we are all here is that you want to know, you don't know yet but that's why you're here so we run an error-driven model in which we say every suggestion is worthwhile because the person sitting behind you has the same question but is not yet confident enough to utter it.

So we ran a model in which set those parameters up very clearly at the start of the class, and at the end of it they agreed they'd had much more questioning in this class of 500 than they'd seen in several years. And it just worked on: 'Look you speak for a whole host of people here. That question's a really interesting question. Let's have a look at where it goes' and then ask the next question. And

then: ‘What do you have to say about that?’ ‘I don’t have anything to say about that’ ‘Yes you do. You’re an intelligent young adult. Just blurt it out.’

- involves giving timely and high quality feedback on student work, so that students know how they are doing before it is too late to do something about it (see Leclercq, 1999a) (see further chapter 15 below)
- involves engaging with students at their level of understanding
- ensures that student workload is appropriate to allow students to explore the main ideas in the subject
- involves encouraging student independence, so that students have “space and support to make imaginative connections and explorations” (Martin, 1999: 37)
- “usually includes the application of methods we know beyond reasonable doubt are more effective than a steady diet of straight lectures and tutorials, in particular methods that demand student activity, problem solving and co-operative learning. Yet it never allows particular methods to dominate. There are no simple means to simple ends in something as complicated as teaching; there are no infallible remedies to be found in behavioural objectives, experiential learning, computers or warm feelings. Good teaching is not just a series of methods and recipes and attitudes, but a subtle combination of technique and way of thinking, with the skills and attitudes taking their proper place as vital but subordinate partners alongside an understanding of teaching as the facilitation of learning” (Ramsden, 1991: 150-1).

Depending on what you are teaching, and at what stage you are teaching, and whether it is an elective or core first year subject, there has to be a component of providing information, some of which they read and some of which we deliver in lectures. Then we might use tutorials to engage them, assignments to engage them. We might get them to do interview with a client, a moot or mock trial, to engage them with the material with which they individually have to engage, but there is no one right method.

- involves an awareness that good learning and teaching are dependent on the context within which learning is to take place. What works in one situation will not necessarily work in another (Prosser and Trigwell, 1999: 168).

The question should be: with what kind of learners, with what kind of subject matter, and with what kind of processes, which teaching and assessment methods will be appropriate? For example, if you are doing skills teaching, the simple method of telling them what to do, modelling what you want them to do, getting them to do it, and then giving them feedback on what they have done is appropriate for that kind of thing. But people have different methods.

- requires a constant process of monitoring what students are experiencing in their learning situations (Prosser and Trigwell, 1999: 168), and trying to find out about the effects of teaching on student learning and then modifying the approach to teaching in the light of the evidence collected.

What are law teachers trying to do when they teach?

Building upon the first part of this chapter, in this section we let Australian law teachers speak, in their own words, about what they are trying to achieve with their teaching. In chapter 1, it was suggested that a traditional, lecture-based, model of law teaching, assumed that teaching was about transmitting knowledge of legal rules and principles to students, and that students' knowledge of the subject matter was best assessed by their performance in an end of year examination.

While, no doubt, some law teachers still adhere to this model, from what came out in interviews and focus groups, it would seem that such teachers would now be in the minority. More common would be a more sophisticated, but still narrow, model of teaching which was described by three focus group participants as:

Giving the students an understanding of the current law in the area that we're teaching and an ability to determine changes in the law in the future for themselves.

And getting them to understand why this particular area of law exists. What purpose it's there to serve. And evaluate whether or not it does a good job.

And one I'd add to those two would be: I want to put an impression onto them that they have a role as a professional and as a professional that involves certain, not just ethical requirements, but also cognitive standards of writing, of time management and of contemplation of how they are approaching their work, not just an automatic pilot approach to doing the job of a lawyer.

These descriptions of teaching go beyond trying to pass knowledge on to students, and begin to envisage teaching as the facilitation of learning, and as intervention to enable students to construct knowledge for themselves, and to self-monitor.

Participants in other focus groups illustrated just how far conceptions of law teaching have come in the past fifteen years. Five teachers from one school engaged in the following discussion of what they were trying to achieve with their teaching:

I guess most of the goals that I'm trying to achieve go beyond the content of the teaching and using the content as the vehicle to develop skills and attitudes, approaches, in my students. But then in relation to the content I'm trying to get them to gain an understanding of why certain elements of that content are important and why it has an impact on the society in which they and others react in and stuff like that. I'm trying to get my students to think creatively and laterally, to criticise what they're reading and hearing about, to question and then also to be able to take a very complex system and understand how that system works, the way that system fares and how that system may be changed to better achieve the objectives.

I think my goals are fairly similar. I think I'm trying to empower students to be good lawyers; to be able to find out things for themselves; to be able to read quickly and understand, think critically about what they're reading; to be able to formulate arguments, both in written and oral form. So a lot of my teaching is less focused on presentation and a certain amount of content – I do set reading and

expect students to read that – and more on focusing on: ‘What do they understand coming out of the readings? Do they have arguments in response to those readings?’ and so on.

What I’m trying to do it seems to me now is to provide students with the space and the opportunity to do those things themselves. It’s less coming from me. I’m less on the stage than perhaps I was before. I want my students to learn to do for themselves and I want to facilitate that rather than teach them to do that.

I have an approach of facilitating the students’ learning and I resist being the expert who they need to please in terms of what the learning is all about. I also invite them to take responsibility for their own learning, to be autonomous, and to look to themselves as lawyers in the future. And inevitably I find that involves often their conceptions of what lawyers do and often ethical issues that arise in all subjects. And what I try to do is to share with them my own experience and invite them to compare their current conceptions with my conceptions and then together we work and see where we might go together. I don’t have a hierarchical view that my view is necessarily better than theirs, but on the other hand I invite them to reflect critically on their own views.

[Teaching some law subjects is] a bit like teaching a foreign language isn’t it? It’s like teaching students Japanese, but they don’t have any sort of preparation or concept and it seems to me if I’ve done that in a way that I delivered the concepts in a way that I thought was manageable and reachable, I suppose, for students, it didn’t always work, but it seems to me when I gave them the building blocks and allowed them to play with them, or put them together to reach their own pattern about that subject, it seemed to me to work better. And then they were better armed to have critical thought.

Three participants at a second law school described their aims in teaching as follows:

I think we have different roles, obviously. The first is to provide a safe and happy environment for learning, just in our classrooms. The next role would be our professional responsibility role, which is to provide a minimum standard of learning for the profession. And then I think by far the most important role is getting people to think and getting them to think deeply about not just the legal system but about learning and to provide an environment where they can gain knowledge and discipline and critical thought.

[My responsibility] as a law teacher is to develop strategies for dealing with changed classroom dynamics [for example, increasing class sizes] and not allowing students to escape their responsibilities as an active learner.

I think the legal doctrine is just the substance that we use to encourage students to learn and to engage in critical enquiry. I suppose one thing that’s important for me is to try and encourage students to enjoy intellectual enquiry, that they want to look further, that they desire to not be satisfied with the simple answer or the obvious answer but want to go and read something else and see if there’s some challenge to that. And I think legal doctrine in some ways is quite a good tool to use for that. [But] I think sometimes that actually makes the education process more difficult and it gets in the way sometimes of encouraging people to enquire, because it almost starts from the position that there is a body of doctrine that you have to know, and that’s more a learning process than any sort of critical enquiry.

At a third law school:

Partly because of the very transient nature of [legal] knowledge I see my role as a means of getting students to the position where they are capable of lifelong learning.

One of the things I tell students is first of all what I'm trying to do is to teach them what to do when they don't know what to do. To give them not so much knowledge or information-finding strategies but intellectual strategies. You know when you're in front of students you present them in a tutorial with a hypothetical where a client says, 'What do I do about this?' or 'What can I do about this?' So you help them to question it. You can say: 'I don't know what the answer is,' and the what you do is you model problem-solving strategies. You structure them but you also model them and then you're explicit about the fact that what you're modelling is that tutorials are a model for group work, they're a model for learning, they're a model for legal practice, and so it's not about the banking theory of teaching where I'm a knowledge bank and you're a creditor, you take me out, but about modelling processes and strategies and analytics and competent ways of dealing with things. there are issues about their responsibility to their client. I mean part of the issue about independent learning is that it's beneficial to them but they also have responsibilities to those people who will eventually become their clients. And their ability, I mean I know it's a very clichéd line, but I always say to them, 'Clients will not come up: "I am a sport. I am a crook. I am an economic loss. I am reportedly a very good person"'. You have to figure that out.'

And so part of helping these people to become an independent learner, I also regard it as my ethical responsibility as a law teacher so that you can actually go out there and properly represent your clients.

I think an important role of the teacher, especially in universities, is to help students get to know themselves better, and to help them get to know their strengths and weaknesses, seeing the challenges they face, help them get over those challenges, identify those challenges and then if they want help from you, to be prepared to help them get over those challenges. And to know what they're interested in, to just sort of give them a range of approaches, a range of angles, a range of subject matters that they can choose from and say, Oh yes, this really lights my fire. And I think it's really important for students.

At a fourth law school:

It's really about encouraging students to learn, towards the outcomes that one has had identified, which are deemed to be appropriate for learning in that particular [subject]. That's the short answer. It's about student learning. So for me the task is always very varied. One is constrained by practice but in theory, how does one best encourage solid learning outcomes? And in order to make those determinations, one has to make a number of judgement calls along the way, which may or may not be correct. ... A year or two ago I asked some of our top students ... about their own perceptions of their own learning, What came out of that, for me very clearly, was that these were good students, and I didn't ask the poorer students, or the lower-scoring students. They all said that their learning took place across a range of different fields. Classrooms are just one part of it. It was in discussions with their peers, it was in informal contact, it was in their reading, it was in their reflection time even. People spoke about things that came to them when they were

doing things completely unrelated to their legal studies and they saw those as important sites of their learning. That's the good students, and the good students seemed to be engaged to a degree much more extensive than the weaker students, who probably expect more from the classroom, and see that as the pivot, indeed perhaps the only place where learning takes place.

I actually think that my role is to facilitate students doing their own work and that it's a bit of an anachronism to think of yourself as being the centre of what the students learn. So for me I think my role there is to displace myself from the centre and put a body of work into place and then to a certain extent my role is to assist students to engage with that material. I don't see myself as central. The choice of material is pretty essential though. ... I think they're only getting the overall beginning of anything that we actually talk about in the lecture. If we think we can hand out all of the information they're going to need we're kidding ourselves so you're really forced to come back to saying, 'Well this is what I want you to think about. Start your thinking here', and it's up to them to continue that. 'Then you need to go to this sort of topic' and you can go on through. So I think that our directives are very important, and I know that there are the really good students who can pick up on that and recognise that and all the rest of it, but I do think there are many, many other students who hear all of this and it just can't adapt to it. You know, they don't see how it relates. And so one thing I'm trying this year is that when we're offering subjects we're saying, 'Well these are the themes running through it. Have this piece of paper here every week and if you hear something I say on this particular topic that relates to this theme, jot it down'. I have to try and help them to see the links across because the good students can do those sort of things and they seem to do it intuitively, and the poorer ones need to be directed to understand what links are all about.

Finally, a teacher at a fifth school outlined an approach to teaching that took into account the changing legal environment.

One of the ways I think about my role as teacher is as a conductor, developing students' various skills and then to critique the laws. There's only one way of doing that and that's getting them to do it. That means that the teacher sits back a lot more whereas in the past the role might have been more forward. Now it's much more a conductor and ensuring that the various members are participating and doing those sorts of things that we want them to do. But in addition, the classroom has an element that it's more than just a set of individuals, so ideally in the classroom you get that synthesis which makes the sum greater than the individual and what any individuals want and to me that's the role of the teacher, to try and achieve that.

I think that's partly to do with the changing legal environment. Whereas before ... we were preparing students to work in was very much solely about adversarial dispute resolutions, and it was appropriate perhaps that what we taught them, what we modelled for them, was a form of argument that involved demolishing the other side and nothing else.

Whereas now in the changed legal environment where there is such a range of jobs there is less emphasis on dispute resolution. If that's the only model we promote then we're doing our students a disservice. So we need to find ways of modelling alternatives and that goes back to the way we actually have discussions in our class, so rather than encourage one person to pick holes in the other person's argument, we are about getting them to understand the connections between each other's

arguments, rather than getting them to demolish each other's arguments. So that's where my analogy of harmony comes in.

This section illustrates how Australian law teachers are rethinking their approaches to teaching. It no longer seems that the dominant approach to teaching in Australian law schools is one based on the assumption that teaching is about transmitting knowledge from the lecturer to students, so that student learning simply involves acquiring new knowledge, and is a process separate from teaching. Rather, as the illustrations in this section show, law teachers are increasingly accepting that teaching is concerned with making it possible for students to learn subject matter, and is a complex process of facilitating changes in student understanding. Seemingly, a growing number of teachers are aware that problems in learning may be addressed by changing teaching, but that there is no certainty about this. As those teaching in Law and other disciplines have written, teachers need to monitor the effects of their teaching on student learning, and to realise that solutions which worked last year, may not be effective this year (see Ramsden, 2003: chapter 2; Biggs, 1999: 21-23; and Prosser and Trigwell, 1999 chapter 7).

A scholarship of teaching

A further key idea that is increasingly guiding the development of teaching and learning in law schools is the responsibility of law teachers generally, and law schools in particular, to promote a "scholarship of teaching". It has been written that one of the great myths about teaching is that it is a less creative and imaginative activity than research (Lucas, 1994: 105). Universities, and law schools, talk about academic contributions in teaching, research and service, "but when it comes to making judgments about professional performance, the three are rarely assigned equal merit" (Boyer, 1990: 15-16).

The majority of Australian law teachers seem not to have formal education or training in teaching and learning, in the main because eligibility for teaching positions in law schools do not require this. Weimer (1997: 54, quoted in Cownie, 1999c: 44), however, argues that a lack of knowledge about teaching and learning produces academics who

do not know how they teach, understand why they teach as they do, or see how such self-insight might improve their practice . . . Most know they teach as they were taught, but beyond that they have no articulate philosophy of education, and no clear understanding of the premises and assumptions that reside implicitly in policies and practices . . . used to govern instructional transactions.

While the previous section of this chapter has demonstrated that it would be grossly unfair to suggest that all Australian law teachers fall within this description, law teachers have indicated that there is still a significant degree of ignorance about key aspects of teaching and learning theory. Cownie (1999c: 44) asks

How would those same academics regard someone who adopted such an approach to their substantive subject? It does not take a wild leap of imagination to foresee the outright condemnation which would be heaped upon the poor unfortunate who

professed to be an academic, but whose knowledge of the subject was so limited. Yet many academics appear to be content to take this attitude to teaching. Teaching is less valued than research, as Weimer observes, not because research actually is a more intellectually rigorous activity, but because the intellectual complexity of teaching is almost completely unknown within academia (Weimer, 1997). It appears to be very common for academics to take a very pragmatic and uninformed approach to teaching.

Boyer (1990) argued that academic work should be reconceptualised, to allow greater recognition of the diversity of work carried out by scholars. He argued that institutions, and individual academics, should adopt varying mixes of the ‘four scholarships’, and should recognise that each produces valuable academic outputs. He described the four scholarships as:

- the scholarship of *discovery*, involving original research and the advancement of knowledge;
- the scholarship of *integration*, connecting ideas and synthesising across discipline boundaries;
- the scholarship of *application*, assembling knowledge through an interaction between intellectual and ‘real world’ problems of practice; and
- the scholarship of *teaching*, transforming knowledge through bridging the gap between the scholar’s understanding and the students’ learning.

Boyer’s argues for universities to rethink their notions of scholarship to include teaching. But this is only part of the picture. By all accounts, teaching tends not to be discussed in a scholarly way in law schools. Lee Schulman (1993: 6-7) suggests that:

We close the classroom door and experience pedagogical solitude, whereas in our life as scholars we are members of active communities: communities of conversation, communities of evaluation, communities in which we gather with others in our invisible colleges to exchange our findings, our methods, our excuses. I believe that the reason teaching is not more valued in the academy is because the way we treat teaching removes it from the community of scholars.

How should law schools promote a “scholarship of teaching”? It has been suggested that the notion of a “scholarship of teaching” requires law teachers to approach their role as teachers in the same way that a ‘quality’ researcher approaches research and scholarship (Laurillard, 1999; Cownie, 2000a; Varnava and Burrige, 2002; Glassick, Huber and Maeroff, 1997; Ramsden, 2003: chapter 12) – by reading and thinking about the philosophy of education, about teaching and learning theory (Cownie, 1999c: 48), and about the discipline area that is to be taught; then applying the principles of subject design to organise the subject in the best possible way for students to learn the subject matter. Cownie (1999c: 48) argues that

While skills ... are very useful, and they in themselves can be used to improve teaching and learning, there is a danger that these ‘tricks’ come to be accepted as the *totality* of knowledge about teaching (Weimer, 1997). However, knowledge of techniques alone is not enough; teaching must be grounded in theory, not just skills, just as with substantive law it is insufficient to know merely how to look up

a case or what the ratio is; one must understand the place of theory in contract or in torts.

A scholarly approach to teaching also involves evaluating the subject as it is taught to reflect on how students are learning the subject, the learning outcomes and the areas of the subject that could be improved. This process of evaluation and reflection will raise new issues about teaching and learning that the teacher needs to explore in the literature or in discussion with colleagues, resulting in the redesign of the subject, and so on. “Expert teachers continually reflect on how they might teach even better” (Biggs, 1999: 6). Trigwell et al (2000) argue that the aim of scholarly teaching:

is to make transparent how we have made learning possible. For this to happen, university teachers must be informed of the theoretical perspectives and literature of teaching and learning in their discipline, and be able to collect and present rigorous evidence of their effectiveness, from these perspectives, as teachers. In turn, this involves reflection, inquiry, evaluation, documentation and communication.

A “scholarship of teaching” should also result in more and better quality academic writing about curriculum development and teaching and learning in law. As one interviewee noted, in commenting on developments at one of the law schools visited:

I think we’re starting to distinguish ourselves as law education scholars as well. I just had to prepare the faculty academic program report [on teaching and teaching initiatives] and there’s a quite a substantial section ... about how we’re going with legal education, with scholarship of teaching in terms of legal education. We’ve got a teaching and learning large development grant, small grants, and publications and conference presentations [with seven staff presenting papers at major conferences on teaching and learning in the university sector] in terms of exactly that, the scholarship of legal education. ... We’ve got a real core and a research strength now in legal education and the scholarship there. And that’s reflecting again a broader, generic, I think university, institutional push, to develop a scholarship for teachers. ... And there are broader discussions and conversations about teaching and learning and curriculum issues.

We encourage our staff to go to workshops on teaching, including the ALTA workshop, and we encourage them to go to conferences on legal education.

The faculty in which this interviewee teaches has two Teaching and Learning Development Grants “looking at how we assess four areas of graduate capability and development. ... If we are being serious about this we need to look at best practice models for assessing and some of them are very difficult.” (See further descriptions and discussions of this in chapters 4 and 16). Another school within the Faculty is trialing assessment models suitable for newly “embedded content in indigenous perspectives”, with a view to sharing that information with the law school. Furthermore, this law school is

looking at the various assessment tasks we have for communication skills, ethical attitudes and teamwork skills. How embedded are they? What assessment strategies have we embarked on? Are they working? Are they best practice? How can we

improve them? And we are trying to look at a holistic assessment framework. You have law school staff examining issues such as: is it valid? Is it reliable? Is it manageable? Does it further student learning outcomes?

A simple measure of how the “scholarship of law teaching” has developed in Australian law schools over the past 15 years is the burgeoning literature of teaching and learning in law to be found in journals like the *Legal Education Review*, and digested in the *Legal Education Digest*, produced by the Centre for Legal Education. But it is also clear that this developing scholarship is not widespread, and in many law schools, has yet to take a foothold. Many reputable teachers express a scepticism about the importance of grappling with educational theory (see Gray, 2001: 152-54). There is also a justified criticism of some, perhaps most, work on legal education and one interviewee caustically noted:

one of my concerns about the discussions of pedagogy that are going on [among law teachers] is that they are informed by nothing more than the reading of a handful of basic education theorists, to the extent that we accept a strengthening of research in legal education as a subject, or legal education as an interest. I’d be much more impressed if I thought that those writing in legal education were publishing also in peer-reviewed education journals, in exactly the same way that you can’t become a law and economics specialist by picking up a first-year book in economics, and familiarising yourself with the language.

We can all write anecdotal articles on legal education and it’s not that they are valueless, but I think it’s asking a bit much to expect that credibility should attach to the writings of those who have no data, insight, or familiarity with educational theory. They may have no greater insight into the educational process, necessarily, than anyone else but they purport then to write outside their substantive area of specialty as lawyers, or as people with a law degree or postgraduate law degree, and start writing about education.

Now it’s perfectly possible to, in a non-credentialist way, become very familiar with educational theory, but I think the test of that is to start publishing in journals other than law journals or law-sponsored legal education journals. I think there’s a lot of second-rate writing in that. ... I do think it is incumbent upon people who purport to be educational theorists to at least bring their interest in educational theory before the rest of us to ensure that they’re being peer reviewed, not by those simply with an interest in legal education, but by the educationalists. Around Australia, indeed I think it’s more than around Australia, in many countries, education as a discipline is often not regarded very highly, partly because it is so ridden with fashion and with ideology. And I think that we have to keep some sense of perspective about that. The atom was not split on this occasion merely by a handful of lawyers pushing us in a particular direction. It doesn’t work like that. And yet I think that to some extent the public debate is being captured by a group who are insufficiently tolerant, but it’s not simply that. They are too convinced of their own philosophy, of the correctness of their views. And I’m somewhat sceptical of that.

This is the next challenge for legal education. Not only do law schools need to ensure that staff engage with teaching and learning theory, develop new approaches to teaching that are anchored in educational research, and carefully and robustly evaluated for their impact on student learning, but scholarship in teaching and learning in law needs to emerge from its cocoon, and subject itself to peer review by scholars working in educational theory.

Summary

This chapter has outlined key principles in teaching and learning, and sought to illustrate them by reference to the practices of law teachers who participated in interviews and focus groups for this project. It has also emphasised the importance of law schools and teachers engaging in a scholarship of teaching, so that teaching initiatives are solidly grounded in teaching and learning theory, and robustly evaluated. During the past 15 years, teaching and learning in Australian law schools has improved significantly, which in part is reflected by the literature on legal education. It, however, has also been suggested by some law teachers that law teachers, as a whole, will not make the effective improvements that legal education requires until they broaden their horizons and open themselves to engagement with, and peer review by, mainstream educational theorists.

CHAPTER TWELVE

TEACHING AND LEARNING SINCE 1987

It was mentioned in the last chapter that it was thought that approaches to teaching and learning have changed, generally for the better, in the past 15 years. Much of the change has been due to the advent of new law schools, some of which, with enthusiastic young staff members, and some engagement with the teaching and learning literature, made genuine moves to student-centred learning, and have introduced a more diverse range of assessment methods, with a greater emphasis on activity-based learning. As one interviewee, put it:

The benefit of all of the new small law schools in Australia is that they started with a different attitude and a different era.

Some new law schools have recognised that “the way that we attract students here, and more importantly, the way we keep them, is to emphasise our teaching”. Some, have deliberately sought to employ staff specifically for their teaching ability.

Teaching and communication were prioritised. ... The way we structured subjects, the way we taught, and even when we were getting part-time staff, it was a major consideration. It was not just filling gaps, but getting people who we felt would be able to communicate. We really were conscious of the fact that teaching was an art and a science. It is both.

Another interviewee compared current teaching with the teaching she experienced as a law student.

I think this is actually quite an interesting but somewhat difficult time for law teachers, or for university teachers generally, in that a very short time ago when I was student, the focus for academics was on their research and if you knew about a subject you could teach it. I mean tertiary teachers did not have as professional an attitude towards teaching in many cases certainly as their primary school and high school teacher colleagues. I mean teaching was just something that was the emphasis was on the student to learn and not on the teacher to teach properly.

That’s changed radically. Now we are expected to be professional teachers. That means we must learn how to teach, as most of us don’t have a teaching qualification. We must go to teaching workshops. We must learn how to teach. We must read about teaching. We must learn about teaching. Now that’s all got to be done at the same time that you’re learning about your particular area and developing a research life as well. I think it’s much more difficult now to have the time.

The rejuvenation of teaching in law schools was also a feature of many first and second wave law schools. One focus group participant from a first wave law school suggested that there had been a change in teaching “in terms of delivery method and from the teacher as expert to a much more interactive process”. An older interviewee from another first wave law school summed up the changes he had experienced in the following way:

It's very difficult to be more than anecdotal on this, but students are expected to read in preparation for classes and most of them do I think. ... Teachers are expected, not just to lecture, but to engage in various different styles of teaching – whatever they're comfortable with – and I suppose my class consists of a mixture of bursts of lecturing and asking questions and occasionally doing exercises and things like that. I do a lot of things I did not generally do [in earlier times]. I'm not comfortable with all of that by any means but I, from somebody who spent many years just lecturing, my teaching style and the materials that I give students, have changed quite a bit because of this.

An interviewee from a second wave law school remarked:

I know there are colleagues who put everything into teaching because it's part of what they do and what they are. Whether the institution valued it or not, it's part of their satisfaction in the way they do their job. ... The level of discussion we have here about teaching I think reflects the fact that people care, take it seriously. They're quite passionate about it in some ways. So that promotes creativity, because the exchange of ideas sparks off other ideas. You can't just sit in your room and think about: now how could I approach this in a different way tomorrow? You learn a lot from each other.

So a good collegiate environment is important to creativity as well. Interestingly, especially now that we're in the appointment round, we think a lot about recruiting people who will fit in to our collegiate environment and share our corporate role. Maintaining diversity and your intellectual edge there is always a challenge because you don't want to get so homogeneous and so cosy that you lose the edge that you get with diversity.

This chapter outlines the principal developments in law schools' approaches to, and experiences of, teaching and learning in law since the late 1980s. The key issues that will be addressed are as follows:

- the shift in law schools to student-focused teaching;
- the adoption in some schools of smaller group teaching models;
- the degree to which teaching and learning in law schools has been grounded in educational theory;
- the casualisation of law teaching
- the semesterisation of subjects;
- the increased adoption of information technology in teaching; and
- the rise of intensive teaching programs and other flexible teaching arrangements.

Student-focused teaching

As foreshadowed in chapter 11, law teachers have moved towards conceptualising teaching as the facilitation of student learning. A law teacher who had been away from university teaching for 15 years noted in a focus group:

When I started teaching [15 years ago] the focus was on me, the teacher – on what I knew, and what flowed out of my mouth. Now we focus less on content and more on the learner and what the learner learns. There has been a whole shift in the general concept of teaching and learning. This is thrilling, but it is also difficult. Now not

only do I have to think how much law do I know, but I also have to get to grips with the process of teaching.

An interviewee from a second wave law school remarked, at their own law school there has been a more explicit focus on learning.

That is, we have tuned into the debate. I think that it's fair to say that the teaching came with a capital T and the assumption that students were learning, but the shift of emphasis from teaching to learning, which has been promoted through the law discipline by [key law teachers and scholars] through [the *Legal Education Review*] and has also been promoted by [university teaching and learning support units].

These changes were largely “changes in sensibility – sensibility about shifting from a teaching focus to a learning focus”.

A teacher from a third wave law school described her approach to teaching as follows:

My personal commitment is about teaching law as a discipline. I am not fixated by different categorisations (i.e. I am an “X” law teacher). I have taught public and private law. When I am teaching I am there to facilitate learning – I am there to say let's explore this together. I will give you the benefit of whatever wisdom and experience that I have. We will explore it, and through that process you will come to have an intellectual framework for looking at the world, which is a law way of looking at it. And there are different sets of law glasses that you can use – depending on where you come from – theoretical, black letter, positivist, natural law. But there is a law way that is different from other disciplines. So it is learning the language and method of the discipline. So when students are starting off I am very conscious of the importance of frameworks, language and method – I can add content around that. But it is about learning the method of the law. I don't think students are terribly conscious that that is what they are doing – they are always more interested in content than frameworks, but you can see the exponential growth in their learning in first year. In later year subjects it is still about let's explore this area – but in the end I am interested in what they have to contribute. They have insights by now, they have learned the language, and they need to practice it – and they do it by reference to different topics eg const law. That's where I fit. I am not a black letter type. The context is important- giving law some kind of context so that it does not just come out of a vacuum. That relates to something I said earlier: the value of studying another discipline. It gives you insights that you can balance against your law vision of the world.

Another third wave law school teacher suggested that the learner requires 99 per cent student input, and one per cent teacher input.

My view is that the role of the academic is to provoke, stimulate and challenge. That will encourage the students to do their own learning. I can sit in a classroom for half an hour and have just as much an impact on students, in terms of encouragement for them to take charge of their own learning process, than if I had four hours with them. I truly believe that. If you do what you do in a targeted, structured way which achieves the objectives, none of those objectives are to do with information but it's about challenging the students and provoking them and getting them to think about what they have done or what they will be doing. ... If we were constructing a law

school I wouldn't call anybody a teacher or an academic, I would call them learning facilitators, or something like that actually demonstrates what they are meant to do.

Many teachers remarked on how changes to the approach to their teaching had been motivated by a better understanding of who their students were:

The other thing that I found very handy is spending time with the students, socially, to find out who they are and where they come from. And you start with a model that all students have just finished secondary school, and then you find that quite a few have been teachers themselves for 20 years and they have many other skills in addition to their interest in the law.

I think that changes your approach to their learning and you realise that you've got an opportunity to learn from them, and I think that the profile and the prior learning of law students is not the same as it was when I started in 1961, and we need to take that into account. There are people who come for second careers who have had many years experience say in diplomatic service or as scientists and you really can't treat them as though they've just left secondary school.

And you need to have – and not only is there a prior learning issue but also the cultural diversity. They come here with different university experiences in other cultures and it's just not the case that one size fits all.

A law dean at a first wave law school described the School's overall approach to teaching as being student-centred learning,

with students taking responsibility for their own learning and the "teaching staff" as facilitators in that process. And there's a fair degree of commitment to that throughout the school. ... The outcomes that we want – our graduate attributes – are people who have a capacity for life-long learning, who have a capacity for self-directed learning, who have developed skills in problem-solving and legal research and who have developed an understanding of the ongoing and incomplete nature of law, that it's never finished, that there's never an answer for everything. But I think our main concern is this capacity for self-directed learning, and research and problem solving is really the most important attribute and outcome.

The student focus was not confined to the understanding of teaching and learning theory. There was a trend, at least at a few law schools, of rethinking law school administration from the students' perspective. For example, one Dean spoke about the efforts his school had made "to improve our administrative responsiveness to students".

When I became Dean, all our systems [seemed to be] designed from some kind of internal, arcane, bureaucratic requirement, outwards, and there wasn't much thought about how the system looked from the students' point of view. And so we would have students who would have to come to the front desk on four or five separate occasions, to do everything they needed to do in order, for example, international students, to enrol in and establish their programs. And it seemed to me that it made much more sense, even in our own administrative interest, to think about it from the students' perspective and to try to build our processes from the student in, rather than from the bureaucratic requirement out.

Similarly, another interviewee mentioned that the student-teacher relationship changed quite dramatically over the last 10 years at her law school. “Certainly over the last six to seven years at least, there has been a very large, very, very dramatic change. The school has become much more user friendly and client oriented if that’s the right word.”

Another interviewee from the same school commented that one of the most significant changes in the school over the last ten years has been in relation to the consultation hours, which are now much longer than they once were,

and student debate, I think, is much more encouraged – it’s a two-way process, both in the classroom and generally. It’s quite common for students to come and chat about things or debate things in class.

A school that was established as a small law school reported that until student numbers started to increase dramatically, they had been able to maintain personal relationships with all their students. They are still able to give a significant amount of attention to their students, but not as much as previously.

We’ve been accessible to students. We use first names. We know who our students are. We do productive things like organise events, write to students who have failed a subject, and the aim of that is to intervene before they get to the point of getting caught up by the university’s rules on minimum rate of progress and that sort of thing. [Most other faculties] wait for the student to come forward. We’re still small enough and we have an attitude about it that means that we take those sorts of steps.

We also try to foster a really good relationship with our law students’ society for example. They’re the ones on the ground and they’re the ones who know what the problems are. So we liaise, once a week I suppose, once a fortnight. I have one or two members of the LSS executive who come in and sit down and they say, “This is a problem” so we talk, they get back to their students members who are the ones who are raising the issue.

That’s a very positive mechanism and I think it’s a very positive development to do that, to use them because they’re a good resource.

But with 180 students in first year, the relationship with students has to change. That personal relationship element is going to suffer because of larger school numbers. The larger student numbers has resulted in the school reducing classroom contact hours. I guess with more regular contact hours you are getting to know your students. With more contact hours every week you are getting to know your students more quickly and more effectively, and you’re building a better relationship which is likely to foster that on-going relationship, both during the course of that semester and during their studies.

But it’s more difficult for staff now to maintain a personal relationship with students when they’ve got more students and more assessment and more workload. I don’t think in the general terms the teaching hours have increased particularly much, but certainly the number of students that each academic is generally responsible for has gone up significantly. That makes it more difficult to maintain a personal relationship with each student, partly on the basis of the time.

One first wave law school mentioned that it has always viewed itself as being a small law school,

that is really interested in individual students. That aspect of treating them as individuals, with individual needs can include counselling and pastoral care for many of them.

But interviewees with experience in North American universities were quick to observe that “Australian students have been less engaged in major educational decisions within the faculty than is true in the institutions I know in North America”. It was thought that at some Australian law schools, the relationship between faculty and students is more distant than is desirable, “and that means that the students don’t see themselves as being as engaged in it as I would very much like to see them”.

Nonetheless, as reported in a previous chapter, extent to which law schools are seeking information from students and from the profession as to how their programs, subjects and approaches to teaching might be improved suggests that the involvement of students is not negligible. It, however, could be further fostered.

Without doubt consultations with students and employers have been driven by government and university policies, but nevertheless these developments have had a big impact on law schools. A number of law schools closely monitor the results of student surveys of teaching, have regular discussions with student representatives, and seek regular feedback from the profession (see chapters 9 and 10, and chapter 16 below). Coupled with this is a greater focus on developing skills in teachers (see chapter 16 below).

Smaller Group Teaching: Taking Pearce Seriously?

Another notable trend over recent years has been the move towards smaller class sizes, particularly in the earlier years of the LLB. Unlike at some other faculties, where it is common to have large lecture classes of 600 students or more, many law schools since the late 1980s have made a determined effort to provide reasonably small classes, particularly for first year students in the foundational law subjects, but often also for other core subjects (for an evaluation of these changes at one Australian law school, see Anker et al, 2000). This is not to suggest that small class sizes per se is a new phenomenon at law schools, as at most law schools, some of the less popular elective subjects have been regularly taught to small(ish) classes.

Some law schools - particularly some second wave law schools – have, since their inception, had a commitment to smaller classes. For example, one law school claimed to have maintained an approach to teaching and learning that it had developed in the 1970s and 1980s. Its Head of School commented that “small group teaching is very important to [us], but I am not so sure that it makes us so distinctive now”. Indeed, some of the first wave law schools have made a concerted attempt to introduce smaller group teaching, particularly in their first

year programs. A law Dean with experience of teaching at a number of first and second wave law schools remarked:

The schools that were established in the seventies really had an eye to some of the developments in America, the Socratic method of teaching, problem-based learning, in an interactive way, and the schools' thinking were founded on the ethic of Socratic teaching, where students were given readings and they would read and they would come in and the classes would be interactive. That was the model and it was very much the model of [two second wave law schools], which were founded about the same time.

[They both] had small-group teaching as its mode of teaching from the first. Groups of 30. Seminar-based teaching. So that was in the seventies and early eighties. I've lived and breathed small-group teaching from the early part of my academic life and that was the foundation of being able to discuss problems at large and it was a very sound platform on which you could have the approach to contextual discussions of law.

It required the students to read larger things. Give them some policy documents associated with changes in law, some historical material, different perspectives on problems, and that made for very lively classroom discussion at that time.

And I think schools like [those] still cling to the idea that our approach is interdisciplinary and we have scholars that come from a range of disciplinary foci. We have clusters of teachers in particular areas. But I imagine, again speaking from my own experience, that most of the schools will say the same thing.

In the wake of the Pearce Report, particularly its suggestion that law schools should give greater attention to providing more small group teaching, many law schools in the late 1980s and early 1990s abandoned the large group format (which might have involved class sizes of 80 or more students), and embraced "our version of small group teaching, which typically involved classes of 25 to 45 students, taught by a range of methods which included mini-lectures, teacher-led full class discussion, small group (3-6 students) discussion, and other methods designed to maximise student opportunity to discuss class material."

A number of teachers who participated in focus groups thought the benefits of small group teaching were many. As one exponent of small group teaching remarked: "Almost invariably people are happier to talk in groups of up to 20, but if they have to do it in front of 150, the equation is quite different and the effect on them is quite different too."

At some law schools, small group teaching, however, was only one part of a change in the law school's teaching approach. After an extensive review of its LLB curriculum in 1988, one law school adopted a new model of "guided learning" which required "small group teaching" in classes of no more than 50 in the first year program. The Dean described how the school changed its philosophy of teaching.

It was a change to guided learning rather than teaching as the basic principle, and that was reflected in many ways in the introduction ... of what we call small group teaching in the first year subjects. ... They are taught in groups of about 50 students.

... The idea is that these subjects provide a foundation on which the rest of the teaching is built, so that subsequent compulsory subjects are taught in different ways but the continuing theme is one of guiding the learning of students. Our premise is that our students are very able people requiring a high level of challenge and intellectual stimulation and so the role of teaching is, by various means, not in any one sole method, to really exploit that inherent capacity in the law students themselves. ... [T]he small group teaching [i]s a means rather than an end in itself, and so it was a means of best promoting the guided learning and that's why ... the group size varies subject by subject, year by year. But the main commitment of resources was deliberately made to earlier years rather than later years so as to entrench the basic approach that we required.

[T]he philosophy really goes back to ... this approach of learn and lead, wanting to stimulate and facilitate learning in a way that really does give students of ability ... the capacity to go on and do whatever else they want to do next. And that might be postgraduate work in other top law schools anywhere in the world ..., where many of our students shine and the record of our students in postgraduate work at Harvard, and Columbia, and Yale, and NYU and Oxford and Cambridge is quite outstanding. So they can measure up to and perform well against the very best from other legal education backgrounds. But also in terms of careers, we want to give people the capacity to succeed in careers where they might be working anywhere in the world, not just on the local enactment of the Commonwealth Parliament and working out what Clause 57B3 means, but working in different legal systems, different jurisdictions and having an analytical capacity to make that leap into the relative unknown.

We're always looking for further ways of pushing [students] further. So it's not a case of getting "the right curriculum". There is never something that can't be improved upon. And that includes and incorporates technology. Technology is just a tool but it might allow you to do things that otherwise you couldn't do, or allow you to do things better And so there's no huge mystique about the education technologies that we're experimenting with, other than their capacity to keep pushing and pushing and pushing towards better results.

Some third wave schools also embraced this approach from their inception. At one third wave law school, for example, there has been "an emphasis on student-centred learning and student responsibility for learning, which at that time had not been implemented in other law schools". When the school was founded there were no lecture groups, and subjects were taught exclusively to small groups of 25 "with pretty good contact hours". With dramatically increased student numbers the school still tries to maintain this approach, particularly in first year, but in later year subjects, class contact hours per week have generally been reduced, "from four hours to three hours and then to two hours in the space of about 10 years". Where there are only two hours small group contact, it is supplemented by a one hour large group on-line lecture.

So that's an example of an attempt to maintain the nature of the class contact and the primary focus being on seminars and all sorts of activities you can do in seminars, but supplementing that in other ways. The large classes are not necessarily formal lectures. People use that hour in different ways, for different purposes. For example, one teacher uses the large group for students to talk about the problems and their group assessments.

Interviewees thought that this approach often conflicted with the approach taken by other faculties at the university, which would affect students in combined degree programs:

We use a seminar-based method and getting students to be active and all those sorts of things. It must be very difficult for the double degree student who is in another faculty where the delivery method is traditional lectures for two hours a week and a one hour ‘tute’ or lab or something where you do exercises.

Another law school that mentioned that its “whole approach to teaching is based on small group teaching”, did not have class sizes of more than 40 students. This school emphasised that small group teaching was not just offering tutorials, and did not take a lecture-style approach. While lecturing was an option, it was discouraged as being “antithetical to the whole notion of small group teaching”.

A law school with a small LLB cohort – with an intake of 50 students each year – mentioned that it did more than offer small group teaching. It experimented with “block teaching” (see Saenger et al, 1998).

To ensure that our law degree didn’t suffer from the fact that it was being taught in a rural, isolated environment well away from the resources you have in large capital cities. And so we instituted a model of block teaching. It’s without doubt the most radical way that law has ever been taught in this country. We would take the introductory subjects, say contracts, tort, criminal, and a broad Introduction to Law unit, and we taught those units in six-week blocks.

You’ll see how we went about that. But that created some very interesting curriculum issues, some very interesting issues in terms of stress levels of students and staff. It meant that we would [for example] have the contracts students studying nothing else for a six-week period than contract law and we had them for four days a week doing nothing but contracts. And then the next subject and the subject after that and so forth. It allowed us to do things that we now can no longer do because we’ve gone back to the conventional way of teaching. For example, in the early years we would take our students away, like when they start with us they were doing introduction to law degree first unit, we were taking them to Canberra to visit the High Court and visit the Houses of Parliament in the first two weeks. That allowed a great level of bonding between the students and the lecturer. We’re talking about 30, 40, 50 people maybe, small groups really. It allowed us to teach the introductory unit prior to teaching any substantive law unit which is of great value in any law curriculum. You use issues in teaching law. When the students arrive on day one in the graduate program, for example, they’re required to do three substantive law subjects and an introductory level subject as well. It creates serious problems for curricula.

That model broke down when we decided to go for double degrees because of the complexities of timetabling. But it’s a very interesting approach to the teaching of law and it still has influence. A couple of our subjects, contracts, torts, are still taught in a modified form of that basis. So we teach contracts here as a full-year subject but in one semester, where we have the students basically to ourselves for about two days a week, and that allows us to do reasonably interesting things in relation to those groups of students. For example, we can go off and visit a court if they want to. It is that capacity to move away from the campus that we were trying to achieve, and it worked to a reasonable level. It doesn’t work ever as well as in theory it should but the lecturers want to be innovative about the way in which they teach. They actually

had the time to deal with the students and not just adopt a standard lecture-tutorial model. It's quite radical. But at the end of the day we've discovered that the timetabling tail wags the dog all over the place and the dog's usually the curriculum, which is a sad thing.

Block teaching also will impact on the way in which we teach our external students because essentially we're bringing external students into three blocks. [We examined] the effect it had on staff and students, whether they liked it or whether they didn't, whether they thought they'd learnt more or less. Those groups of students who did the first two or three years of our degree did that intensive-based teaching. In their final year, when they did do their electives, they resorted to standard lecture-tutorial models and it was interesting to see how they compared the two. Some thought the lecture-tutorial was very bad compared to what they'd experienced before, and some thought it was just brilliant. So we found serious polarisation going on with the students – and the staff – as to whether they liked the model or not.

Some subjects worked extremely well in this model, subjects such as Evidence and Procedure, you know, skills-based subjects, worked well where you really needed people together. Subjects with very large curricula tended not to work so well so in our early days we taught equity and property as one equivalent full-year subject and I think there was just too much depth in there and too much sheer content to get the most out of the model. Skills-based subjects worked well in that process.

The conversion to smaller group teaching in the older law schools tended to occur in the 1990s. At one such law school, this conversion took place in 1997.

We teach now not in a big lecture format but in small groups. Now those group sizes aren't as small as ideally we would like them to be, but they are at least much smaller than they were initially, and that has allowed us to be much more adventurous in the ways in which we put things over. For example, [in one of my subjects, which] involves the acquisition of basic theory skills, plus more advanced skills of mediation, we spend an awful lot of time role-playing – and that's just one example of the sorts of ways in which we teach. So we've really changed quite radically everything that we do, over that period of time.

[Small group teaching] is very much part of our philosophy in teaching. I'm not saying that all teaching happens best in small groups. I mean there are some times when you can do what you need to do just as well with a large group as with a small group, but having small groups allows us to get to know our students, allows us to develop a personal relationship with them and allows us to teach things in ways that are just not possible with a large group. The philosophy behind [introducing small group teaching] was really about giving the students an environment in which they could learn more effectively, where they could have dialogue with their teachers, they could participate in class a lot more, they could be independent in their learning a lot more, and as teachers we would be free to do many more adventurous things in the way we taught. It allows a lot more contact and dialogue in the classrooms. So that sort of dialogue is really important to us. ... [I]n order to engage with small-group teaching we had to make some sacrifices. You reduce the size of your groups, you have to work harder in other areas. But we decided to do that because we have that commitment to providing the students with a quality learning experience. ... That was the focus of that change.

Class sizes varied by we've made a very determined effort to keep classes in the compulsory[y subjects] to around 40, and the [electives] no more than 60. In the first

[first year] subject the students do, ... we've kept classes under 25. ... We try to keep the second subject down to under 30 as well. So we really load resources to the beginning of the degree. It's expensive but it is very, well worthwhile. ... I would like to think that 16 out of the 18 subjects in the degree will have a class under 45.

There is no prescribed ways of teaching within small groups at this law school.

But for example one of the compulsory courses which I will use as a good example is *Criminal Law*. In *Criminal Law*, which all the students have to take, there's a really excellent curriculum that includes some lectures, where there are people giving straight information. You need to have this information given to you in lecture format, but that's also combined with problems, it's combined with court visits, it's combined with exercises, it's combined with research and legal writing requirements, and so on. So there's a whole range of different ways of getting students to approach that material. And that works because ... you can have class discussion, in which you focus on a particular prepared issue in a class of 40. If you try to do that in a class of 120, it's extremely difficult to get everyone focused because most people know they won't have an opportunity to engage in any discussion.

In other words, one of the recognised benefits of smaller group teaching was that it enabled a more flexible and varied approach to teaching. One of the motivations for moving towards the smaller group format was to "free up" teachers to teach in the way that they wanted to teach.

So for instance, you can have in a subject someone, a very senior member of staff, who is teaching in an area where they have a big reputation and because we're in a hierarchical institution, under the old system, where there was the lecturer who gave the lectures and there were the tutors who gave the tutorials, the more senior staff had a perhaps disproportionate effect on what was taught and the way in which it was taught.

And then you would get people coming in at lecturer level who, whilst respecting the more senior staff, had a different idea of how they wanted to do things. ... [We] wanted to be able to free people up to teach [subjects] the way they wanted to teach them and focus on the things that they found most interesting and challenging and to bring in new ideas, about teaching methods as well as about content. I think people thrive best in that sort of an environment, so long as you give them the skills and the support that they need to keep on refining and improving both their knowledge and understanding of what they're teaching, and the way they teach it. I think that's the way it works best. [I]t is not a one-size-fits-all environment.

This change had been most successful, as judged by a number of criteria:

It has meant that there has been a lot of focus on teaching, a lot of experimentation, and some very, very good things happening. And it's been abundantly clear that that has been to our students' satisfaction. It is clear anecdotally, but it is especially clear in our [university-based student course evaluation] and CEQ figures, which went from way below the national average to substantially above the national average in the course of a relatively short time – between the 1997 and 2001 surveys. And our [university-based] figures are significantly superior to our CEQ figures, which suggests to me that our CEQ figures are still going to build because, as you know, the CEQ has a time lag built into it. So it's abundantly clear that our students are very much happier with the attention they're getting from us and the form of teaching now here. It is true that the smaller your groups are, the more interesting the things

you can do. And so there are some things you can do with a group of 35 that you just simply cannot do with a group of 75. So there is no doubt that numbers matter but I think that there's a relative amount of flexibility in numbers. What really matters is how you use that opportunity in the classroom. ... [T]he best thing to do is to talk in terms of highly interactive teaching and realise that in order to conduct highly interactive teaching, and yes, a mixture of assessment throughout the year, you have to have relatively small groups, otherwise it just becomes unwieldy in the classroom and your faculty members just don't have the time to do the marking that would be involved in continuous assessment.

Another first wave law school decided to move away from its traditional lecture/tutorial format to small group teaching in 1999.

We changed our delivery from the lecture-tutorial format essentially to give an emphasis to student-centred learning and teaching in small groups and seminars, so that essentially we lost tutorials. ... But what we were trying to focus on was student-centred learning and problem solving, [rather than] the sort of things tutorials often have, which is the reflection back of material provided in a lecture and simply the application of that information. What we wanted to do was emphasise that it was for students to actively learn the material themselves and problem solving would be part of that. Now that's of course an extremely expensive way to teach, as all law schools that engage in it have found. We thought, and I still think, that we have developed a very cost-effective and delivery-effective way of teaching this.

Our subjects are two points and four points. For a four-point subject our view is that a student should have three hours face-to-face teaching a week, plus another hour of structured but not face-to-face teaching. And I'm using teaching in the old sense but I really shouldn't. I really mean facilitated learning.... We've sorted out those four hours in order to make the teaching as cost effective as possible. There is one lecture a week to the whole class – it might have to be repeated depending on the size of the class – and each student has a two-hour seminar. The seminars are in groups of about 30, a maximum of 30, and the system relies extremely heavily on the production within the school of very detailed learning guides, which are essentially study guides or cases and materials books. The materials [will include] a lecture text, or a commentary text. There'll be usually all of the cases and any other readings that the subject coordinators want students to have, and there'll be throughout these materials there'll be questions, problems, tutorials, exercises, all sorts of things, and it will identify material which is specifically to be dealt with in seminars, and the seminar system relies very heavily on students preparing. So four-point students get three hours plus one, and that's supposed to be focused on the questions and the specific exercises in the materials.

A two-point subject might be a one-hour lecture and a one-hour seminar but it's more usually a two-hour seminar each week.

Of course, moving from traditional lecture-based teaching to more discursive smaller group teaching is a difficult change to bring about in a law school.

Small-group teaching is very difficult because there is still a very strong student resistance to it and there is also a strong staff resistance to it in lots of respects. So if you are faced with a room full of students who refuse to talk, there is of course a great temptation to give them a lecture - so you turn small-group teaching into mini lectures and that's really very wasteful.

One law school, in 1998, moved to a “smaller-group teaching model” for all of the subjects in its first year program, and for two subjects in its second year program.

We stream about seven subjects into groups of, at the moment, somewhere between 35 and 45. It depends upon enrolment in the subject. The idea was to stream on the basis of groups no larger than 30, but that as an ideal was almost unachievable from the very beginning.

Now that, even with only seven subjects, makes them very resource intensive and with enrolment in first year of about 280 to 290 that leads to a variable size of group. And of course that’s exacerbated by the fact that although you can, in theory, spread evenly across the groups, practically speaking that’s not possible because some times are much more convenient and popular than other times and we have a heck of a task trying to maintain some level of equality of number across those groups.

The school’s plan is to eventually adopt smaller-group teaching for all core subjects, and for most electives. “It was thought necessary to begin with the first year subjects and then work our way through.” The school claimed that the model was based on the model adopted another law school, which in turn was based their model on yet another law school. The theory behind this approach to class size was described in the following way:

You would dispense with the lecture and you would have highly interactive teaching arrangements, with the classes being broken up into buzz groups and very different teaching techniques. So the lecture as such would be dispensed with, although clearly there was a role for short lecture-like periods within the seminar. [Smaller groups] replaced [a format of] two lectures a week with one tutorial a fortnight. That became three contact hours a week in seminars. ... The objective was that a whole range of different teaching techniques would be available and would be used by the members of staff for teaching.

What motivated this school to make these changes was receiving a very low rating for teaching in Course Experience Questionnaires in the mid-1990s. “Our students seemed to be suggesting that we were aloof and we didn’t want to be like that.” It was also considered to be “pedagogically desirable” to make such changes. “We had literature at that time that supported the view that small-group teaching resulted in deeper learning by students, and enabled an emphasis to be placed on students’ pre-reading and a Socratic method.” Furthermore, it was thought that small group teaching would enable feedback to students to be given more regular, mainly through the critique of assessable work.

How teachers adapted to this model “was really a matter for individuals. Very little intrusive monitoring was involved.” As drivers for change in staff approaches to teaching, the school relied on “peer pressure” and “the re-education of those who for years have been teaching in a lecture-tutorial format”. Nonetheless it was reported that some teachers “were not coping”.

They would virtually lecture to the smaller group and indeed some go to the lengths of replicating the old format, so they would have two classes with the entire group of 40 students together, and some people will then say the third hour is for half the class, once a fortnight. So they are virtually replicating the lecture/tutorial format.

And the objective behind [moving to smaller group teaching] was less passivity, more interactivity, more mature, independent approach by students. That very much depends upon the individual instructor, and then when you have different approaches in the same subject, or indeed even across the subjects in the same year, not only does it communicate mixed messages, it leads to some insecurity and restiveness on the part of the students, who then begin to find reasons for attending the style that they prefer. And for the majority it seems, the style that they actually prefer is the more passive style, the lecturer style, because they then merge it with the set of notes.

Once you move to smaller groups, it seems to me that a serious question arises as to whether you're going to, by agreement, restrict the discretion that people have, not merely in the way they teach but the materials they use. You can start defeating the purpose of all this by having people distributing entirely different sets of materials, using different books, and then again the student body gets quite different messages and becomes concerned about the fact that if you're in A's group you'll get a lot of assistance in the kind of materials that are distributed, whereas if you are in B's group, B insists upon greater interactivity and less in the way of general assistance with materials.

My own view is that the problem here is that the easiest thing to do is to switch to smaller groups. The difficult thing to do is to ensure that the smaller groups actually operate as seminars. And I'm not sure that anyone has an answer to that. I think, because it requires such a level of agreement amongst staff and a preparedness to go down quite a difficult path, because there will be a lot of student resistance to the kind of work, the kind of preparation that's involved, the level of participation, and the expectations that staff have, but unless there's everyone in agreement, and everyone prepared to consistently, or to persevere with the approach, it begins to fall apart. And all that cosmetically what will remain of smaller groups, but that will be, as I say, the least significant of the pedagogical changes that have taken place. Because you might find that half or two thirds or even more of those teaching the smaller groups either don't adopt different methods or revert to the old method once they experience enough student resistance. And student resistance will certainly emerge if you start to have different approaches being adopted within the group.

This interviewee thought that the solution to these issues was to come up with some consensus about how to approach small group teaching.

I would have thought across Australia there would be general agreement that if you get a smaller group, even if you are lecturing to a smaller group, it is a preferable arrangement. The dynamics of a smaller group are very different. People are, on the whole, young students are much more comfortable asking questions, even if you're not going to utilise all the techniques of smaller group teaching, of seminar-style teaching, it is much more positive for everyone to have teaching and learning going on in a group of 35 than to have teaching and learning going on in a group of 150, indeed even of 100 or 80.

In an ideal world you would have smaller groups but you would also have much more agreement upon what you were trying to do in a smaller group. You would have much more agreement on the materials, and the extent of distribution of materials. Some will see that as a loss of academic freedom and that's often the immediate objections raised: "I teach my way". And I have some sympathy for that. But in a sense you corporately sacrifice that when you go to the smaller group because there are very serious problems in having people possess great discretion in

what they will do in a smaller group, because it's so much more resource intensive, and because it's very easy to generate insecurity among students in core subjects.

So ideally, there would be general agreement on approach to smaller group teaching, much more lecturer peer interchange, teacher peer interchange in the smaller groups, a mix of some lecturing setting the scene, some summarising, more student participation. You're never going to get absolute uniformity. I don't think we need that. But you do need much more agreement upon the limits, much more agreement upon the general style.

Not all law schools reported that there was a diversity of approaches within the school to small group teaching and, furthermore, that this was causing problems. Many law schools adopted a common approach to teaching materials, and held regular meetings of their teaching teams, where common approaches were debated and agreed upon.

Some law schools have only very recently embraced the small group teaching model. One such law school reported having ten streams of 40 students in each of its first semester first year subjects. In second semester, class sizes increase to 50. In later year compulsory subjects, teachers are permitted to choose whether to have about five or six groups (50 to 70 students each for three hours a week) or two largish two-hour lecture groups (about 150-200 students) and a one hour weekly tutorial. Electives at this law school generally do not have tutorials, but are taught in two streams if class sizes exceed 60 students, and where there are large enrolments, teachers have the option of the lecture/tutorial format.

One of the dangers of focusing on smaller group teaching early in the degree only was neatly outlined by a focus group participant.

We put all our resources into small groups in first year as part of the induction and welcoming [process], which in a way makes it harder for the students to adjust in the later years when we don't have the same resources to keep up that very-small-group approach. So there are pros and cons I suppose, although ideally one would have the resources to do things in small groups all the way through.

Not all law schools have abandoned the traditional lecture/tutorial model. Instead, some have taken care to carefully conceptualise the role of each. One law school that reported having always had a commitment to small group teaching, mentioned that it is well resourced enough to be able to supplement lectures with tutorials of no more than 10 students. Focus group participants at this law school explained the law school's approach as "like building a tent. You start with the frame (lectures), and then put canvass over the frame (the tutorial activities). I lecture for structure, and provide an analysis of how this thing holds together. Then in tutorials (once students have the structure in lectures) they can see how things really work out.

Another law school thought that it was important to include both "large groups" and "small groups" teaching, and supplement this with teacherless groups. Yet another law school does not plan to introduce an official policy to change its approach to teaching; however, one interviewee reported that there have been changes in the school's approach to subject design:

There's been a bit of a tendency to go a little bit more towards a seminar presentation rather than a lecturing presentation – and a greater use of technology. Staff are starting to use Blackboard and things like this for materials for students and so in that sense, there's a change.

The school is small in size so the class sizes tend to be small anyway, relative to other states. I mean a big class for us is 50 students, and lots of classes are 10, 15, 20 students. So there is more of a tendency for interactive learning than there would be at other law schools.

The shift to this “more interactive teaching” occurred over the course of the past decade. “When the school was founded in the early 1990s a lot of young staff were recruited. In the early years a lot of them were new to teaching too and they were finding their feet, and over time they became more confident and read more on these issues and experimented more. I think that was more of a natural progression.”

Table 12.1 attempts to summarise the teaching arrangements in most Australian law schools, and shows the extent to which smaller group teaching has been institutionalised. The order of law schools in the table does not follow a discernable pattern, nor does it follow patterns in tables in any other part of this report.

Table 12.1
An overview of teaching arrangements at most Australian Law Schools

	Teaching arrangements
1	Early years – one or two hour lecture and 2 hours smaller groups each week. The school puts resources into first and second years to keep smaller group arrangements. In later years, an hour face-to-face for each credit point. The school has one stream lecture groupings – 300 in first year, 200 in fourth year. External students 150 in first year, 100 in fourth year.
2	Smaller group teaching in all first year, and two second year subjects.
3	Has increased its student body threefold, which has “affected the way we teach”. In the first year subject, <i>Criminal Law</i> , a small group seminar format has been abandoned in favour of lectures and tutorials. Seminars are still used in the other subject, <i>Legal System and Method</i> , but the class size has increased from 30 to 60. In the core program some subjects are now taught in a lecture/tutorial mode, but some later year subjects are taught in large lectures only. In electives, depending on size, most subjects are taught as seminars – about 30, although some electives like <i>Intellectual Property</i> have 55 students.
4	Smaller group teaching in both first year subjects (40 students per class). Second year, 50 students per class. Later year compulsory subjects teachers can choose 5 smaller groups (50-70 students/class) or larger lecture groups and a one hour weekly tutorial.
5	First year students do non-law subjects. In second year, <i>Law of Contract</i> is taught in a one hour lecture (2 groups) and a two hour seminar (10 groups) each week. Other subjects have one hour lectures (2 groups) and a 1 or 2 hour seminar each week (10 groups). Third year subjects are taught in 1 hour lectures (two groups) and one two hour seminar (10 groups) per week. Fourth and fifth year mix of classes – from one hour or two hour lectures (two groups) and two hour seminars (10 groups each) week, or 3 hour seminars (10 groups) per week. All seminars have about 25-30 students.
6	First to third year, two 2 hour lectures (80 students) and 2 one hour tutorials (10 students in a tutorial) each week. In fourth year two 3 hour seminars per week, (15-25 students in a seminar). In fifth year 4 three hour seminars (15-25 students); three semesters.
7	First year, 3 hour lectures, 1 hour tutorial (25 students) each week; later years 3 hours

	classes/week (usually a 2 hour lecture and a 1 hour tutorial)
8	All classes have fewer than 40 students. Most subjects have three hours of weekly classes. From 2003 the school will shift to a general model of a two-hour seminar and one hour practical tutorial each week.
9	A fairly fixed format, depending on whether the subject was a core subject or an elective. In core subjects there are both large (2 hours a week, 90 and 160 students) and small group teaching (1 hour/week), and in electives there is more flexibility – subjects can be taught in weekly classes or intensives, or even web-based.
10	Mainly external program
11	New school, class size under 60 each year.
12	The school adopts the lecture/tutorial mode, except for small electives which have small interactive groups.
13	Two 2 hour seminar per week in first year; one 2 hour class each week after that, sometimes with an additional one hour lecture, and perhaps with on-line lecture outline. Some electives are taught intensively.
14	The basic model in all subjects is a two-hour lecture and an hour of tutorials each week.
15	Classrooms generally accommodate 65 students and a class of 35 to 40 is viewed as a full size class. The school strives for classes of 25 in first year, because “[We] believe that first year classes are difficult, and have a crucial impact upon students’ approaches to learning, so we ensure that there are more classes, so that class size is kept small.” The School tries to ensure small groups by scheduling multiple streams in subjects. Occasionally there are large groups where there are popular courses and few teachers.
16	The standard model is 2 to 4 hour lecture classes (110 students) per week. In first year there are fortnightly tutorials. In later years, some subjects have tutorials. From third year, some subjects have workshops (20-30 students).
17	First year - in each semester, one 1 hour lecture (two lecture groups) and one 2 hour seminar (small class) each week in one subject; three to four hours of lectures in 3-4 lecture groups and one 1 hour tutorial/week in the other subject. Second year onward – 2-4 hours lectures in 2-3 lecture groups, with one hour tutorial each week (though in some subjects, there are 6 tutorials a semester; one has an additional workshop, and one has additional seminars). In electives class sizes depend on enrolment figures.
18	Pattern varies considerably by subject.
19	First year 600 students, 2 hours lecture, 1 hour tutorial (20 students) (2 subjects have 2 hours tutorial, 1 hour lecture); second year 500 students, similar format; etc third year 400 students similar format; electives usually 2 hour seminar.
20	Some subjects taught by seminar; others in lecture/tutorial mode (all lectures less than 100 students).
21	The school has a small student cohort (less than 50 students in each year of the LLB program). In core LLB subjects, there are two hours of lectures and two hours of tutorials per week in each subject.
22	Small classes, five summer subjects in LLB program – 4 compulsory and one elective.
23	In the first two years of the LLB program, there are two hours of lectures and two hours of tutorials (less than 30 students) each week. From the third year, there is greater variety.

The Table illustrates how many law schools are keeping classes relatively small. But for how long? As will be discussed in the next chapter, law schools reported that they faced enormous pressures to increase class sizes.

Support for law teachers

The first Australian law teachers’ workshop was held in 1987 in New South Wales. It was organised by Professor John Goldring and run by two Canadian academics, Professors Neil Gold and Mary Gerace. Twenty Australian law teachers attended this workshop. The workshop not only spawned an Australian-run workshop, but the teachers who had attended the workshop, and its

successors, returned to their law schools to discuss alternative ways of approaching teaching in law schools. Some started teaching interest groups, some began to experiment with new forms of assessment and new teaching methods, some urged organisers of law schools seminar programs to include teaching and learning issues in the program, and some argued for the importance of peer and student evaluation of teaching. From the late 1980s, law schools began to provide institutional support for these initiatives, by establishing teaching support programs and appointing Directors of Teaching or Associate Deans (Teaching and Learning) to nurture these developments. Subsequently a refereed journal, *The Legal Education Review*, was launched, providing an outlet for law teachers interested in legal education as a scholarly enterprise. These developments will be explored to a greater extent in chapter 17.

Improved subject design

The changes described above, particularly the increased understanding of teaching as a process of facilitating active student learning (see also chapter 11), and the shift to smaller group teaching, required teachers to review the way in which individual subjects were designed (for discussions of subject design in law schools, see Johnstone, 1996; Johnstone and Joughin, 1997; Joughin and Gardiner, 1996; and Schwartz, 2000). Focus group discussions and interviews with law teachers for this project, as well as published material in the *Legal Education Review* and other journals, suggest that Australian law teachers are giving greater attention to subject design. As will also be described in later chapters:

- teachers make greater efforts to clarify for students the expected student learning outcomes in individual subjects (see chapter 15);
- assessment tasks are increasingly designed to “fit” the specified learning objectives (see chapter 15);
- teachers are more conscious of the need to select teaching methods, and to design teaching materials, that promote activity-based learning (chapter 16).

Within many law schools, some staff are developing skills in subject design, and at the law school level, this is reflected in the development of teaching and learning policies, as well as the existence of support mechanisms, to promote subject design.

Evaluation of teaching

Driven largely by government and university-level demands, all law schools now have procedures for students to evaluate and/or appraise teaching. As will be described in chapter 17, some universities require all schools and faculties to conduct teaching evaluation surveys (sometimes known as “tevals”), which are to be used to monitor the quality of teaching in the faculty/school. In other law schools, these surveys are voluntary, and teachers alone receive the results of the surveys. While there are many negative aspects to such surveys and evaluations, some teachers reported using information from students (and other sources) to analyse the strengths and weaknesses of their subject design, and classroom teaching methods, in order to improve them.

Grounding teaching and learning in teaching and learning theory

Not all the rethinking about teaching and learning in law schools has led to small group teaching. At a few law schools, this rethinking has led to an integrated approach to teaching and learning (as described in chapter 11). As mentioned in the previous chapter and in Chapter 5, one law school is to develop an integrated, holistic LLB curriculum.

I think this faculty has quite deliberately been trying to address a whole range of teaching and learning issues and although I suppose there's some tensions between this process and the academic's turf, we are seeking to have the academics aligned with the school and the faculty, and get them to actually focus on teaching and learning and to do something about the matter as a school and as a faculty.

As part of this process, for example, there is a co-ordinated strategy to get staff to apply for small teaching and learning grants to develop dedicated tools to embed the more generic and ethical aspects of the curriculum – things like assignment writing skills, collaborative group work, and conflict resolution skills. So it's a lot of effort and there's a lot of financial commitment and resourcing.

At another law school, engagement with learning theory came at the behest of the university.

Some of these quality issues that are coming top down, imposed upon us. We're actually having to become more answerable, as teachers, and we're being required more and more to articulate what it is that we're trying to do.

And most academics don't come from a formal teaching training background. And so actually it's shaking them and saying, 'Well look, this is not hard. It just requires us to put another filter on our thinking'. And what increasingly we're required to do is actually articulate what it is that we're trying to do. What are the objectives we're trying to reach? How do the assessment tasks meet the objectives? What is it you will take home with you? What will you get out of this course in terms of generic skills, legal skills, legal knowledge? What is it that we're trying to do?

And when academics, legal academics, were first asked to do this, they sort of went shock horror, I can't do this. But in fact it's not hard. And I think that's actually quite a good step in terms of accountability, requiring people to actually think what it is that they're trying to achieve.

The increased casualisation of law teaching

Another big change across the law schools has been a greater use of casual staff. In general most first, second and third wave law schools reported a greater use of casual teaching staff in order to cover the range of subjects on offer and to keep classes as small as possible, where there were increasing numbers of students and shrinking resources. It was estimated that 19 per cent of law teaching staff were casual appointments.

One law dean explained the pressures towards casualisation in the following way:

We have used more casual teachers than we did 10 years ago. Because of budgetary issues, and also because the size of the student intake has increased in last 10 years, we have deployed casual staff for convenience and flexibility – we put on casuals to keep classes small. The number of students is growing, and class sizes are growing. The university seems to accept greater numbers each year. We don't have large classes, especially at the outset of [the LLB program], so we just have to find other teachers.

Other interviewees thought that the use of casuals in tutorials in first year subjects “is quite killing in terms of resourcing”. Nonetheless, others observed that as student numbers have increased, the law school has used resources on part-time teachers try to keep class sizes small so that students get more experience of “small group work”. One law school reported that it had doubled its student intake between 1991 and 2002, and at the same time reduced its full-time academic staff, which placed “a much greater reliance on casuals”. At present just over half of its teaching hours at this law school are taught by casual staff. “We have had eight staff leave and there have been replacements but because of budgetary issues, and we have had to replace permanent staff with casual staff.”

Casual staff tended to be used in two main areas in most law schools – as “tutors” in large core subjects with large classes, or in small group tutorials that accompanied lectures. Outside practitioners were also engaged to teach (or co-teach) subjects in postgraduate coursework programs. There were also examples of outside casual staff appearing as “guest lecturers” in undergraduate subjects, teaching LLB electives, and participating in skills-based subjects.

Under-resourced law schools in small cities were particularly dependent on casual staff.

We do try to make use of some of our postgraduate students. We have a huge postgraduate intake and we do have some, but the local profession has been very useful in terms of basically undertaking tutorials. It takes some of the load away from staff, which would otherwise be too great. And accordingly our relations with the profession has to be fostered as much as we can because it's not a huge profession up here. In fact if someone didn't like us any more we'd be in an awful lot of trouble. So by and large we keep pretty good relations with the profession. We try not to use the local profession [for] lectures, because obviously it's far more preferable to use academic staff. Occasionally in the event of emergencies when we've had people keel over and the like, that's been rendered necessary.

Some law schools, particularly those able to cross subsidise LLB teaching from fee-paying programs, claimed to have resisted casualisation (although sometimes where such claims were made by Deans or Heads of School, they were regularly refuted by other teaching staff in the same school).

Semesterisation

One of the strong trends across all universities during the 1990s was the “semesterisation” of subjects, largely influenced by DETYA's policy of having transmutability across the tertiary education sector. As a consequences, most law schools have semesterised their subjects during the past five or so years. One

interviewee commented that, despite the school's protests and "good sense", the university imposed semesterisation on all schools and faculties.

Semesterisation was an issue that got foisted upon us by the university and all the faculties were told that the university wanted to go to a semesterised system. That was driven by a number of imperatives, not the least of which was some anomalies that were seen in HECS calculations. When you had annual subjects and semesterised subjects, you'd have two students sitting side-by-side in a lecture theatre who would each had a different HECS loading for that course and the university was getting a bit edgy about how that affected us.

And also there were concerns about timetabling and flexibilities and also the students' curriculum flexibilities. An annual subject locks students in and reduces their capacity to mix-and-match, so the faculty went down the path of semesterisation, not entirely without debate and concern. There were some significant dissents raised about that but at the end of the day it went ahead and it seems to have worked. But you can't [semesterise] without also saying, 'Right if we're going to semesterise all of our courses, what does that mean in terms of the overall structure of our program? What will students be doing in compulsory courses? Where will they be doing their electives? How many elective slots will we then have available for them?'

In some cases [semesterisation was implemented] just by taking the number of hours per week required per year and condensing it down to an increased number of hours per week, so from two hours per week across a year became four hours per week across a semester. And part of the concern was, well how would that impact on students' learning capacity? And how would it impact on just the way in which the course was taught? And in the year since then we've been reviewing it and the general message I think, certainly in my case, has been that it has worked very well.

The debate really was, well, if you give students a full year to digest complex legal matter they have time to think about it, deliberate on it, ponder it and it soaks in better. Against that, the view about the more intensive program is that they more readily see connections between one point of the course and another because it's not strung out between April up to September. And certainly it's been the experience that I've had, that students are seeing much more easily now the way a course hangs together.

The downside is, yes it's much more intensive; it's much more perhaps demanding on students' time. But I think the general message we're getting is that it has worked.

One law school that had semesterised all elective subjects and some compulsory subjects, explained why it had favoured semesterisation:

We are conscious of the need to take in a mid-year entry for flexibility because we do have some students, including overseas students, who begin their studies in the middle of the year, often to fit in with the northern hemisphere academic calendar. So semesterisation makes that possible.

Another law school that had done something similar, explained that its main reason for adopting a model of semesterisation:

is to accommodate those common units and the other is to facilitate the interaction as between universities, because so many other universities are semesterised that it allows other students the opportunity to come here and we are finding that students will come, cross-institutionally, to study here. In the last two years we've had 23 French students that have come over because the final year of their law program allows them to study 10 credit points from any university anywhere in the world.

A further advantage of semesterisation was that it allowed new students to enrol in the program in second semester.

A new law school in the early 1990s reported that it had always semesterised its subjects, but that two of its subjects were "semesterisation in name only". The latter involved splitting one year subjects in two, for example, *Public Law A* and *Public Law B*. Interviewees from the school observed that this fragmentation of subjects made it more difficult for the school to outline an overall set of objectives for each year of the program.

An interviewee from another law school that has semesterised all of its subjects commented:

It's a Clayton's semesterisation in *Contract, Property, Criminal Law and Procedure* and *Constitutional Law* – the year long subjects have been split into two, some skills added, and different co-ordinators in each semester, but basically the old subject. As a result we actually have more content than some of the other law schools which seem to squeeze a lot into a subject.

Semesterisation has its advantages and disadvantages. We still have space to cover everything that we want to do in terms of the Priestley requirement and other requirements which we feel should go with that particular course. At the edges a little bit of extra space may be desirable in some courses, but it's not a major problem.

If anything, semesterisation has led to a dispersal of coordination responsibilities within the school. So whereas once upon a time, say, *Torts* would have had one coordinator throughout the year, now *Torts A and Legal Method* has one coordinator and a certain teaching team and *Torts B* has a different coordinator and almost a different teaching team.

But also semesterisation has inevitably led to more assessments for students, and more work for staff. We just do more assessment, more marking, because the university wants us to have progressive assessment. Previously there was an assignment, an exam or whatever, in the first semester and then a final exam at the end of the second semester. Now once it was semesterised, we have a mid-semester assessment and an end-of-semester assessment. So you end up having four assessment tasks rather than two. This is not taken into account in the allocation of teaching responsibilities.

But one result of this is that students seem to learn more. I think that their standard of legal understanding and written expression is much higher now, and their research skills are higher than they were, say, eight or nine years ago. There's much more independent learning, self-teaching and so on, but on the other hand, they do work under severe pressure and the content has not decreased substantially, not even when they're doing combined degrees, so it takes away the time for reflection. It takes away some of the social life of the university, and probably

accentuates that move away from a politically aware campus to a very employment-focused campus.

There were other criticisms of semesterisation, even from schools in that had implemented and reviewed it some years ago. An interviewee from one such law school commented that:

There was some resistance to it when it was first introduced. Some of the resistance, ... were concerns that it was crammed in. People who had for many years taught full-year [subjects] got the [mid-year] break to set long research assignments where the students could reflect and so forth, and the feeling was that it was all crammed and cut short.

One of the criticisms that is often levelled at semesterisation is that for some large subjects, it artificially constricts them. My guess is ... that for us that problem is less serious because we have fairly large units. Our units are taught for four hours a week. So it means there are still a significant number of hours in our undergraduate classes, even if they're confined to one semester. And there's no doubt that there's a benefit in flexibility to have units that are a semester long and that are of the same size. Law students come at their law school education with a host of different focuses and a host of different agendas and interests and particular subject interests and I always think it's a mistake to be too rigid, at least without reason, in the structuring of our programs.

Another interviewee remarked that foundational core subjects were better taught in year-long subjects, because of the "breadth of the learning experience and to pace the amount of knowledge that is required for those subjects". He also thought that semesterisation has led to students "not being able to do much research, which can only be a fault".

A focus group member argued strongly that:

semesterisation has had a big impact – a dumbing down, because when I did my undergraduate degree, most of the subjects were yearly. Certainly all of the compulsories were yearly, and we had plenty of time to kind of 'chew the fat' on subjects, and we'd do a project over the mid-semester break.

And there was loads of time for reading. We used to read a huge amount in each subject taught over a whole year, and gradually the subjects have been converted to semester subjects and some people don't seem to think that it's got its advantages. Well I can see a few advantages in semesterisation but I know it's water under the bridge now, in terms of we can't turn the clock back. But it does put enormous pressure on everyone.

One interviewee recounted arguments against semesterisation of core subjects at the her school, when the idea was first proposed:

The more you compress something the more you lose the opportunity for learning through reflection and revisiting things. The penny drops eventually and I think somebody said that compressing all the stuff is like expecting a pregnant woman to give birth in one month by putting nine doctors on the job.

I think there are real pedagogical downsides to semesterisation and compression because there is a reflective element in learning. But I think on the whole we supported semesterisation for a couple of reasons. One was you really can tailor anything to the time you have available, and I think we came to the view very quickly that we shouldn't approach it by thinking what we're doing is squeezing an annual course into a semester. The correct approach was to devise a proper semester course in this area.

And in that situation, some things have to go. They don't go entirely of course because what's gone can be picked up in another unit and they will be different semester units.

[But] despite the downsides to semesterisation, we went along with it for a number of reasons, the first one being that it's quite acceptable if you're thinking differently and devising a different kind of course. So you're not actually obsessed with coverage, but you are focusing on core principles and skills and so forth, and if you are concerned about coverage, you know, you maybe have an elective or a following unit or something like that to cover it.

The other reason I think we went along with it was that there were a lot of benefits that it's brought the students in terms of flexibility of planning their program. I go back to the exchange programs. Often students caught up in an annual unit year were very restricted in the degree to which they could participate in exchange programs. With semesterisation and self-contained semesters, obviously it's much easier to have a period of exchange overseas, either for a semester or for a year or whatever, because you're not so confined by having to be here for a whole year at a time.

An interviewee from another law school further added:

It is true that some subjects are hard to get through in a semester and if you get sick or you have a bit of a bad patch there's not a lot of time to recover. You're generally trying to get through, in a semester, what you used to get through in a year and you probably still have a similar number of pieces of assessment, so I think there is a lot more pressure.

A member of a focus group from yet another law school additionally pointed out that semesterisation increased the workload on teachers because they had to prepare new subjects each semester, instead of being able to prepare a subject at the beginning of the year, on top of having to conduct research and other activities during the mid-year non-teaching period.

For some of these and other reasons, not all law schools have "whole-heartedly" embraced semesterisation. One law school that has semesterised most of the subjects in its LLB program, reported that it did not semesterise the majority of the early compulsory subjects. The Dean explained the reasoning behind resisting semesterisation in the compulsory subjects:

Students get a better educational result from dealing with a particular area of law over a longer period of time in a structured and developmental way. Now perhaps you could achieve the same result from semesterisation. I'm not saying you can't construct the building blocks in different ways. ... We're not convinced, in relation to those foundation subjects, that there is an obvious or necessary benefit from

semesterisation. I know that there is great pressure in terms of construction of timetables and other administrative matters of convenience. But if you ask: “What is the educational value from semesterisation?” then you have an interesting discussion about whether there is any. ... [T]here has been a great deal of pressure but we have not been convinced that on balance, the benefits outweigh the losses from semesterisation at that point of the curriculum.

In summary, while most LLB programs are now built around semesterised subjects, driven largely by the need for flexibility and transferability across degree programs, support for semesterisation was variable. The principal criticisms were that students had less time to develop their understanding of, and reflect on, subject material; and that the workload was increased for both staff and students.

Greater use of electronic modes of delivery

The greater use of electronic modes of delivery, and the greater use of websites and email in communication with students, will be discussed in greater detail in Chapter 16. At this point it is suffice to mention that many law schools are embracing the rapid developments in information technology.

Changes in students’ demands and expectations

Law teachers almost uniformly commented on the significant changes in student expectations; focus group after focus group remarked that students’ attitudes to their university work had changed markedly. As was mentioned in Chapter 10 and will be discussed further in chapter 13, students increasingly spend significant periods of time in paid work. One focus group respondent observed that

University education used to be a thing students undertook on full time basis. Over the years, however, there has been an extraordinary increase in students working so that now the balance has shifted. Students do their jobs, and fit in university education around their jobs. As a consequence students’ expectations in the classroom have changed. They want fast delivery, and want to find out quickly what they have to do to get through. This is far removed from the idea that this is an opportunity to explore and have an intellectual experience in what we are doing. This new attitude to study comes through in the classroom in intangibles. For example, they have a less relaxed attitude. Every minute has to count; what used to occur over long period of time now has to take place quickly.

Many staff admitted that they had capitulated.

When I was a student we were told that we should not do a degree if we do more than eight hours of paid work per week – now we schedule the timetable around students so that they can work and study. They, and we, no longer treat what we are doing as a priority.

As a result of this, some staff teach only in the evenings to accommodate students. Other law schools, in recognition that students do not attend classes, provide backup notes on the student server, and even videos, “so if students miss [classes], they can get material later”. This policy, it was argued, also benefits students who can attend classes. “They don’t have need to write everything down as we did when we were students. So they can take more constructive notes.”

An interviewee at one law school in the context of discussing increased demands from students observed that:

It is not entirely coincidental that many universities are moving to flexible delivery. Students are hoping to find materials on the web, notes handed out, tapes and videotapes of lectures. That is becoming extremely common. Also the timetabling of combined degrees is creating chaos, so flexibility is coming in. And we are also finding that students want variations in assessment, such as extensions because they are working. We are having much greater popularity with intensive subjects and summer schools. But we are finding that students even want variations of these as well. But we have to make sure that we are not answering the demand for flexible learning at the expense of not producing the skills that we think our employers are looking for.

Other interviewees were concerned that students' increased involvement in paid work would raise a number of issues for the law school:

Including the issue of lack-of-engagement, timetabling issues, requests for special consideration or alternative means of assessment. ...There are a range of things that we do and we offer a range of flexible delivery option. [For example, students] can go external just for one unit, if work requirements require that. Students don't have to come to lectures because we tape them and we sent the tapes out to external students and the tapes are available in the library for internal students to come and take. So they can sit there and replicate the lecture experience if that's what they want to do. But they ultimately will have to choose whether they are internal or external. We provide them with options and we make it quite clear what the expectations are. We understand that students have a variety of competing demands upon their time, but ultimately the choice is theirs. We are aware of it in the background but it can't be a forefront consideration. Because what are we going to do? Are we going to drop standards? Are we going to say, "Well yes, tutorial participation is an essential aspect of this particular unit but not if poor Johnny has to work every Friday night and therefore can't come". It is a concern but it's a concern that we try to make students aware of in orientation and in terms of time management, so that time management becomes an implicit/explicit skill that we have to get them to address.

In addition to undertaking paid work instead of attending class, some law teachers also reported that "student demands are more and more shaped by their ultimate jobs/career goals. They want us to teach them the minimum they need to get a job, and want assessment to be tailored to survive this process."

Over the last decade, student expectations have climbed steeply. The kind of expectations that they have today in terms of the delivery of courses and the services we provide them are much, much more than what was expected when, for example, I came in here in 1989. They expect good materials, supporting materials, they expect better delivery of lectures, they expect transparency in assessment, they expect substantial, useful feedback on the assessment work and they expect us to be available for consultations. ... So it's a very different culture now and the expectations are very different to what it was 10 years ago. ... Our typical student is one who wants to get very high grades and get into the top jobs.

Another interviewee thought that changes to student expectations and increased student demand was a direct result of the differential HECS model that was described in Chapter 1.

I think student demands have changed very significantly since the differential HECS was introduced. I think that's probably the biggest factor and students, no matter how you try to tell them, do not understand that we don't get their HECS funds or anything that approximates them or is proportionate to them. The demands are mainly about resources – timetabling that suits them, which of course is increasingly difficult with combined degrees. They are all working. They don't want classes at night, which is perfectly understandable. They will have significant demands for after-hours classes though, so in each core subject we offered a seminar group from 5.00-7.00. But it was almost never full, you know, so there will be a demand but it will be from about five or six students and we can't manage them around five or six students because we can't afford it. So you end up not doing it. And it causes no end of trouble because students think they have a right to it and it's really difficult to accommodate that demand. If it was a tutorial you could do it because you have small tutorials but you can't when your teaching groups are 30. It's just too expensive.

While many focus group and interview participants were concerned that student demands had taken a turn for the worse, it should, however, be noted that this view of students was not unequivocal. A few focus group respondents suggested that student attitudes were no worse than they had been in the past.

More intensive teaching

The trend towards more intensive teaching in law schools was more than half Australian law schools. Some of these law schools have offered students LLB subjects over the summer non-teaching period for some years now. Other law schools offer intensive subjects in June/July and yet other schools offer intensive subjects during the conventional semesters.

One law school offers students about five subjects every summer, mainly the compulsory subjects.

With summer subjects, which tend to be run in a semi-intensive way, and tend to be two whole days a week for four weeks, the feeling of those who taught them was that they were successful. The students did attack them with enthusiasm. Because you really had space that you didn't normally have, you could actually get students into break-out groups during the day, much smaller groups. They might have a lecture for two hours and then break up ... into groups with the lecturer going around from group to group. It's something that the students were responding positively to.

In summary, 10 law schools were offering intensive subjects in the undergraduate program and 14 were offering summer or winter semester teaching in the undergraduate program (10 were offering intensive subjects, and 5 were offering summer or winter teaching, in the postgraduate program).

One law school reported that it had recently started offering summer school electives, which both offer students “flexibility and the ability to complete a subject in a short period of time”. It also enables subjects to be taught by overseas visitors. Another law school mentioned that 250 to 300 of its LLB students take

summer elective subjects. Another law school mentioned that such electives “are very popular with the university too, because it is full fee-paying money”. Yet another law school mentioned that it intends to offer at least four summer semester subjects each year, partly as a way of enabling fee-paying LLB students to complete the LLB program in two years.

Many staff reported that they liked these arrangements, and that students also welcomed intensive teaching. As one participant in a focus group remarked,

Students can get a lot of courses done over summer. It is better for deeper learning [sic] because students do one subject and can concentrate on it, and because the intensive format tell students have to do more outside the classroom. They have to work on exercises, and be reflective.

Some staff appreciated the flexibility of these arrangements, in that they freed up time for research or for other responsibilities. For example, one staff member appreciated being able to spend more time at home with a new child.

Others, however, expressed doubts about effectiveness of intensives. “You spend two intensive weeks in the classroom, and you are not sure that students learn anything.”

Staff at one law school evaluated the impact of student learning of subjects taught in blocks of six weeks (see Saenger et al, 1998).

The positive sorts of comments that came through from students were that it allowed them to focus very much on a subject area but for some that was a positive and for others that was a negative. And then in the final year they then found that they were studying under the standard spread of four subjects at once, those very same students were then saying how they found it difficult to actually juggle all those [subjects] at once. So that was one level of comment.

Some students found that if they fell behind on the six-week intensive model that they got seriously behind and couldn’t catch up, so that was a negative. Some students found that if something happened, they got sick, that added to the stress they were dealing with so they were forced often, because they were sick for a week or a two-week period, they had to drop out of the whole subject, whereas in a regulated university period they might have been able to catch up a two-week period. So that was a negative.

We found that some students found it very stressful but it may be that our expectations were just too high at the beginning in terms of the sheer volume of the work we expected of them and that might have been us overshooting the mark in the early days. It could have occurred on a regular teaching model as well as that more radical model.

Certainly our experience of dealing with stress from our students was higher in that model than under a regular teaching model. It also created other issues. There were problems, for example, with AusStudy, because not only did we teach over a six-week block model, we started teaching them – the academic year started in January, finished in early August and the theory then was that our students would then go and get five months experience, so it was not just a block model, it was also one which totally disrupted the normal teaching year and created this chunk of

time at the end of the year when they should have been out getting work experience.

Work experience worked extremely well where students got work experience I might add, but it also created all these other problems. Unfortunately, if you look at Austudy rules, they expect students to be enrolled in a course which doesn't finish prior to the middle of September and if a student finishes their actual study prior to the middle of September, they miss out on getting Austudy for the rest of the year. So there are these strange little rules that you don't realise until you try to do something quite radical.

Summary

A number of changes have occurred to law teaching since the Pearce Report. Probably the two most significant changes have been an enhanced appreciation of teaching as the facilitation of learning (see also chapter 11) and a greater concern with "student-focused" teaching, and a strong trend towards "smaller group teaching". Student-focused teaching resulted from engagement with educational literature (often through the ALTA Law Teaching Workshop – see chapter 17), and in response to "top-down" pressures from universities. It found expression in better pastoral care for students in some law schools, more "student-friendly" approaches to law school administration; longer student consultation hours; and smaller group teaching. The majority of law schools have taken some measures to reduce class sizes, often only in the early years of the LLB program, in the expectation that teachers will be able to use a variety of teaching methods to promote active student learning (see further chapter 16).

As a result of these developments, and university-led schemes to evaluate teaching (see chapter 17), it was reported that subject design in law schools has, on the whole, improved. This is demonstrated in clearer learning objectives, more varied assessment and teaching methods, more feedback on assessment tasks, and the use of teaching materials and methods that encourage active learning (see further chapters 15 and 16).

In keeping with other trends across the university system, law schools have experienced increasing casualisation of teaching staff, the semesterisation of undergraduate subjects, greater use of information technology in teaching, and changing student demands and expectations. Market pressures, expressed in student demands for greater flexibility in teaching arrangements and accelerated progress through the LLB program, have resulted in most schools adopting intensive modes of teaching. While some teachers appear to favour intensive teaching, opinion about whether intensive teaching enhances student learning is mixed.

CHAPTER THIRTEEN

FACTORS THAT INHIBIT EFFECTIVE TEACHING

Chapter 12 outlined key changes in law teaching in Australia since the late 1980s. These included a shift to student-focused teaching, smaller classes, and an increased grounding of teaching in theories of teaching and learning, which were undoubtedly positive factors in improving student learning. These developments have been extremely important, and have had the potential to improve student learning in law schools, but, as will be described in greater detail in this chapter, these developments have been undermined by the under-resourcing of most law schools. The symptoms of this under-resourcing include increased class sizes (despite the commitment, and recent shift, to smaller classes) and greater administrative burdens on academic staff.

Other changes that outlined in chapter 12 were driven less by educational theory, and more pressures external to the law school (including resourcing), and include increased casualisation, semesterisation, and greater resort to intensive teaching. In chapter 12 we observed that these changes had many positive dimensions, but that a significant number of law teachers interviewed thought that semesterisation and intensive teaching did have some negative effects on student learning.

This chapter explores further factors inhibiting effective teaching, and hence student learning, in law schools. A range of factors were identified by interviewees and focus group participants, including:

- Inadequate resources
- Increasing class sizes
- Increased administrative burdens on teachers
- The negative consequences of casualisation
- Teaching facilities
- Lack of educational training
- The “primitive” use of the student evaluation process
- Demands for “coverage” at the expense of other important factors
- Non-law school demands on students
- A perceived lack of student interest in learning

Resources

All law schools remarked that under-resourcing is an issue in Australian law schools. Earlier chapters of this report have noted how law schools have had to reduce their offerings, and seek new revenue sources, in order to resource their teaching programs. One law Head of School described this issue in the following way:

The life of the average academic has been made more stressful. When I started as an academic it was a relatively leisurely life, as compared with being in practice, because there was time and space for research and reflection. These days I think because of the lack of resources – and that’s a key thing – the classes are larger, the assessment burden is greater, the accountability expectations are higher, so there’s more reporting, surveying, evaluating. Where students are paying fees there are

expectations on the part of the students for professional service, as they see it. All of those things have put extra pressure on the teaching side.

The external circumstances are difficult for all faculties but law schools in particular. And it all goes back to inadequate levels of funding, or that's a major part of it, and I think law as a discipline has been on the back foot ever since the relative funding model came in about 10 years ago – a little bit more now – based I think on flawed case studies which don't cater for the ways in which we really need to teach to be effective. In other words the model was the large formal lecture, passive impartation of knowledge, whereas what we should be doing is imparting skills in small groups, and you need more resources to be able to do that.

Resourcing presented a particularly problem for the new and smaller law schools.

We are pushed to resource teaching and equipment. We will have to look at streamlining the undergraduate degree, and generating more fees. I am a bit apprehensive about how well placed we are to do that. We are not a prestigious sandstone with a brand name which we can hawk around and get people to pay for without thinking about it. It will be tough. I am a bit worried about our ability to sustain all our activities.

A Head of School at a third wave law school explained that the problem was with the Relative Funding Model.

The manner in which we're funded, under the Relative Funding Model, meant that we were getting caned rather badly and that had been a source of increasing concern, and basically the university, I think, had come to a realisation that we were perhaps not crying in the wilderness without some justification and things have improved in the last 12 months. There's still an awful long way to go, I'm afraid. ... We are not the golden child that law schools can be at other institutions. In fact we're just a bunch of whinging lawyers who frankly they think is a little bit of a pain in the backside. So relatively speaking we've struggled with our institution to try to ensure adequate resourcing. That has proven difficult. ...

We don't have a lot of room to manoeuvre in terms of being creative in the manner in which we conduct the face-to-face classes, with the exception of augmenting them with some electronic materials. Because we've got too many students and too much to do.

As well as that, we don't have a lot of margin for error. Because our staff is small, if we lose anybody it leaves a big hole and it's difficult. We have to basically just cover everything and do our best to try to maintain our coverage. It would be great to have a megastaff of 50, because then people could disappear and do their research and they have a lot more flexibility to do other things, and more time to play with curriculum design and to have some creativity in the options they offer and so on. We don't have that luxury because there aren't enough of us and we're too small.

As described by one focus group participant, “all law teachers were trying to maintain quality teaching and learning in a cash-strapped environment. Some of the better assessment regimes, for example, are time intensive [for the teacher], for example, the research essay.”

As observed in earlier chapters, it was thought that the sudden increase in the number of law schools came about because “law schools make money, and they subsidise other students. But we do not get the full value of teaching students in the combined degrees. These students are actually 50 per cent in law, but we get 40 per cent of the revenue.” The Dean at one law school further added:

There are disciplinary issues that arise in the distribution of funds. It's a real problem. We don't get funded anywhere near as well as any other faculty. Arts and Law – we're at the bottom of the funding heap. No question. On our relative funding model we're expected to educate three students for every one that, say, Science is expected to educate. I doubt that there's an understanding that Law is labour intensive. Ninety-five per cent of our budget goes into salaries.

A second wave law school claimed that it received considerably less resources from the university than did other faculties and schools within the university. Given this, the school has had to be entrepreneurial, particularly in relation to its postgraduate programs, and claims that 60 per cent of its funding comes from non-Commonwealth government sources.

One interviewee laid the blame for the under-funding of law schools squarely with universities.

My concern in relation to this law school and many other law schools is that, if in fact they have their funding controlled by people who are not necessarily favourably disposed towards law, law thinking or law values, there's a terrible risk that the funding will be diluted and that the students won't get anything like the amount that they spent on HECS spent back on them.

My personal beef is that in fact universities waste enormous amount of their funding and a lot of that funding never gets anywhere near the disciplines. It's sucked off in a massive bureaucracy around universities that are being created top down, not student driven from the bottom up. And I think this is a critical point. Whilst we can talk about teaching and learning in these places, if in fact the money isn't flowing down to the basic student in the basic class, these students are not getting value for money.

I know there are law schools in Australia that have cancelled tutorials and just run basic lecture models in some of their subjects. That is fundamentally unfair to those students, because they're paying very high levels of HECS yet they're not getting tuition. The tuition has been cancelled and this is just appalling and for what reason? The university hierarchy will say it's because the government isn't giving us enough money and I'd be inclined to say, 'Well that might be part of the story, but the other part of the story is how you spend the money that's coming in from government.'

Even the better resourced large law schools in the major cities have reduced their elective offerings in recent years to accommodate the limited resourcing. As observed by one Dean:

There are a lot of positive aspects of curriculum design and some of those things are university driven. Universities drove very strongly in the 1990s, less so now, the student-centred learning model. They would give lip service to that now but not allow us any capacity to implement it. Obviously resourcing is pretty significant, impacting significantly on curriculum design and delivery, the methods of teaching you can adopt, the number of electives you can offer, the nature of, you know, the

input quotas on electives and we have quota limits on some of our electives because staff members are simply unavailable to teach them.

In the words of another Head of School:

Funding of course is always a problem and the way in which the university is funding the Law School, or the government would say law schools should be funded, has always been a little bit controversial. We think that we should be funded differently. Under the relative funding model I have argued the law school should be funded at least at a loading of 1.4, because of the fact that to give effective legal training, you need smaller groups and to have smaller groups you simply need to have more staff members. It's a simple as that.

The most effective and the best law school, as far as I'm concerned, will be the law school who can afford the best student:staff ratio. If you could get to the ideal situation of only allocating 20 students per staff member, it would be fantastic because then you can really give individual attention to the students. But that's obviously just a dream and I know that that's impossible.

There is a contradiction of course in our own program. On the one hand we say that we need face-to-face contact but we offer a distance education program. So that in itself is a contradiction.

[Resources are an issue in the external program too]. How many hours can you spend on [internet communication] per week, to look after their interests? How often can you ask questions on [the internet] and expect students to respond, and to respond to their questions? If you've got a group of 120 it becomes impossible.

How the lack of resources affects law schools was vividly illustrated by two interviewees from a small regional law school.

It would be ideal if we could have the time, for example, to sit down and formally work through curricula and update them, but because of staffing constraints, lack of administrative assistance, we've got to do these things on the run. There's a revolution taking place at the present time in personal tort liability and as you know, it's in the papers all the time. And this has come about rapidly and we've got to somehow try and adjust our courses to introduce students to the sorts of underlying social issues and so forth that are involved and it involves a tremendous amount of research, not necessarily publishable research, and we've got to do this sort of thing on the run, so to speak, while we're teaching and it's very important, so that it has in fact put a tremendous amount of added pressure on people at the same time as we've been downsized in the number of staff that we have available.

I suppose if you think it, not that I was teaching at that stage, if you think 20 years ago there weren't the changes in the common law that are occurring, or even in legislation, and yet law schools would have been relatively well staffed and with large numbers of administrative staff. Now, with all these changes happening, we've gone to the situation where we've been denuded of administrative staff here.

And that impacts upon us. You might say, well how is that related to curriculum development? But we have to attend to a lot of their administrative problems ourselves, which they set up on behalf of students, which means that we spend time doing things that we shouldn't be doing, which obviously impacts on the time that we need to devote to the things that we should be doing, i.e. curricula development.

If you look at the teaching load of our staff in a small group such as this, on average each staff member is going to be put across generally three units and probably coordinating one or two others externally, every semester. You go to a sandstone university, where they've got a larger staff base and you will find a staff member who is an expert in criminal law, and that's what they teach. Criminal law and a couple of aspects of it. And they might have a second string to their bow. We are the orchestra and each of us is expected to be capable of moving over roughly half a dozen subjects. Not every semester. So these are the impacts it has had and then that reinforces the problems raised about curriculum development.

At another law school, resource pressures resulted in a reduction of tutorials, which are now only offered in first year subjects, although some later subjects do have tutorials.

Increasing class sizes

In chapter 12, it was reported that there was a strong trend towards smaller sized classes at most law schools. Spurred on by the recommendations of the Pearce Report, first wave, some second wave and many third wave law schools reconfigured their teaching arrangements to ensure that, at least at strategic points in the LLB program (for example first year), students were taught in groups of no more than 25 to 50 students. Other law schools either already had small group teaching in place prior to Pearce or were set up, post-Pearce, to teach most if not all subjects in the LLB program to small sized classes. It was also reported in Chapter 12, that some law schools claimed that smaller sized classes had resulted in a marked improvement in student learning.

This important development has, however, been threatened by increased student enrolments in LLB programs in most, if not all, law schools. As such, even in schools committed to small class sizes, cannot help but notice that their class sizes "are increasing at alarming rates", "to the detriment of student learning". In short, increased enrolments sabotaged the move to smaller class sizes at most law schools.

In an environment where universities had become dependent on undergraduate student numbers for a large part of their funding, the ability to attract undergraduates was critical. Law Schools offered a "cash cow" opportunity to vice-chancellors. Funding to universities was increasingly untied, leaving universities to decide for themselves what projects to finance, and law schools could be developed without the need to seek specialist capital funding from centralised government. Legal education became 'captive to the higher demands of an education policy which made the expansion of law very attractive to the universities' (Parker and Goldsmith, 1998, 36-37). In this environment, it seems likely that the issue of what law schools should teach became secondary to the need to increase student places in law, whether or not the resources were there to teach law in the way Pearce and others had suggested it should be taught. (Brand, 1999: 119-120)

More than one law school reported that they faced enormous pressures to increase class sizes (see also Brand, 1999: 122). One such law school reported that, since 1999, enrolments were allowed to climb very rapidly:

We've got more students than we would like. We don't have autonomy when it comes to enrolment policy ... and the university has used law enrolments from time to time as a way of topping up [overall university enrolments to compensate for under-enrolments elsewhere].

Another law school reported that its university was "actively chasing students".

In '96-'97, the university set about re-establishing itself financially and given the funding formula, that meant more students. And of course this was a national trend, so just about every university over-enrolled in that period in an attempt to ensure that they didn't suffer any funding deficits, and we followed suit. In fact the Law School became a major player in bailing the university out. I think our current load is 540 and now it's been capped, and that's how it will be preserved, whereas up until this year the mantra was essentially every person who walks through the door would be another law student. We would have the lowest entry standards I think in the state, and this led to a doubling in the size of the Law School. So we went from 286 EFTSUs in 1995 to 535 EFTSUs recently.

And as a result it meant that any small-group teaching, you had to have an undertaking, and by and large it had to be abandoned because it wasn't practical for that to be maintained. We have, relatively speaking, a high staff: student ratio, which is not desirable. I've done my best to try to alleviate that and sought to express concern with the university about it and we've been able to take on some more staff and help get the ratio going back in the right direction.

Almost all schools indicated that their universities require them to enrol increasing numbers of law students each year, usually with no additional funding. Invariably this has meant not only increased class sizes, but the knock-on effects of increased class sizes. "It has affected the way we teach", commented one interviewee, who reported that with *Criminal Law*, a first year subject at her law school, a small group seminar format had to be abandoned in favour of lectures and tutorials. Seminars are still used in the other subject, *Legal System and Method*, but the class size has increased from 30 to 60.

The lecture tutorial format works OK in criminal law, but we can see the scope for better learning outcomes in groups of 30. In the core program some subjects are now taught in a lecture/tutorial mode, but some later year subjects are taught in large lectures only.

At another school, the trend for increased enrolments competing and usurping the trend to smaller class sizes has meant that the experience of smaller group teaching was only quite fleeting.

Originally there was a focus on small group teaching, but that hasn't lasted very long. We still have seminars but classes are very large – 45 students instead of the original idea of 25, and that is not really small group teaching. We are not very happy with this development, which has occurred gradually as student numbers increase and staff numbers remain the same.

An interviewee from this law school described the knock-on effects of this for the law school:

There are more students in all of our core subjects, therefore there are more staff needed to teach those students. Therefore those staff have less time available to give to other areas of the curriculum. So something has to give at the end of the day.

And that also has an impact on what issues you're covering in class, but that also has an impact on the way in which we teach our courses. In terms of the way in which we design our assessment tasks, I'd really like to be able to set students to do a series of critical essays or research pieces, but if I've got 300 students, even though I'm co-teaching the course with other staff, each of us is also involved in teaching other courses. We are just not going to have the time to mark them, as interesting as that would be and good for the students we think it would be. There are just not enough hours in the day to be able to do that. So there's this inevitable pressure towards the one-size-fits-all form of assessment.

The pressure for student numbers would be one of the major factors. And the core of it, I suppose, ultimately can be traced back to university policies in one way or the other, but you know, the way we feel it is through the class sizes.

On law school that mentioned that its vision, at the time it was established, was to have all classes taught in groups of 25; however, its student intake increased from 75 in 1991 to 180 in 2002. While the law school did receive an increase in funding during this period, "it was no where near enough to maintain the same number of hours of face-to-face contact in small classes". The smaller group format had to be "modified to some extent. It depends on the year and whether it is an elective." The first year classes have been maintained at 25 students per class, and the two two-hour weekly seminars have been retained. Later year compulsory subjects, however, now only have one hour small group contact each week, with, in some subjects, an hour long large class contact, and on-line lecture outlines.

We have gone from no lectures 10 years ago to lecture groups in a number of compulsory subjects, but we have not just defaulted to the old-fashioned educational model. I actually don't think the outcomes are any different. Certainly we have changed, but the students have also changed, particularly in the way they use the university, what their demands are in terms of attendance on campus, working anything up to full-time. Because of financial restraints we cut down some subjects from three hours to two hours in contact terms, and it gave people the opportunity to lecture in bigger classes. I didn't have one complaint. The only time we got any feedback was when I called a meeting with the student law society executive, and discussed it with them. Why did we not get any feedback? Because it suits students. It suits their needs to change. What we're being driven to by finance, is actually convenient for them. What serendipity is that?

One law school mentioned that "we have suffered an increase to our student intake" from 200 students to 230-250 students, without any corresponding increase to staffing levels. The result is that class sizes in lecture groups in compulsory subjects has increased, and tutorial sizes have increased from 10-12 students in a tutorial to 15-17.

That has undoubtedly affected, I think, students' learning. They are getting less of an opportunity to become known to their lecturer, and to participate, as a general rule. It's one of the reasons why we have some subjects that are taught that is purely small

group. We do try and ensure that, in every year, there's one compulsory subject where there are more tutorial groups and more tutorials than might otherwise be the case. We moved a few years ago to saying there's limited resources, so we will put the resources into first year and we'll put the resources into skills and we would also keep a bit to ensure that there are enough of the part-time teachers available to ensure that other selected compulsory subjects to at least allow students something more than the bare minimum, in terms of small-group work. Whereas for other subjects the small-group work is typically quite minimal.

Another colleague added:

I think there is some difference between what I dearly would like to be as a teacher, which is a facilitator of knowledge, of knowledge gained, and what I am, which is just a knowledge bank. But the pressures are such that, you know, I still find myself being a knowledge bank. If I really think that something is important for the students to know and understand, I know it's in their reading, I know they'll understand it if they've done the reading carefully, but I know they won't have, so there's just that pressure to say, 'Okay, I'm going to spend five minutes telling you how this theory works or what this case deals with' or something like that. And so especially in large groups you can find yourself doing that.

At the same time, the school at which this interviewee teaches, has rethought the value of face-to-face contact in the elective program, while implementing the university's new student workload policies, which are expressed in terms of students' "work effort" both inside and outside class. That is, contact hours per week is a concept that the school has abandoned as a benchmark of quality teaching.

We're decreasing the contact hours, but we're not decreasing the work because the students do more independent learning, on the theory that electives are precisely where students should be working more on their own, developing those skills rather than necessarily just sitting in class.

In some elective subjects, where class sizes have increased to over 50 students, we're reducing contact hours per student but if you have more than 50 students in your elective you can, if you wish, for one of those contact hours, break the class up into two seminar groups and meet with them in seminar-style. So although the contact time per student may be three hours per week rather than four, it may be that the teachers is still teaching four hours per week, because they may teach two hours to the big group and then one hour each to each of two smaller groups. So we've worked towards, in a sense, a larger group/smaller group combination for those types of electives.

Interviewees also reported that in response to this increase, and the consequent increase on staff loads in relation to assessment, there has been a discernible trend towards using examinations, "or at least increasing the weightings of examinations, because our assessment policy dictates that the assignment's word limit will determine how much an assignment is worth. So if you increase the weight of exams, then you decrease the weight of in-semester assignments", and consequently the length of assignments that staff have to assess.

A second wave law school that reported a dramatic increase in its staff-student ratio also added:

Budget pressure has generated a student to staff ratio that's twice what it was, certainly at the time of Pearce. Pearce wanted student to staff ratios of 15 or 16 to one, as the object for the discipline. At the time [we were] sitting around that in Law and the university at the time committed to 15:1. My student to staff ratio is now 31:1.

I'm balancing my budget, but I have a student to staff ratio that I find intolerable. And that's the result of financial cuts, basically. And one-line budgeting where your budget, and this is federally driven, your budget does not come in accordance with an accepted staff profile, but a kind of watered down reflection of your students.

So yes and that's put enormous pressure on how you teach students. We can't afford to have a teaching dynamic of classes of 30 without my staff teaching 30 hours a week, and so we have a balance. We've actually utilised lectures as well as tutorials. So the seminars are in the tutorials which accompany the lecture, which in a way is the old way.

From 1997, this law school has taken the view that "an increase in students and over-enrolments was a strategy for survival in most universities, certainly it was at ours". At the same time, staff numbers declined. "The response here was to reconfigure teaching, and we maintained small group sessions in tutorial mode, but we had to switch to lectures as well.

A colleague of this interviewee described the situation more dramatically and thought that their school was slowly losing a commitment to small class sizes.

We've moved to lectures and seminars in all of our compulsory subjects. The reason we have done that is that it is a way to cope with large numbers and at the same time ensure that the students are still in reasonably small groups. So they get four hours a week in a compulsory subject, but two hours will be in a lecture and two hours in a seminar. We've lost our attachment to small group teaching.

Similarly, another law school also thought increased class sizes affected the law school's original ethos. "We previously adopted a very strict approach of Socratic teaching - it always was expected that all academic staff would be involved in questions and answers, but when class sizes became too big, it made the Socratic method very difficult."

One law school started with 80 students on one campus in 1992, and now has 200 students in each year, across two campuses, "which makes for a completely different environment".

We're finding it more and more difficult to have small groups. Budgets, timetables, room allocations, all of that seems to be tightening around us and every year we're sort of feeling the pressure on us right now to have more and more students in a small-group seminar. To the point where you wonder whether this is really a small group any longer... We're up to 20 – and beyond – and some of us feel that's too much. That's changing and that's a real inhibitor because we all recognise the value at some point in that engagement that we've been talking about, and that exchange and it happens best in small group sessions.

You can't reproduce it elsewhere. You can't reproduce it on the Internet or in a large classroom. You can only do it when you've got a certain number of people sitting around the table prepared to play that game. It's a very good learning opportunity if it's done effectively. But we are under pressure is to place less and less emphasis on that and to kind of water it down.

The bigger and more established schools reported the same phenomenon. For example, one such law school, that has been widely been regarded as the benchmark in small group teaching, reported that class sizes are as high as 65. The school, however, strives to have no more than 25 in each class in first year. "[We] believe that first year classes are difficult, and have a crucial impact upon students' approaches to learning." The school schedules multiple streams in each first year subject to achieve small class sizes.

The school's commitment to small group teaching in the later years as well, as far as this is possible for them, means that it has 72 elective classes each year. "But that does not mean there are 72 different electives on offer. Some electives are very popular, and there might be two or three, and occasionally four, groups per subject." Even though this school spends almost all its entire budget on teaching, in order to maintain small classes and overall teaching quality, increasing enrolments is increasingly making it difficult for this law school to maintain its position on small classes. At the focus group discussion at this law school, some participants remarked that the school had not made adjustments to teaching to accommodate larger class sizes. "Rather, everyone was in denial. For years we have been teaching in the same format, even though class sizes have increased. We have tried to teach smarter and more cleverly – but this is wrong."

Colleagues at another law school explained:

Since the early to mid-eighties, before we offered the double degree, our intake was about 150 a year. Well now, our intake would be, in terms of bodies, would be about 285. There's about another 150 students in the law school at any given time. So our student numbers have increased quite a lot. And our graduating classes would be probably about 230. I think [the increase in student numbers] has impacted [on teaching]. You're constantly teaching bigger classes, the anonymity makes it difficult to establish good learning relations with students, which in turn leads to more difficulties because students feel the legal education process has been depersonalised. It also enables students to hide behind others ... This makes it a much more negative learning environment.

At another law school, which reported an increase in its student intake from 200 in 1987 to 290 in 2002, the Dean mentioned that the university operates a faculty-funding model.

Within the limits of the resources, you are free to adopt the teaching method that you prefer. But you have a serious difficulty across faculties if one faculty is able to put up an argument about how important it is for it to adopt smaller group teaching arrangements and to be funded in a very different way from other faculties for that reason.

So the funding issue is a very acute issue for everyone and the reality is that your policy has to be developed within the framework of the faculty-funding model. And

that may lead to staff voluntarily, but corporately saying, “Well we will have more contact hours in order to teach on a smaller group model”. Because it is more resource intensive.

But of course, there is a general reluctance to accept this position. If you hire staff and you don’t have the funds to hire staff, if you’ve hired them in order to introduce small-group teaching, then you have to cut the number of staff down ultimately to reflect your resources, and that starts to call into question the whole small-group exercise and then you get pressures to increase hours with the trade-off being research performance and so on.

We note that the Pearce Report recommended that funding for law schools should be based on the understanding that a minimum target staff-student ratio of 18:1 is essential, and 15:1 is desirable, for a good law school to be able to offer a range of elective, theoretical and policy studies and the provide appropriate skills training. In a recent publication by the Department of Education, Science and Training (2002: 78-79), the student:staff ratios for “admin, business, economics and law” were consistently and significantly higher than the other discipline groupings. Only 12 other discipline groupings had worse student:staff ratios than the “admin, business, economics and law” grouping. There were no law schools at the few universities where the “admin, business, economics and law” student:staff ratio was consistently better than a number of other groupings.

Increased administrative burden on teachers

Most of interviewees and focus group participants reported that the administrative burden of teaching staff had increased significantly in recent years, as law schools streamlined (and in some universities, centralised) the responsibilities of administrative staff, and teachers took over tasks previously assigned to administrative staff. For example, three years ago the number of administrative staff at one law school was reduced from five to one. Another law school reported that 3.5 administrative staff to share among approximately 30 academics. Teachers reported that such administrative cuts left less time for them to prepare for teaching and conduct research. As one focus group participant at another law school, elaborated on situation:

Here we type everything ourselves, get things printed ourselves and so on. Anything documentary, anything that creates a document, almost everything, unless it’s done by the Law School administration in general, everything in the program is done by, produced by us.

One of my pet peeves is how much time I spend just typing up my own subject lists and doing my own photocopying. I have 250 exams, I have to alphabetise them otherwise the pile is wrong and the office won’t give them back unless I have alphabetised the parts myself. The university wants to pay me but they’re paying me as an ‘alphabetised resource’. So I think it’s not just limited resources, it’s the idiocy with which then the limited resources are deployed. I mean it just seems crazy to me that that’s the way things are run.

From another interviewee:

You teach the stuff, you type the exam yourself, we have to load up the exam front page via an internet site in the university, we have to be available for student consultation, we check the examination rooms, I'm in here at half past one on Friday to check my Criminal Law room. Then we have to physically go over and get on the trolley the papers to bring them back. We stand around big tables and sort them into questions. Then we have to write the answers. [Awfully sorry, we probably do that when we set the questions. I must remember that.] Then we have to mark them. Then we have to bring them back and type in all the results for the 400 odd students. Then we have to collate, stand around a table and collate, and check that we've got all the marks correctly recorded. Then we put them all up, then we provide feedback, and then we get student enquiries. It would just be easier I think if we could just do the exams ourselves.

We do everything. We take on the administrative load, the pedagogical load, the pastoral counselling load, and the menial load. And they're causes for concern, about the best use of academic time. And I know there's a perception that academics are big whingers but there's been a big shift and I wouldn't want any overview of the sector to come out without recognising that there's been a big shift in the expectations on academics, not just in terms of whether it's content or skills or whatever, skills online or whatever, but also in terms of administrative expectations.

And student expectations have increased enormously as well. I physically can't handle, especially when I'm coordinating first year units, the e-mail enquiry load and the voice mail load and the personal knock-on-the-door load. The increased expectations from students in terms of contact and their feedback, although they're text based – and their time poor, so they want answers now. And they will scout around to get answers. I've got two e-mails down there which I'm not going to answer, where one particular student has e-mailed the whole teaching team with a set of questions and I don't know what that particular student expects in terms of everyone answering the set of questions or just someone who feels like it.

The negative consequences of casualisation

In chapter 12, we noted the increased use of casual staff for teaching in most law schools. Many interviewees and focus groups participants were of the view that the trend towards casualisation clearly had an impact on the quality of teaching programs. This, some felt, impacted particularly on full-time teacher's administrative burden.

The increase in the number of casual teachers has changed the duties of full-time staff. Students and our and management's expectations of teaching and learning remain the same. Less is expected of casuals in relation to staff-student contact. Permanent staff do more of the administrative aspects of teaching – curriculum development and maintenance, setting assignments, research related to curriculum content, staff-student contact (especially in multi-group subjects, where students see permanent staff because casuals not there.) Permanents also have big role in making sure people teaching are up to speed (usually have smaller level of skills and knowledge etc).

An interviewee from another law school made similar remarks:

We have to rely on a large number of part-time staff and of course they only just come in to deliver the lecture, all of the housekeeping chores have to be done by the small cartel of people who are here ... Don't think for a moment I have

anything against part-time staff, I mean they do form a very valuable part of the school. And students I think actually appreciate them, you know, like they have somebody who is coming to teach them from the Bar or from a government department or whatnot, sometimes they think, “Oh wow! I’m actually getting a real lawyer for teaching this. [Casual teachers are drawn mainly from the local profession and from government offices.]

But the difficulty is in terms of curriculum development. Those people just want to teach and nothing more. Usually they do it, not for the money of course, they do it because they want to do it, but they’re interested more so in the delivery of their lecture or lectures that they are required to do, rather than any overall: ‘Where is the law course going?’ per se. They’re only teaching their Corporations unit or whatever. And I suppose that reduction in the number of full-time staff has had impacts upon curricula development.

And it also affects us in terms of, quite correctly, people coming in from outside, their priority is their working timetable, not the teaching one, so we run into difficulties with the classes that are, for a perfectly good reason, postponed or cancelled. They don’t have the university timelines for exams and marking and so forth, so you run into inevitable administrative difficulties there.

And all of this has to be dealt with by an internal staff member and it takes up an extraordinary amount of time, and something as simple as photocopying, you get a phone call, “Oh I’m lecturing at six (this is five o’clock) and I’ve got 10 pages. I’ll fax it through and all I need is 60 copies of each for my class at six”. That lecturer has to do that. We don’t have an administrative staff that can actually do that.

So it has these impacts upon us, no matter what value of the mind of the person that comes in, their constraints and priorities are driven by their work and there is all the administration that’s thrown back on, most often, the academic staff, because the administrative staff, we just simply don’t have them.

Other interviewees other issues that arose from casualisation. These involved quality assurance, and the development of basic skills in casual teachers, such as facilitating small group activities “which all casuals struggle with”.

So how do you address casuals’ access and familiarity so they’ll have a shared language with the student cohort of online skills development? We have now a subject materials database so that casuals have to access that. They don’t get those printed volumes of material any more. Casuals have to access and print off unless we do it for them. [Furthermore] the experience of casual staff is very similar to the first experience of students. They come with an enormous amount of good will but if unchannelled and if not supported, can turn a bit sour.

So strong was the trend to casual teaching that law schools were forced to address the issues arising from casualisation in order to maintain the quality of their teaching programs. One law school runs special programs for casual staff (see also Kift (2002b) and chapter 16).

We have a policy now on the employment of casual staff [it includes discussion of] mutual obligations - what we will provide them with and what they will provide us with. We offer them quite substantial administrative assistance, we run a training program for them, which again has probably a bit improved on the climate for

university teachers per se. But they must come. Once appointed they must come to a training program that we run once a semester, and we don't indoctrinate, we inculcate them into the philosophy of the way we teach here and what our drivers are in terms of online skill delivery. And we provide them with those older agenda items, such as how you do facilitate your interaction, given the diversity of the cohort they can come to expect, and we encourage the evaluation of their teaching. ...[I]n terms of assessment quality and ensuring the assessment, and whether they're in undergraduate tutorials or post-graduate units, we have to be really quite careful about how they deal with matters of assessment. So that's part of the induction and training that we embark upon.

All of that is quite daunting for someone coming in from outside, and in terms of supporting that, it's only sensible isn't it? [In relation to casual employment], law has been different from other disciplines as we constantly say. Our casuals aren't in the main PhD students. We have a number of PhD students, but in the main they're practising professionals who are essentially either our advocates or our 'disadvocates' in the workplace and who are or will be potential employers of our students. So it's only sensible and right that we should give them support and encouragement.

... We went through a quite arduous process at the beginning of this year of interviewing every single person who had applied to be a casual tutor. We nominated into a pool our existing casuals, so the good-value casual people weren't put off, but anyone who was new was interviewed and then required to go to this training. And from that process we identified a couple of really very excellent people who could then go on and pick up quite specialised units, like industrial law for example and insolvency, where we had some gaps because of staffing, as inevitably occurs, or people taken out for special projects. So as a faculty we're really quite, it just about killed us interviewing them all, but really very valuable in the longer term I think.

Another law school also has developed a policy on casual teachers, which includes "more mentoring of casual teachers". This includes an induction program, student evaluation of casual teacher's performance. "Casual teachers are better supervised than full-timers."

Not all casual staff were members of the profession; law schools still involved PhD students in its teaching programs.

I'd much rather have somebody on nomination full-time, or a postgraduate student, who is casual in that sense, but is a full-time part of the academic community. They're nomination is short-term but they're there full-time. I'd much rather do that, and that accounts for a lot of our casual staff, with the people doing doctorates or other people who are part of the life of the faculty, not just coming in to teach.

Teaching facilities

Teaching facilities were a major issue for some law schools, even for some of the large first wave law schools who it is purported, are better resourced than most other law schools. A significant number of law schools did not have their own teaching rooms, and staff had to teach in rooms scattered across the university.

Our teaching rooms are not good. Rooms don't have powerpoint, overhead projectors, video players, and they are often much too hot, so that students get very

sleepy. It is impossible to get the right room, particularly if you like to do a mixture of introducing material, and the facilitating class discussion. For that you need a flat structure where you can move tables and chairs about to reconfigure the class. But we keep on being put in lecture theatres where you can only lecture. I want students to handle the legislation, and look things up. Students won't all buy legislation, and will look it up on the web – but they can't do that in class. So I take the CCH loose-leaf into class and hand it around, but it is hard to do this in a tiered theatre.

Lack of educational training

Many interviewees and focus group participants thought that one of the biggest impediments to better teaching in law schools is the lack of expertise of teachers in teaching and learning (this was touched on in chapter 11). Very few law schools reported that their teachers had training in teaching and learning, or in subject design. As one Dean commented, “our staff come to us with a high level of education and achievement in their subject areas, but without any qualifications or background in teaching”. A focus group participant further commented, “training of law teachers to be teachers is a great factor in teaching and learning in law schools, and we do very little of it”. In chapter 17 we discuss some approaches that law schools have taken to address this issue, but most are piecemeal and depend heavily on the individual commitment and conscientiousness of teachers.

“Primitive” use of the student teaching evaluation process

Many interviewees and focus group participants thought that student teaching evaluations are used as a “stick” to “manage” teaching quality in law schools. Some thought that staff's attempts to be creative, innovative and experimental in their teaching were inhibited in order to obtain good evaluations from students. Some reported that under these conditions, this just encouraged teachers to stick to tried and trusted methods such as straight lecturing and other forms of “spoon-feeding” in order to ensure that their student “ratings” were high enough to ensure their tenure or promotion.

I think there is a pressure to spoon feed students, to give them what they want, to waste your time repeating the same old comments again on their papers so they feel they've got individualised feedback, there's pressure to put easily digestible chunks of material in dot points on the screen in a lecture.

I find it really depressing sometimes, the way that students' demands can 'dumb down' the learning process and [student evaluations of teaching by written questionnaire] only reinforce that process.

Not all law schools gave paramount importance to student evaluations of teaching and one Dean remarked,

for teaching to improve, staff need to be able to experiment and innovate, and share ideas, without failure being a problem. Most people who try initiatives get lower TEVALS in that semester, but that does not stop us from taking initiatives. The key thing is to see whether over time these developments enhance the learning process for students – did they learn on a deeper level, and if so it is worth doing.

The management of teaching is discussed further in chapter 17.

Demands on law students

As mentioned in chapters 10 and 12, the popular view among both law students and law teachers is that law students spend more time in the workforce than was the case twenty, even ten years ago. The popularity of paid work during semester was such that law schools with external programs reported that it was not uncommon for local students to switch their enrolments from internal to external to accommodate their work patterns.

A seemingly strong factor inducing these working patterns are the pressures on students to support themselves while they are at law school, but a further factor includes students' perceptions that they need to be engaged in legal work while still at law school so that they could ensure that their legal careers "got off to a good start". Whatever the reasons for the increased level of employment during their law studies, it is clear that many law teachers think that this pattern of student employment is having a negative impact on students and teachers alike.

There has been a huge shift in the pressures from the outside world and the biggest one is the change in the student employment pattern from 10 years ago, so almost all of them are working in part-time jobs. And I think it quite significantly changes the way they regard the law school and what we can expect of them, from them. I think it is getting to the point where it is actually affecting standards, because we respond as teachers to the pressures that are on them. So it's quite a symbiotic relationship. And I do believe we have got to that stage where there is a different standard.

We all have to be conscious about the statistics showing that about 80 per cent of students at this university are working up to 12 hours a week. ... The idea of the standard full-time student is just a nonsense. ... They are not full-time students any more.

For Deans and Heads of School, the dilemma was whether to accommodate students' external demands:

Students' expectations of what it means to go to university has changed. They no longer have an expectation that university is a full-time educational experience. What we see as a full-time load, they see as a part-time load, which would enable them to work three or four days a week.

Now in our first year program we tell people, we tell the students, about what our expectations are. We tell them how difficult it will be. We tell them how they're going to change. But in reality, these students are studying in a world that is a lifetime removed from that of 15 years ago, when if you went to university, you were here typically four days a week. You may not be here nine till five, but you were on campus four days a week. It doesn't happen any more.

And as a result, the connection that you have with the students must of course change. If they're considering it as a part-time education, and their working as a part-time education, then they're treating you and their view of you in their world, is of a part-time component, as the provider of a part-time component of their life. Whereas it used to be you were the provider of a full-time learning environment where they would work on Thursday night and Saturday morning.

These concerns were not confined to one law school:

Given that so many students work part-time and yet do a full-time course, and some even work full-time, what is a reasonable expectation on our part of the intellectual engagement of those students? To what extent can we reasonably expect to pursue the model in which they read for class and we have an interactive discussion to get the most out of the material? On the other hand, to what extent do we have to make concessions for the fact that they are not, in truth, full-time students? And I don't think we've answered that question yet, but that's one of the big questions on the agenda I think.

Another Head of School thought that a significant number of students are less interested in their studies per se than how their studies relates to employment – how their paid work during semester could be accommodated during their studies and/or how quickly their studies could propel them into a career of their choosing. A large proportion of students view their studies through the lens of employment.

I perceive [students] to have higher needs for flexibility because so many of them are engaged in part-time work. It's the difficulty of fitting their work in with their academic studies and unfortunately academic studies seem to give way to work. And so there is the degree of flexibility that students want.

Students now have a keen eye to what the assessment in the subject is, so they're more likely to look at the assessment requirements before they decide which elective they will do. So I mean it's a changing environment in which students regard it as important to get some sort of employment opportunity, and this is not only short-term economic needs, but also long-term planning. Because a lot of them look for opportunities to get a position in a legal firm, as a paralegal, for example, and this will provide the base for future employment in the law.

So you've got multiple things operating there and for some of these young people, there's the actual need to economically support themselves as well. I'm sure it must be happening everywhere. The level of student employment is so considerable now. I think most students have some sort of part-time employment. Very few of them don't. Some of them will admit to working 30 or more hours a week. More typical would be 10-15 hours. A large number, a very large number, are working 10-15 hours a week.

The other thing that is extraordinary is the desire to finish quickly. It's virtually overwhelming. All they can think of is: how quickly can I finish my course and get out into the workforce? So we run a Winter Session and a Summer Session and some students don't seem to have a break and you think, well, you need a break. You need some time for yourself and you need some time for social activities and everything else, instead of going hell for leather to finish.

Similar reports were given by other interviewees, who were less sympathetic:

And we have students – it seems shocking to me – who are actually undertaking full-time studies (doing something like four subjects), as well as holding down a full-time job, which to me just seems bizarre. Then they complain about the assessment. The temerity of expecting them to do a research essay. But somehow this has become more of a norm, so that actually studying is just an ancillary thing to acquire the additional qualification, rather than the vital end in itself that we imagine as teachers is all-important and expect them to be excited by this.

Many interviewees and focus group participants – both teachers and students – thought that many students' current work commitments was interfering with students' learning.

Outside work commitments place considerable pressure on students. There's lots of evidence that they don't prepare properly for exams, and sometimes they say they can only be at law school two or three days a week because of work pressures. And they inevitably miss out on key things, which is problematic from the point of view of their learning. It affects teaching and learning in the end quite significantly. The university's buzz word is flexibility, in the way we organise student learning, but sometimes there is no substitute for coming along and taking part in a discussion. So when people don't attend it is a bit like not getting the signposts on the map. They have got the map there, but they don't know how to work their way through it. They don't get the frameworks they need for learning it. Some people are good independent learners and have good skills and pick it up early, but most law students, from my observation, don't do that, and they do benefit from having someone point them in right direction, and they benefit from the discussion that occurs around them in the classroom.

I have noticed an increased failure rate in some of my own compulsory subjects in the last years. It used to be negligible, but last year I had 5 out of 70, which is quite a big number. Some students whom I spoke to about their examination said that they simply did not know the work – they could not identify what the issues were. They were writing answers about things which were completely wrong. It was impossible to give them any marks at all for some questions, so they had to fail. Students who are periodic attenders become more strategic, and only learn certain areas of the subject. This is a big risk, and sometimes pays off, sometimes not. I think all teachers have become aware that some of the people who are presenting themselves for assessment don't have a holistic view of their subject area. There can be substitutes to attendance but they are not good. Last year I put tapes of lectures in library, but I wonder how often they are used. I did not do it this year. I am worried this year. I have 76 enrolled in [my subject] this year, and the most who turn up are 58. In the end we have to be realistic – classes are not compulsory, these are senior students, and they have to make choices which I have to respect even if I don't agree with them. I guess we are seeing more students who need help with planning their commitments, because of the necessity to work multiple hours and days per week, while still seeking to complete the program in minimal time. We have had increasingly in the past few years requests for taping of lectures, provision of notes etc. At the moment we have not responded to that by introducing a program for provision of notes, or anything on the web, or tapes. We have largely left it to students to do that. However, I anticipate increasing pressure to respond more actively to these sorts of things. I don't know what response will be as a school, but I don't think that we have any great desire to become what a lot of law schools started off as – a part-time institution where people come in in the evening to do their classes, or as an external provider. I guess there may be pressure from faculty or university to provide more web-based courses – some of us would resist that. I don't think that law is best studied externally.

Another interviewee similarly reported that:

I reckon that on any given day of the semester, after the first week, there is probably only 75 to 80 percent of the enrolled students in that class. And that may reflect all these different things. The sporadic attendance, illness, a range of reasons

– but part-time work is the biggest problem and they have organised their lives to attend those classes but then there is a crisis at work or a lot of them work in law firms where there are sporadic heavy demands and they will all miss some classes.

The other big factor on attendance I should say, is essays, and I have a very mixed view about the amount of writing we require of students. They typically have to write a long essay, about three or four thousand words, in every later year class, and I gave you a figure of 75 percent on average any day of the semester but that's perhaps a bit inaccurate. It may well start out as 90 percent at the start, and then by the time all the assignments are due, it drops down then it goes up again towards the end. And that's a pattern as well.

Clearly some students' work commitments have a knock-on effect for other students, as well as for the law school and law teachers.

It's not unusual to have in every subject a handful of students who cannot do an exam on a particular day, specifically because they have to work.

We're not a silvertail law school and I think there's always been an ethos of accommodating the needs of particular students. But that then flows over into other students but we don't say to them, "Look that's your problem. You sort it out. We do our lectures now" and so on. So we've been in that situation where a large proportion, an increasingly large proportion of the students, do have to work. They've got no other alternative. They've got no other way of living. And so, we do make those sorts of changes but it is bad in the sense that we're really struggling often.

We've introduced in a number of the subjects, on-line study guides ... which go out in their e-mail, and that helps to some extent. Some lectures are taped, because students just can't make it otherwise. Certain lecturers [in some subjects] are run from 3:00-5:00pm, to accommodate part-time students.

But everything we do just creates more work for us, for administration, for other students, which is a problem because none of us have the luxury of time anymore.

Some law teachers reported that students' focus on employment – both during and after their studies – often makes them critical of what they see to be superfluous, for example, the inclusion of legal theory in some/most subjects:

Students more and more work in paid employment, which not only limits the time they can spend on their studies, but also makes them more assertive about negotiating with academics the way in which they're course should operate and what they should be able to do etc. Particularly since a lot of them are working in legal practice. There is this sort of a bit of a push to say, 'Why are we learning all of this extra stuff? We just want to know the basics so we can go and practice' and convincing them that they need to learn to be critical and learn the theory.

Other law teachers were less concerned about student employment and, in fact, felt strongly, that it should be placed in the proper context, particularly in the context of changes that were occurring throughout higher education. In their opinion, only by doing this, would teachers cease to view student employment as an inhibitor to good teaching and learning.

Not only in law but in a number of professions, nursing, engineering, manufacturing, management, medicine, music, it is the case that the work experience and the learning in hospitals or in factories or in workplaces of various kinds is a learning experience that is a rich one as well. And often the challenge for the university is to find ways of being in alliance with that and providing some standards in terms of assessment and some academic dimension to simply getting the job done in the workplace. And I think that what I found quite curious is that each of the different professions are unaware that other professions have similar problems. So I think we have to engage with the learning of our students in where they are. They're partly with us in the academic community. They also have their work lives but they have social lives as well – and that's another area that's seen big change.

A perceived lack of student interest in learning

When asked to identify factors impeding good teaching, teachers in focus groups regularly cited lack of student interest in learning.

The biggest inhibitor to teaching is that students don't care. They don't want to be there. This is not only a problem for core courses, but I'm also teaching an elective which has been fairly popular, and in both those situations I've noticed, more so than in my compulsory subjects - probably because they're forced to do the latter – that there are many students who have no interest in learning about the subject. They are completely disconnected to their university learning. I often feel like I'm a hurdle and they're just trying to find out some way to either walk around me or jump over me and still get a pass! It could be a combination of factors, and I have no real idea, but it could be a combination of the consumerist attitude that is now prevalent amongst our students, that is they're purchasers of services and they expect that they will pay the money and basically get through. And that there is absolutely no expectation that they have responsibilities to satisfy and that we have a relationship whereby I owe them responsibilities but I also have expectations and vice versa. There's none of that at all. And I've only been teaching for four years and I've just even noticed during these four years that things are changing – we have the same economic base but there has been a complete shift in attitude of the students. So that's the biggest thing that's inhibiting my teaching - I'm just troublesome and I'm asking them to do things when I shouldn't be.

And it certainly seems to get worse as they move up the ladder. That's my impression, that the difference between the first years and the third years is huge in terms of their willingness to put in the effort. So there's something that happens to them as they progress through the system. I think it definitely seems to be getting worse. I think from year to year they seem to prepare less than they did the year before. To put it very briefly, it's a commodity issue – a commodification of law which is happening right through the university system. Now they might be all bright and bushy tailed in the first year, but I suspect that's because they already had a commodified view of higher education during the HSC, which is a disaster as a preparation for university. About half of my students might as well not have been to a secondary school. Really, after school, they think, "We're at university. It's going to be all in-depth now and qualitative". But as they progress through their LLB and they realise how much time they have to put in to obtain a good, in-depth, qualitative education, especially given the students to staff ratio is well into the mid-thirties, they think: 'Uh oh, same old rigor'.

Some law teachers speculated that student attitudes might be related to student demographics.

I'm of the opinion that it has at least a good deal to do with the socio-economic status of students at some law schools. I thought, well maybe it's just timing but I now think students at other law schools [with students from lower socio-economic groups] are a lot more driven than the students here. Driven by different things and in different ways but I mean the conservatism by default of the students in this place – these people live in a different world from the students I taught at the other law schools [that attracted lower socio-economic groups]. Some of them weren't the brightest lights in the harbour but the amount of work they'd do and their apparent motivation ...and their interest in knowledge, not all of them but certainly proportionately speaking, it's a different world from here. It's an observation that I have no empirical support for whatsoever. It's only an impression.

But you also notice the difference here, too, between the day-to-day students and the students who come in, the external students, who are as keen as punch in comparison to the day-to-day students who are doing our degree. We've got a cohort of students that are among the wealthiest of all law students. Combine that with a culture of commodification and the fact that everything is laid out for them on a silver platter compared to what's available to students at my previous law school... They come from a different background. They inhabit a slightly different culture.

Building on themes that was introduced in this and the previous chapter, one interviewee suggested that semesterisation, combined with the need to work, might be a factor in many students' lack of interest in learning.

The semesterisation leads to over-assessment. You know, they're getting assessed all the time and they just get exhausted. Everyone's overloaded by assessment. Teachers are overloaded by assessment, students are overloaded by assessment. So they get sick to death of it and they end up being lazy in their assignments. They use the quick-fix internet access research tools. I think that semesterising everything into the chunks has generated a problem in terms of assessment and that tends to fight against the slightly deeper layering of reflective development.

The second thing is the introduction of HECS, [which] changed the way students approached their universities. They regarded themselves then as fee-paying students, from that moment on. And so the pressure to work was not just: 'Oh we need some extra money to go out to the pub, etc', it was sense of: 'Oh my God we're going to have this burden. We have to work to meet this in some way'.

And I think that really, that added to the commodification idea, it's the quick fix. 'We've got to work, we've got to...'... it's added a whole extra pressure on their lives and so they are working much more than the students did 15-20 years ago, I think.

And combined with this is the great pressure, increasingly, by law firms, even more than 5-6 years ago, to do work experience and extra-curricula activities with them while studying. The students can get super jobs in law firms and the students don't feel that they can say 'no'. They think: 'Oh this is terrific. This is great training' and they just get sucked up so every available second of their time when they're not at law school is taken up by work. It's the absence of spaces for the students, which is largely financially driven – or they say it is – that I think is the problem.

Others also wanted to name the funding models imposed on law schools as a factor inhibiting student interest in learning:

We must also look at the differential HECS. The law students were hit with excessive HECS and they know perfectly well that most of what they pay in HECS doesn't come back to us. They know they're being robbed and that is annoying and of course it annoys us too. It just infects the morale. It inculcates the idea of 'you owe me a living or you owe me a degree and I don't really have to do very much for it and I'm paying for it'. I think that's had quite a bit impact on attitude. ... At the same time this is happening our class sizes are getting massive and I feel now giving a lecture to 200 students, I'm just some sort of repository for information. I have absolutely no relationship with the students.

How can you possibly inspire students? Oh you might if you are a fabulous lecturer and you can just for 50 minutes have them spellbound. Maybe. I don't quite have time to prepare a lecture like that anyway, but I don't know if I'm even capable of that. I've got to produce charisma. Well I can't and to me that means that it's just not possible to get the kind of motivation, the kind of questioning that you can have.

And also I suppose they do interact with each other outside the classroom but it doesn't really happen in the classroom and I think that sort of learning that isn't just teacher/student-based, that happens almost as a community of scholars, you just can't have it.

As already described, teachers felt law students had adopted a consumerist stance to legal education, which one focus group participant thought began in the 1990s:

There was also another revolution and I think we maybe tend to underestimate it, but I don't think we should, in student perceptions and student expectations. The 1990s represented the era in which the student was suddenly positioned as a consumer of services and that's something people don't like to talk about but we are now dealing with cohorts of students who have explicitly positioned themselves, not as partners in an educational enterprise but as consumers of a learning product, and that alters expectations in very specific ways.

A focus group participant further added:

I think there's a greater expectation that everything comes neatly packaged. You know, 'here are your materials. Take the little book and read it, and all you need to know is there.' And so that expectation creates a pressure. There's quite an industry - buying notes from last year's class. In other words you don't have to do any thinking. You get the answers there. And to me it's more than just about materials; they want everything without any effort.

Many law schools reported that the demand for notes was a widespread phenomenon:

I've noticed quite a change over the last three years. It's particularly emphasised by the students asking for written handouts they can just learn verbatim or copy in an open book of things, rather than reading or looking things up. And it seems to me to be a continuation of the high school system. They're just giving you back what you say. They're not thinking, they're not challenging. They're probably being challenged but they're not taking it up. They just want you to give them something

as a handout or download the lecture from the Internet rather than go to the lecture itself. They reproduce it; they don't reflect on it. The more specific the reproduction to the point of plagiarism the better, rather than any kind of critical evaluation of it.

Coverage

Many law teachers who participated in this project thought that a perennial problem for law teachers is "coverage - the ideal curriculum would take 10 years to teach." Teachers feel overwhelmed at the amount of material that might be included in the law curriculum, the pressure from students and the profession to cover the legal rules for major areas of practice, and teach students the main "legal skills", "not to mention give ethics and legal theory the importance and attention they deserve".

Sometimes there are pressures to put more content in and sometimes that's from lecturers who think 'there's all of this material that students need to know'. Sometime the pressure comes from students because they don't want to miss out on anything, and then you can end up with a very big workload. We need to resist the pressure to increase the content because the law is changing. It more important to understand the method, to be able to find the law, and to know the key principles, rather than wading through every case. But [the pressure of coverage] is common across the system. There is pressure to include more and more content, which is insidious – but you have to recognise it and try to resist it. But it places pressures on everyone. It means a lot of material and a lot of assessment.

A former Dean argued that,

Law is growing at a dramatic rate and in law schools if we can get students emerging with a good understanding of key principles, and with some key values, a very good understanding of where they can find the law, a good understanding of the major areas, then our task has been done. And that's about all they're going to get. I don't think a student coming out of a modern Australian law school, any law school, will have a thorough coverage of every area of law. That's not going to happen.

One interviewee further added:

There is less time and so it means that the parameters of knowledge are contracting as one has to get through things. You know, this notion of 'getting through', covering things in minimal time and less focus upon the so-called deep learning and thought and research, is silly. I'm strongly wedded to research and see it as a very central skill, for getting students to think independently and critically about work. But it is becoming harder. Harder to get them to do that and they often don't have the skills, but of course there's also the question of the time for marking. People are tending to cut corners.

The content has exploded so much that to try and teach content is in my view a pointless exercise anyway, because it changes and grows so rapidly that if all you're doing is trying to teach content then you're short-changing the students.

Other interviewee also counselled against coverage:

We have a bit of a fixation on coverage when what we should be focusing on is core principles, ways of thinking, skills that enable students to do their own coverage of things that we don't cover. So I often get into arguments with my colleagues who sometimes like to think of the language of coverage as if it's just a matter of digesting things rather than engaging in an intellectual process.

While this is sound advice, the challenges posed by the huge amount of material in many subjects, exacerbated by the increasing availability of cases and secondary material on the Internet, place teaching staff under pressure to sift through material, cull outdated case law, carefully choose the best cases to illustrate the broad principles, and so on. In the context of larger class sizes, shrinking resources, and increasing administrative burdens, this is not an easy task.

Summary

It is generally accepted by researchers in university education that an analysis of teaching should not just focus on the individual teacher (see Biggs, 1999; Prosser and Trigwell, 1999; and Ramsden, 2003). Also important is the environment within which the teacher works, including the approaches taken by colleagues within the same school, the attitudes of senior managers within the school, the university's policies towards teaching and the school, and the signals and resources from government. This chapter has covered some of these factors, as well as others, that interviewees and focus group participants thought had a negative impact on teaching in Australian law schools.

The major inhibitor of effective law teaching was identified as being a lack of adequate resources, largely resulting from the "differential HECS" funding model (described in chapter 1). The number of law students at most universities increased dramatically through the 1990s, while universities' funding of law schools remained the same, or increased at a lower rate than the increases in student numbers. This, in turn, resulted in larger class sizes. A major teaching and learning initiative adopted by law schools (smaller classes) has, therefore, been thwarted. Inadequately resourced law schools have also reduced administrative staff levels, requiring academics to undertake tasks formerly carried out by administrative staff, and leaving academic staff with less time to reflect on their teaching, subject design, assessment activities and prepare for classroom contact.

Of the other factors inhibiting good teaching, the most significant has been the level of student participation in paid employment. This was seen to have dramatically changed students' relationship with their law school, to the detriment of their learning.

CHAPTER FOURTEEN

TEACHING AND LEARNING POLICIES

This chapter, and do chapters 15 to 17, describes the institutional policies and approaches to teaching and learning adopted by law schools. It provides an introduction to law schools' teaching and learning policies and the factors that have motivated the policies. It also examines the kinds of program objectives that law schools have developed. Chapters 15 to 17 examine particular aspects of these teaching and learning policies.

An overview of teaching and learning policies in law schools

Unsurprisingly, some law schools indicated that some of their teaching and learning policies were largely shaped by university policy: for example, requirements pertaining to program objectives and graduate attributes, subject objectives (and the alignment of objectives with assessment tasks), “continuous assessment”, “criterion-referenced assessment”, and the use of information technology. As one Dean noted, “the Academic Senate formulates the general academic policies, but we translate those policies into a practical form and further, include policies of our own”.

Other law schools claimed to have had as much influence on university policies as the university had on the law school's policies.

In some ways the law school has shaped the university more. The law school from its inception had the radical idea that teaching was not simply the rent for research time – this was a novel idea within the university. The teaching project has always been taken seriously in the law school. That has percolated through to the university. Now the university has a pro-Vice Chancellor for Education, with a strong teaching innovation agenda. We work very closely with him. ... So, the faculty has contributed as much to university as vice-versa.

Not all law schools had teaching and learning policies. And, while some law schools have taken care to compose and implement important and effective teaching and learning policies, many law schools still have much to do to bring their approaches to teaching into line with state of the art teaching and learning policies. As such, while some law schools have a limited number of administrative requirements that must be followed by teachers, and implement teaching and learning policies required by their universities, they leave all other decisions about subject design and classroom teaching to individual teachers.

Some law schools have spent much time debating school teaching and learning policies to guide teachers. For example, one law school took the opportunity, during a major review of its LLB program from 1997 to 1999, to develop its *Guidelines for Unit Design*. This documents includes an extract from a leading text on *Designing and Evaluating Courses* (Jacques, Gibbs Rust, 1990). The guidelines were developed by the school's Curriculum Committee.

They are intended ... not to add to [teachers'] burden but rather to provide help and assistance in discharging the task efficiently, effectively and professionally. The

Committee does not in any way see its role as one of scrutinising and monitoring [staff member's] performance or harassing[staff] in the exercise of [their] professional judgment about [subject] design; its role is merely to facilitate the collegial process of endeavouring to ensure the practical achievement of our shared commitment to high quality teaching and learning.

The school mentioned that it places a high degree of trust in the professional judgment of its staff, and this approach dovetails with the school's "policy of systematic evaluation of teaching and learning", which includes a subject review by the Curriculum Committee. The guidelines envisaged reports (for submission to the Curriculum Committee) that reflected a collaborative process of planning, negotiation and decision-making for the design of each new subject. This report would cover the subject objectives, an outline of topics/tasks by class or week; an explanation of the relationship of the subject with other subjects in the program; the extent to which the subject provides a "contextual approach" (and, where relevant, the techniques for providing a contextual perspective); where relevant, how admission criteria are satisfied; the place of skills in the subject and the methods for addressing them; details of teaching and learning methods to be used in the subject; pace and workload (e.g. details and breadth of treatment of topics, the amount of class preparation expected of students); assessment details (goals, criteria and methods, including effective feedback during the semester); and teaching materials (e.g. nature of materials to be used, availability of published materials; use of electronic sources).

As an interviewee from this law school explained:

We put together a package of materials about curriculum design that brought together, hopefully in an accessible way, these simple but important points about how you design curriculum, how you have to have objectives and how what you do, and how you assess, always have to be linked to your objectives. And so in theory, everything has been designed around that.

We have developed a considerable number of curriculum principles about having to give feedback during the semester, small group teaching in first year subjects, contextual approaches are to be encouraged and so on. If you have responsibility for specific co-ordination of assessment you must ensure that in-semester exercises and assessment are not bunched for students in standard subjects.

Examples of the development of and implementation of other teaching policies are as follows:

- A law school that reported having developed policies on group work and class participation, also implements university codes of practice on practical placements, and teaching and assessment. "During student Orientation Week we have an induction program where we tell students about what they can expect over the next five years, and we tell them about policies, and what they can expect in terms of assessment tasks."
- One law school is developing a template for all undergraduate subjects, which will outline teaching and learning policies, such as the specification

of learning objectives for all subjects. “This will then flow through to the postgraduate area.”

- A *Guide for Teachers* has been produced by one law school, which provides a guide to the university’s “requirements, policies and practices.”

The document is meant to further excellent teaching in four particular ways:

- By distinguishing clearly what is required by the University from what is expected by the School and what is recommended or has been found to be useful;
- By detailing University requirements, policies and practices on teaching administration, and offering assistance to you in complying with all of them;
- By detailing and explaining School practices, particularly those adopted in the interests of good resource management; and
- By passing on information about practices that our teachers have found useful and effective.

While much of the guide is procedural, covering school requirements for matters such as teaching materials and assessment, the employment of tutors and so on, it begins with a statement of the School’s commitment to “Excellent Teaching”. The guide also includes the University’s *Code of Practice – Assessment*.

- More common was for law schools to lay down teaching and learning policies covering some areas of teaching, but to allow staff discretion as to how they implemented their policies. “We don’t say you must do this or you must do that, but rather that you must achieve certain standards and results and there may be different ways of doing so.”
- One law school required all subject outlines to be approved by the Head of School, “so there’s a quality control mechanism, but nothing which says you have to have any particular assessment or teaching method”.
- The approach of another law school is to have teachers work in teams:

We put people in teams and see how that evolves.... I’ve been trying to move to something a bit more flexible that will allow a lot of flexibility in terms of pedagogy, but doesn’t become a static lecture/tutorial model. You can teach more intensively and sometimes you can create breaks where the university doesn’t necessarily have breaks to use different spaces, to use teaching in an outside environment – magistrate’s court or whatever – and so my policy has been one to put them in teams, give people some brief to say these are our available IT resources and the moment to allow people a little bit of creativity and it seems to me there’s precious little of that in universities these days.

I would have thought having exposure to a range of different pedagogic approaches, and teaches having a little bit more opportunities to work as autonomous groups, would be a better experience for students than trying to impose some very static structure.

- Other law schools do not have a policy so much as a shared ethos about teaching. As one interviewee from such a law school described:

Our ethos and culture is pretty well shared by the people here. We all know roughly what we are about, and I suppose we don't feel the need to shout it out. I don't think there is any one philosophy about teaching and learning. There is an emphasis on student-centred learning, and that learning has to take place at the student's level, and that there is a focus on that rather than on what academics do. There is an emphasis on a broadly-based curriculum that embraces substantive law, legal theory, legal skills, and general skills. There is a perception that if the course is going to work properly, all of those things have to be mastered and assessed, and these things have to be revisited over the full life of the program rather than just at one point, and left at that. I think the program is graduated, it has the virtue that it is broadly based in the skills and content. There is an emphasis on the importance of progressive assessment in order to provide the formative assessment to students to ensure that they understand how they are going in the learning process. These are the hallmarks of the teaching and learning process.

This common ethos is ensured because, in the words of another interviewee at this law school, "teaching skills, knowledge and philosophy are very much a key part of recruitment so we have recruited very good teachers. We have looked for particular types of people, people who have theoretical and interdisciplinary interests, and teaching interests."

- One law school reported that it did not have any policies on teaching and learning issues, such as assessment, teaching methods and materials. But the school does encourage staff to respond to student surveys on teaching:

We take regular surveys of our students and the questions on the survey form are directed to the materials and how appropriate they are, and the handouts and how appropriate and a number of questions along those lines. Certainly with most of the core subjects where there may be as many as five teachers teaching in the area, they will have meetings and get together and determine what the materials should consist of, and they'll have a common outline and handout materials.

Some interviewees expressed scepticism about the usefulness of teaching and learning policies. For example, after discussing a law school's change to smaller group teaching and the clear evidence that this had dramatically improved teaching in the school, one interviewee commented:

I don't think this law school functions this way. We do have a constant, ongoing process of reviewing teaching. We have a faculty Teaching and Curriculum Committee that's always reviewing and updating things. We have a Director of Teaching Development, who provides kind of support and faculty teaching awards for teaching excellence, as well as a university one. We provide training to people to improve their teaching skills. I suppose the way in which we go about things is not to have a policy but to focus on improving the capacity of the people to teach what they want to teach. I think people are fairly resistant to making this formal ... We don't have this sort of information about what we do available in a glossy brochure with

our policies and our mission statement in it. Well maybe that means we could do better at explaining what we do, and then I sometimes think we're complacent because we have the reputation as an excellent law school and so we tend not to do that. However, beware of the organization that gives you everything in a beautiful glossy brochure but doesn't support its people. I think one needs to put more time and energy and resources into supporting the staff that one has and developing their skill levels and providing them with the resources that allow them to take the initiatives that they see. ... We have fantastic colleagues here, and they've been stretched so thin by all the various demands on them that they just don't have time to do all the things that they'd like to do, particularly to be able to develop skills, to innovate. I think people are really overworked. So for me the focus should be on what resources we've got to put into letting people use and develop the skills and abilities that they have. So yes, I think if we were being judged on a coherent set of policies about what we're doing we might not do very well, so that's why I'm glad that you are talking to us face-to-face about what we're doing. We're doing a lot. I mean teaching, good teaching, is about a constant process of improvement. You never stand still. You should always be reviewing what you're doing and moving on and learning new things and changing. But yes, we certainly don't systematise that. Instead, we get on with doing what we're doing. Basically what I would like to see is the recruitment of more staff because that would allow us to do what we're doing better. And it would mean we wouldn't lose so many people, because they are, compared to what they could be earning elsewhere, earning very little.

Other law schools are very reluctant to prescribe how staff should go about teaching.

One of the approaches that this law school has always taken to teaching is to always be supportive of creative teaching initiatives. But this has involved being supportive of the autonomy of the individual – people taking different approaches to their own material, and retaining autonomy in their approach. I personally think the community aspect of education is very important. We are involved in a communal enterprise. We might achieve ends in different ways but as a school we have to commit ourselves to a basic end. Learning the law is as good a way of expressing that as anything.

Overall Objectives for Teaching Programs

Surprisingly, given the level of debate over the purposes and foci of legal education, not many law schools reported having clear objectives for their undergraduate and graduate programs.

Some law schools resisted suggestions that they should have overall program objectives.

We've never sat down and said, 'These are our objectives' and in fact I'm sure that if you put that question to a number of my colleagues they would say: 'What does that mean? That's management speak.' But nevertheless there are some very clear objectives that are implicit in the way we do what we do. We, regrettably, have to cover the Priestley subjects. ... So in that sense our program has compulsory subjects and it has options ... But I suppose there are a whole series of other objectives apart from covering particular areas, which are to do with acquiring and refining legal skills, and I think they are also to do with ensuring that people come out with a critical approach to law.

Law is not just about learning rules, it's about understanding why the law is there and who the law benefits and who it disadvantages and where it needs changing and all of those things. I'm not interested in turning out lawyers who just want to know the rules. I'm interested in turning out people who are movers and shakers so they can change things, hopefully for the better. So I suppose in a sense that that's taking a critical approach to law and implies having an ethical sense and a social conscience. I'm not sure we achieve that with all our students, but certainly we do with some of them.

Some law schools that did have clear aims and objectives for their overall teaching programs, sometimes encapsulated not only the desired learning outcomes of the program, but also the school's philosophy of teaching and learning.

We are trying to produce graduates who are better skilled, good citizens, reflective practitioners for changing and challenging work environments. ... So there are important things that weren't previously addressed, such as collaborative skills and oral communication skills and ethical values in a broad generic sense, rather than in a discipline-specific sense at the end of the degree.

The case study below further describes the program objectives of the law school that the above interviewee was from.

Case Study 14.1

LLB Course Vision and Objectives:

Underpinning all of its activities, is the law school's ongoing goal to provide a structured teaching and learning environment of the highest possible standard. The school encourages shared responsibility between teacher and learner to ensure that graduates possess the skills, knowledge, understanding and sense of community responsibility appropriate to the discipline of law. The aim of the LLB is to both "educate students to be able to enter a learned profession, as well as to enable them to function in a wide variety of other vocations". In addition, the school aims to provide an environment in which "equity, values, diversity are promoted", one that enhances learning for the widest possible community. The specific aim of the LLB is to provide students with an education that would enable them to:

- to comply with the academic requirements necessary for admission into the legal profession.
- to apply intellectual and practical skills to solve problems confronting the community.
- to access the broadest possible range of community skills, knowledge, understanding and professional and ethical responsibilities during their period of education.
- to continue to develop skills, knowledge, understanding and commitment to professionalism, and ethical and community responsibilities during the lifetime of the graduate.

This education should develop students':

- understanding of the fundamental principles upon which the law as a system is based.

- knowledge and understanding of the principal areas of law that comprise the legal system.
- understanding of the relationships between the legal system and other systems in society.
- understanding of contemporary legal developments and legal change including means of law reform.
- capacity for critical enquiry, intellectual debate and ethical practices.
- intellectual and practical skills necessary for the acquisition, understanding and application of knowledge.

As for postgraduate study, the objectives of school's LLM course is as follows:

- To provide postgraduate students with opportunities to deepen and broaden their legal education and learning and to explore perspectives on law, sophisticated analyses and greater depth of examination of legal problems than that undertaken in undergraduate courses.
- To provide postgraduate students with opportunities to undertake a program of advanced coursework and applied research related directly to their professional and educational needs.
- To provide postgraduate students with the opportunity to develop a high level of competence in legal research of an advanced and original nature.
- To provide postgraduate students with the opportunity to undertake original legal research projects resulting in a substantial contribution to knowledge in the form of new knowledge or of significant or original adaptation, application and interpretation of existing knowledge.
- To provide postgraduate students with the opportunity to develop skills required for advanced legal reasoning, writing and evaluation.
- To provide postgraduate students with opportunities to develop skills required for more sophisticated critical evaluation of the attitudes and values underlying the law and of the reactions of people, including legal practitioners, to it.

Case Study 14.2

The 2001 review of the LLB at another law school produced the following list of intended graduate attributes:

- The ability to explain the operation of the legal institutions, principles, rules and procedures in their theoretical, social and economic context
- A commitment to continuing self-education and scholarship
- The ability to conduct independent research
- The capacity to identify and critically analyse issues and problems logically, to develop and consider different options and viewpoints, and to formulate strategies to solve problems in an effective, timely and efficient manner
- A high level of competency in professional skills, including policy analysis, and effective representational and communication skills
- A knowledge and understanding of, and commitment to, high ethical standards
- The ability to apply legal knowledge and skills in a range of working environments
- The ability to interact with other people in a range of working and social environments and to work co-operatively to achieve common goals
- An appreciation of the value of cultural and intellectual diversity, and an ability to function in a multicultural, global environment and across disciplinary boundaries

- An awareness of the need for law reform, and the ability to initiate, implement and participate in social change through law reform
- The capacity for and commitment to the prevention, management and resolution of conflict.

“These attributes form the touchstone against which the Faculty’s academic programs are compared and against which, ultimately, the Faculty’s effectiveness can be measured.”

The 2001 review further recommended that a “whole of year” approach be taken to produce expected outcomes for the first year of study in the LLB, and that the Faculty should, furthermore, devise a detailed inventory of expected outcomes and abilities for later year subjects. A first year co-ordinator should be appointed to oversee the closer integration of all subjects in the first year program, and to ensure that necessary skills and knowledge are learned by the end of first year.

Case Study 14.3

The program leading to the degree of Bachelor of Laws and Legal Practice is designed with the intention that students will obtain:

- (a) knowledge, understanding and the capacity to critically appreciate and evaluate Australian law and the Australian legal system, taking into account historical development and societal imperatives;
- (b) facility in a range of basic legal and generic skills that assist in the translation of legal rights into effective outcomes; and
- (c) competence in applied legal skills essential to the ethical and professional conduct of legal practice, broadly construed. The overarching aim is to have graduates properly prepared to enter the practice of law in Australia.

Other law schools also mentioned having explicit objectives for their LLB program and one such school reported that it aims to provide students with the following:

- a critical knowledge of the institutions and operation of the Australian legal system and related legal systems, of the central concepts, principles and rules of those systems and of the values to which they give expression;
- a critical knowledge and understanding of the nature and function of law and the roles it performs in the ordering and functioning of the wider social system;
- a critical understanding of, and experience in, thinking about those influences and aspiration which have shaped the development of law;
- a critical appreciation of the moral, ethical and normative problems associated with the law;
- an appreciation of the responsibilities of lawyers to the courts and the wider community;
- an understanding of the techniques of legal reasoning and argument

- an ability to think and write clearly and effectively;
- the development of skills which are increasingly essential to participation in the legal process (whether as a practitioner or otherwise), such as interviewing, drafting and the ability effectively to use computer technology; and
- a commitment to the promotion of justice.

Another law school described its Bachelor of Laws and the Juris Doctor programs as “comprehensive law degree programs designed to impart professional competencies and skills, to provide theoretical understanding of legal materials and to promote critical and contextual study of the law”. Their specific aims of these programs are to:

- ensure a quality legal education which is at least equivalent to international best law school practice that continues to guarantee strong state, national and international competitiveness through professional acceptance and recognition and also in postgraduate study and advanced research;
- provide theoretical and conceptual knowledge necessary to enhance the understanding of legal rules and principles;
- encourage and promote critical and contextual study of law including the investigation of the nature and function of law, and the economic, social and moral dimensions of law and legal institutions;
- impart high levels of professional skills including competencies with respect to traditional and modern legal research methods, including electronic research methods, all forms of legal writing, pleading, advocacy, client interviewing, negotiation and alternative dispute resolution modes;
- provide an international perspective of the law through comparative study of legal systems and the study of public and private international law and regional and global legal regimes; and
- provide a vehicle for admission to the either branch of the legal profession throughout Australia.

A further law school also had explicit objectives for its LLM program, which specify that on completion of the program, students should be able to:

- explain the nature and function of legal regulatory frameworks in business environments and how these frameworks vary across national borders;
- show how legal frameworks are created, extended and modified to respond to rapid change occurring in other political, economic and social systems;
- demonstrate the range of choices and incentives that legal rules offer in business decisions and how those choices can optimise business outcomes;

- diagnose and analyse the legal components of business problems and issues in local and global business contexts and suggest solutions that maximise commercial outcomes;
- anticipate likely commercial legal problems that may arise in particular business contexts, locally or globally;
- evaluate the likely success or otherwise of particular legal strategies in commercial settings in different countries; and
- demonstrate a synthesis of business and legal knowledge in a way that enables you to communicate intelligently with business colleagues on a wide range of comparative commercial law issues.

Not all law schools had overall aims and objectives for their teaching programs. One law school, for example, had a broad mission statement, which is described in detail in the case study below.

Case Study 14.4

This Faculty's Mission is to provide "high quality teaching, research and community service to promote a just and equitable society". To this end, it is committed to:

- Innovation
- Integration of the discipline of law with other disciplines
- Intellectual freedom
- Excellence
- Social justice for all
- Highest ethical standards

Its goal for teaching and learning is to provide an environment in which students -

- acquire a thorough knowledge of legal principles and their practical application
- evaluate critically the operation and purpose of the law
- integrate their knowledge of the law with other fields of knowledge and practice
- understand how the law can be applied to meet the future needs of society, and
- develop skills of life-long learning in law.

This school did not have overall objectives for its teaching programs, although an interviewee articulated the overall aims of the law school's LLB program the following way:

We are trying to produce graduates at the end who are able to think critically about law, who have the skills necessary to adapt to a rapidly changing legal environment, rapidly changing modes of accessing information, [and] rather more optimistically, ... who have at least some commitment to social justice and to an expanded conception of a professional role which embodies in it a commitment to ensuring that justice is equally available to all members of the community, irrespective of class, gender, ethnicity, race, whatever.

Each subject in this law school's LLB program is required to have aims and objectives, and a statement of skills to be acquired, but these were not aggregated to program level.

Another law school's mission was to be the "leading Australian law school providing high quality legal teaching, scholarship and research which promotes within its communities equity, social justice and access". The school aims to achieve its mission by producing graduates who are:

- Are gender, culturally, socially, politically, environmentally and ethically aware;
- Have substantial knowledge of a wide body of case law and statute law;
- Are able to express themselves clearly and concisely;
- Are capable of critical, creative and reflective thinking;
- Have high levels of practical legal skills;
- Are life-long learners, astute to the phenomena of change
- Achieve excellence in their field

The school furthermore provides opportunities for study at various award levels to those students who are currently unable to gain entry to a law degree.

Other examples of mission statements are as follows:

- Foster the understanding and further the application and evolution of law with a commitment to justice, integrity and professionalism.
- Provide a teaching and learning environment in which members of staff and students, both at the undergraduate and postgraduate levels, can fulfil their potential as teachers and learners in the school's programmes of university-based legal education.
- To provide quality teaching in diverse areas of law in order to impart and develop in students –
 - (a) intellectual skills and reasoning, analysis, critical thought, enquiry and research
 - (b) practical skills of problem solving, concise and effective writing and oral expression, as well as professional skills and judgment; and
 - (c) self-reliance and resourcefulness in learning.

- At one law school, different mission statements were specified for different groups of students:
 - All students – encourage students to appreciate, and to evaluate critically, the roles of law and the functions of the legal system in our society
 - LLB students – to provide students with a broad education at the tertiary level which will include study in a discipline other than law
 - LLB students – to encourage and facilitate effective student learning of law and legal process in a clinical context which encompasses experiential learning of law, and the learning of lawyering skills by instruction, simulation and supervised clinical experience
 - LLB students – to prepare students for careers in law

At some law schools, program objectives and mission statements were not written down but nonetheless could be described by law teachers. The following are examples of this.

- “To have something that is a little bit more multicultural, long-term global, something that has a constructive engagement with the profession. But it’s a two-way process, I would have thought. And that provides students with a way of integrating ... some of the vocational aspects of legal training with a theoretical and a contextual conception of law so that they don’t just see it as a vocational training in a technical frame.”
- “To provide a general liberal education, using law as the vehicle for doing that. We have the view that students can learn a lot about society and their place in society and the role of Australian society in a global society by using law as a vehicle to do that. We don’t see law as essentially or necessarily being only a professional education, but we also recognize that that is what a lot of our students want. So we also teach law as an exercise in professional training. So we do pay attention to skills training, training in legal ethics, and the like, but without ever making the assumption that all of our students are necessarily going to go into practice. Many of our combined degree students we know are doing law as their second degree. They want to be accountants or scientists or whatever, and they very much see their law as an important support to that other area of work. Equally, many of our students think that’s what they are going to do but by the time they finish their views have changed and been turned around. So we deliberately have a law curriculum which aims to meet that flexibility. So when we teach students, we’re trying to teach them to be critical thinkers about the law.”
- “We produce a student who has the knowledge and understanding in the Priestley areas ... and to have other intellectual qualities about self-directed learning, problem solving and research ... and further to have the ethical awareness and dimension that a lawyer requires for the application of skills...to deal with problems. The school assumes that most of our students will end up in private legal practice. I suppose it’s probably fairly

focused in those litigation subjects that we teach in the final year – procedure and evidence and ethics in Legal Skills III – but all of our students do all the Priestley 11 subjects. That’s a core part of the degree. They can’t get a law degree without it. We don’t have a non-practicing law degree ... So while that’s our assumption, I don’t think it’s something that we necessarily focus on ... other than in the sense that we do try to foster in students some sort of sense that in reality you don’t get problems that have labels on them called “torts problems”. Really you get an 'unmoderated' set of facts, which raise all sorts of different sorts of legal issues. And we do try to expose students to those sorts of unmoderated (sic) facts, as they would be in practice. Well anywhere, whether they’re in legal practice or any other form of work really. So I suppose in that sense, it’s focused on a reality, a sense of reality, you know: ‘this is not how things really work in the real world’.”

- We produce graduates who not only have law-specific skills and a thorough knowledge of the law, but also have generic skills: writing skills; advocacy skills; research skills. And we think that all these skills would be transferable to other professions or careers as well. And it’s a very important aim - to make sure that once we’ve got our graduates out in the market, that they can cope with what will be expected of them in the marketplace. And therefore our practical orientation through practical legal skills, dispute resolution, and professional experience.”
- “From very early on, we had a very heavy emphasis on professional practice. The philosophy that underlies [our] thinking is that we want to get a broad theoretical underpinning to a very practically orientated program, so that [our students] actually know how to do their stuff. They also need that sort of underpinning so that they could go to various jurisdictions and say: ‘well, I know the basics of the law here and I can adapt [to this other jurisdiction]’. We will not sink below what we regard as a minimal professional standard. ... We are looking in that professional standard not merely for the student who has got the conceptual foundations, [but also to produce] a graduate who leaves with ... the capacity to look at legal matters, to respond to the problem appropriately, to be able to analyse and to look to the law, and to recognise it when they come across something new. We produce graduates who can go anywhere, and not merely hold their heads high, but walk as tall as any other in Australia.”

Summary

Few law schools reported having comprehensive teaching and learning policies, and those that have such policies have outlined their overall approaches to teaching and learning in writing, detailing aims for their LLB program and/or postgraduate teaching programs. Other law schools have done little more than implement university teaching and learning policies, with some schools expressing scepticism about the usefulness of such policies. Others still have chosen to specify mission statements, or have explicit learning objectives for

individual subjects and for assessment (this will be described in greater detail in Chapter 15), but have no written program objectives.

CHAPTER FIFTEEN

OBJECTIVES AND ASSESSMENT

In the last chapter we described law schools' teaching and learning policies and program objectives. Not all law schools have such policies or objectives, and some schools do no more than implement university-recommended teaching and learning policies. Other law schools have mission statements in place of specific policies and program objectives.

In this chapter we describe teaching and learning policies pertaining to:

- learning objectives; and
- assessment, including
 - the nature of assessment tasks
 - the alignment of assessment tasks with learning objectives
 - assessment criteria, and
 - feedback on assessment tasks

We also refer to data from the student survey showing how students have perceived staff attempts to make expectation for student learning clear, the nature and variety of assessment tasks, and the adequacy of feedback on assessment tasks.

Objectives

In the past decade, most law schools have increasingly ensured that students in each undergraduate and graduate subject be fully informed of the objectives of the subject. In most cases, this is a university-imposed requirement. One law school, for example, reported that the university requires that teaching and learning objectives for each subject be placed on the web. Another law school reported that subject objectives must be included in every proposal for a new subject, and those subject objectives must be linked to objectives in the program.

Other examples of subject objectives are as follows:

- One law school's Administrative Guide states that:

Each course outline details the learning objectives of that particular course, the assessment tasks that will assess whether students have achieved those objectives, the assessment criteria, and the method by which feedback will be given to students on their performance in their assessment tasks.

This guide also mentions literature that staff may consult to implement these requirements.

- Another law school's Code of Practice on Teaching and Learning requires staff to:

identify the student outcomes of the subject clearly and in terms which enable students to understand what skills and knowledge they are expected to achieve, and what values and attitudes will be fostered by satisfactorily completing the subject; these student outcomes must be included in the Subject Outline.

- A law school that reported that subject objectives must be stated in the subject outline, also mentioned that their university is less stringent about the inclusion of objectives for postgraduate subjects.

You'll find that if you look at every subject outline, certainly in the undergraduate program more strikingly than in the postgraduate program, you will find the aims and objectives there. I say more strikingly than in the postgraduate program because we tend to have more visiting and part-time teachers in that program, who are responsible for their own subjects because it's so highly specialised, and I don't think we manage to articulate the requirements quite as informally to those teachers as we do to our full-time teachers.

- One law school's *Guidelines for Unit Design* outlines a "list of principles, assumptions and factors" to assist teachers in subject design, the first of which states that:

Syllabus planning is more than the selection of content. It involves:

- the definition of aims and objectives;
- selection of the content and teaching and learning methods that match the aims and objectives; and
- selection of assessment procedures that measure the achievement of the aims and objectives.

- At another law school, all teaching staff are required to follow the university's *Unit Outline Pro Forma*, "a template that guides the [subject] design process". The pro forma specifies the elements required in all subjects, to "ensure the quality" of all subjects and programs. The pro forma begins by requiring subject co-ordinators to provide basic details about the subject (credit points, teacher details etc) and then requires subject co-ordinators to specify:

Rationale

The Rationale is a short paragraph describing why the learning that students will do will be important to them, why the [subject] is included in the [program], and why the [subject] occurs at this particular point in the [program] structure.

Aims

The Aims are a broad but concise description of what the teacher expects the [subject] to achieve. Links between the aims of the [subject] and of the overall aims of the [program] may be indicated.

Objectives

The [subject] objectives should be written in terms of student learning outcomes. They should be a statement of the knowledge, values, skills, attitudes, competencies and generic capabilities ... that students will gain through successful completion of the [subject]. ... The aims and objectives are the foundations of the [subject] outline. The teaching and learning approaches, the content, the methods of assessment, and the resources should all derive from the aims and objectives.

This law school tries to ensure that all teaching staff implement the requirements of the pro forma.

We encourage our staff to produce clear objectives and it has become really important in terms of graduate capabilities because if we're going to achieve these learning outcomes then they need to be stated up front, and clearly. And they can't just be stated as follows: "that [students] know, understand, analyse and critically evaluate (ie use all the cognitive verbs)", if we're also assessing assignments, written skills or tutorial participation, oral skills or group work skills. The focus is: What are the learning objectives for each subject? Are we including in that the graduate capabilities that are being assessed? And what is the link then between the learning objectives and the assessment? And all that is up front and clear on the subject outline, which then becomes our contract with the student.

So under the pro forma subject guidelines, teachers go through a process of developing objectives for each subject. The directors of undergraduate and postgraduate programs look at them. The new and the amended [subject] outlines, they come to the Assistant Dean (Teaching and Learning) who looks at them. They then go to a school committee, a faculty committee, and then the Law Academic Board and a range of external-to-the-faculty stakeholders have a good go at them. Students are represented on the Faculty Teaching and Learning Committee and on the Law Academic Board. Students also comment on objectives in the usual student evaluation process and other types of feedback. ... A working party is looking at student evaluation data and course experience questionnaire data, which is where a lot of the reflecting on the evaluation of [subjects] is happening, and which might lead to further changes to subject outlines. One of the constant criticisms from students is that 'You keep asking us to evaluate what you're doing and then where do we see the link between what we do and what's actually happened, as in mechanisms for improving the [subjects]?' The whole process is a very arduous process and not well liked. I think it is successful. . I think it goes to this broader mapping. [Subjects] aren't owned by individual academics who happen to teach them from one semester to the next. There have to be approval processes now because we can't afford for things to be changed. And that, again, reflects a broader institutional push to have the [subject] outline as our contract with the student. Whatever's up has to be right. So the two have come together quite nicely.

We also monitor the online sites to make sure they have current subject outlines, and that they contain required information.

The debate that's still going on here is content and skills and the balance between the two and how effectively does the outline match the reality of what takes place in the subject? "Are you satisfied that they're actually doing it?"

It is now a standard feature of subject design at most law schools that each subject will specify the learning objectives for the subject, which as mentioned earlier, is usually a university requirement. The main differences between law schools' approaches to teaching aims and objectives is in the guidance schools give their staff, and the extent to which schools monitor the implementation of the requirements pertaining to aims and objectives.

This process of specifying subject objectives can be complied with ritualistically, with little impact on teaching and student learning. But if rigorously implemented, it can transform law subjects, as two focus group participants reported:

[We now all] link our [subjects] to our objectives, and these objectives affect our teaching in relation to each [subject]. We have to set out what our objectives are when we're teaching each [subject] and obviously it covers the subject matter but also the learning, you know - actually getting into [students'] heads an understanding of the law. But it includes other objectives as well, which reinforce their practical skills, like research, writing skills, and even there's a change I think from what it was a couple of decades ago when I was at law school, because I don't think there would have been such a thing as objectives, formally. Then, you understood that the main objective to be the content, what they can expect.

Yes, I think as soon as you articulate an objective, as we now do, other than mere content, it does force you to think about "well how am I going to help my students to find the skills?". And one thing about skills, such as deep reading, no matter how much you tell them, no matter how much you might wish to lecture about the skills, by definition a skill is something that you acquire with experience. You have to think, well what's an efficient way for the students to acquire that experience or practise that skill in an environment in which they're going to get better at it, other than to have me observing the traditions of a teacher. So I think a lot of it is thinking of ways that students can acquire these skills in an efficient way and including a particular reason for reading research, or asking for an oral presentation, for written presentation, all of that stuff.

A good example of the learning objectives outlined for a subject (*Evidence*) is the following (reproduced from Mack, 2000: 58):

By the completion of the [subject], students should be able to:

- identify information which is and is not relevant to a material fact in issue;
- describe the specific use for which information is tendered;
- articulate the chain of reasoning which makes information relevant (or not);
- select and apply appropriate exclusionary rules;
- choose, analyse and apply the correct cases and statutes to a particular evidentiary issue; and
- recognise the impact of personal characteristics and social attitudes on evidentiary issues.

Assessment

It is now well accepted that assessment is one of the most important elements of subject design (Johnstone, Patterson and Rubenstein, 1998; Hinett and Bone, 2002). Assessment has changed in law schools, partly driven by university requirements, and partly by greater understanding of how good assessment strategies can influence student learning. In focus group discussions, for example, some participants mentioned how they had discovered for themselves a truism of teaching – that “assessment defines the *de facto* curriculum” (see also Rowntree, 1987: 1).

My concentration is at least as much on trying to get the students to develop skills of critical reasoning and writing and the application of those skills in argumentation so that in the [subjects] that I teach now are mostly geared by the assessment. I’m a great believer in saying to the students if you value something or think it’s important then you’d better attach marks to it because otherwise nobody will believe you think it’s important. So there’s a big element of assessment on critical reading and writing and critiquing, either judgements or answers to problem questions that other students have presented, those sorts of things. And indeed presenting critiques and potential solutions in a class situation rather than ask questions. I’m in favour also of the skills development argument in oral presentation. And that’s, I feel, is a big percentage of my job.

Many law schools have adopted thoughtful approaches to assessment. Some have also established procedures to monitor assessment regimes in individual subjects. For example, one law school has established a sub-committee within its Faculty Education Committee “which goes through every assessment scheme before it approves it for compliance with our policies”.

A broader view of assessment

The view of assessment in the traditional model of law teaching – a single end of year written examination after “teaching” was completed – no longer dominates law schools as much as it did in the past. This, in part, is due to a more thoughtful approach of some law teaching academics, and in part to the “top down” influence of university teaching and learning policies.

For example, one law school reported that it was subject to a university *Code of Practice – Teaching and Learning* that defines the functions of assessment as:

- to judge performance, by awarding marks which indicate whether and how well a particular student has attained the stated learning outcomes; and
- to determine whether a particular student is sufficiently well-prepared in a subject area to proceed to the next level of instruction; and
- to provide feedback to students which indicates levels of attainment, and to indicate and diagnose misunderstandings and learning difficulties; and
- to provide feedback to teaching staff to indicate areas in which students are experiencing difficulties, and to identify and diagnose ineffective teaching; and
- to promote learning.

Further, the code suggests that good practice in assessment requires that “assessment should promote learning and improve student performance”.

Law schools without good assessment policies are recognising the need to develop policies which are anchored in current thinking about teaching and learning. One such law school’s Teaching and Learning Sub-committee is developing guidelines for assessment motivated by:

A sense of a danger of lack of coherency and a sense that unless you had a framework or guidelines [the LLB] ran the danger of being a bit *ad hoc*. And I wanted to ensure that we are working within clear teaching and learning guidelines, both with assessment and with teaching configuration. Because one of the things with the pressure of all these students is that we need to explain what we need to do and how much face-to-face teaching we need to give them.

Most law schools have written assessment policies, although it would be fair to say that the majority focus on administrative matters, rather than provide guidance for exemplary teaching and learning principles that govern assessment; however, some law schools do keep refining their policies, with this being the end aim, time.

Administrative focus of assessment policies

Most assessment policies require assessment regimes in each subject to be scrutinised by the law school committees responsible for overseeing teaching and learning and the curriculum (see also chapter 8). Most law schools provide some form of guidance to assist the committee make decisions about the approval of assessment regimes. For example, the word length of an assignment will usually be determined by the marks that the assignment carries in the subject and the weighting of the subject in the program. Similarly the length of an examination will often depend on the proportion of the subject’s that the examination constitutes, and the weight of the subject within the overall degree program. Law schools’ assessment policies will also generally cover a range of standard matters, including appropriate referencing and citation (increasingly law schools are adopting the *Australian Guide to Legal Citation*, Melbourne University Law Review Association, 1998), plagiarism, grammar and style, word limits and penalties for overlong papers, procedures for submission of assignments, extensions and penalties for late submission, distribution of grades (for example, the minimum or maximum percentage of students who should achieve particular grades), special consideration, and procedures for publication of assessment results.

The growth of “continuous” assessment

Up until the 1980s, examinations played a central role in law school assessment (see McInnes and Marginson, 1994: 167). In most schools, assessment, particularly in the LLB program, focused heavily on end of year examinations. Law schools also mentioned, when interviewed for this project, that assessment regimes have changed considerably in some schools since that time.

In modern learning the move away from the exam, or the 100 percent closed book exam at the end of the year as the only method of assessment, is a significant change. It also significantly enhances your ability to do creative things in class that mean something, rather than being ‘a fun little exercise but what’s it got to do with the exams?’ sort of thing. Moving away to more continuous assessment and more creative assessment and away from the straight old exams is a significant factor today.

Another law school reported,

multiple forms of assessment to cope with the different [learning] styles of individual students, and this means that we have a far broader base to assess the ways students can interact with each other [and with the material they are learning]. The school was blessed with small classes, which meant that staff had a better knowledge of students, and could give feedback all the time on their immediate understanding, could ensure interim forms of assessment, require students to do things and get immediate feedback, and then do the same thing again at a higher level, with more feedback. Exams are OK, but they are not a learning instrument. We have to have them, but they are not helpful to learning process. Examinations enable us to test whether students can do [tasks] at the end of the subject, but are not so much part of learning process because students receive no feedback at the end.

Two law schools reported that they are subject to a university rule that there cannot be a 100 per cent examination in a subject. At one of these law schools, no assessment item may be greater than 70 per cent of the overall subject mark, and all assessment regimes are scrutinised by the Head of School to ensure that they comply with all university requirements. At the second law school “there is no requirement to have an examination – if you have don’t have an examination, its pretty much up to you what you do”.

One law school reported that, as part of its efforts to integrate a graduated approach to developing graduate capabilities, it is rethinking its range of assessment tasks. It acknowledges that this is placing new demands on students, who may still have quite a passive approach to learning, and particularly to assessment:

It’s about making the outcomes explicit, in terms of professional development and what the practitioners are looking for. But it’s quite challenging. It’s quite different from just sitting down and writing an assignment, which was the big ask ten years ago, because it was different from the traditional 100 per cent exams. Now every student has to orally present something. Every student has to advocate something. And students who previously could avoid moots or speaking unless they were absolutely forced to are not given that option any more.

At another law school, the policy is that all subjects include some form of continuous assessment, co-ordinated across years so that too much emphasis is not placed on one form of assessment to the exclusion of other forms. Similarly, one law school reported that it is subject to a university requirement that each subject must contain two or three different assessment methods or tasks, “which must, of its nature, mean more assessment”.

Some law schools have explicit and detailed written assessment policies, and one such policy includes the following:

Progressive Assessment

Assessment in each course should be tailored to the objectives of that course. Co-ordinators are encouraged to devise a variety of appropriate assessment tasks, rather than rely solely on an end of semester examination. For assistance in developing assessment tasks see [literature listed].

Each 2# course is required to have a minimum of 30% assessment by means other than an end of semester examination. *Inter alia*, this may be by means of a mid-semester examination, assignment or evaluation of tutorial performance or a combination thereof. At the discretion of the course co-ordinator, the progressive assessment component may be offered on an optional basis thereby enabling students to elect to have a greater proportion of the assessment at the end of semester.

1# courses are not required to include a component of progressive assessment.

Other law schools follow university practices, such as the following university *Code of Practice – Teaching and Learning*, which specifies that:

- Assessment should be based on more than one piece of work and should require demonstration of achievement in a range of outcomes.
- As part of the assessment in every subject, students should produce some written work and at least one piece of individual work from which the unaided capacity of each student can be assessed.
- No component of assessment should count for more than 70 per cent of the final mark, except in subjects designed research project.
- Group work may not constitute more than 50 per cent of assessment.

And at another law school:

Each assessment scheme will involve more than one method of assessment, and in particular no subject will be assessed by a single final examination. So far as is practically and administratively reasonable, students will be provided some measure of choice in the assessment or other means of recognising academic strengths or interests. Students should note that such flexibility is more appropriate for elective subjects than for compulsory subjects.

Examinations will normally be “open book” (that is, no restrictions will be placed on the materials which students may take into the examination room), unless there are special reasons for imposing such restrictions. The general exception is that materials or books borrowed from the University Library may not be brought into the examination room, in order to ensure that they remain widely accessible. Photocopies of books and material will of course not be caught by this ban.

Unless provision is made to the contrary, reading time of 30 minutes will be provided to students at the commencement of any Law examination. The Examinations Office will be asked to ensure that all students sitting law examinations are provided with a double desk or a table of comparable size.

All assessment requirements in a subject must be completed by the end of the examination period in semester 1 in the case of semester 1 subjects, or the

examination period of semester 2 in the case of all other subjects, unless there are special reasons for setting a later date.

One law school claimed to have put more emphasis on continuous assessment than any other law school “which probably reflects our history [in Arts and the Social Sciences]. It is also true that many of us come from diverse education backgrounds. Not everyone here has an LLB, although we would not now appoint someone without an LLB.”

Other law school reported the move away from 100% examinations occurred some years ago and one such law school reported that for the last decade, there have been two assessment tasks per subject, “which might in the worst cases be two exams or two essays”. In most subjects, assessment included a research paper, and many subjects included moots as part of the assessment.

A law school that mentioned that it has a strong policy that “assessment follows pedagogical goals”, further reported that the law school’s commitment to smaller group teaching has translated to a more flexible approach to assessment.

So we might have three or four teachers in one subject who have a common course outline, and common assessment, and you might have one teacher in that subject who does everything in a totally different way. And then his or her assessment is going to follow that.

So we don’t have a policy on assessment which homogenises it at all. We do have a policy against 100 percent exams. Again it’s a university policy that you really have to justify very strongly how you came to have 100 percent examination. In the undergraduate program, I think there about 170 exams per year. We have had that as an option. ... You can elect to do 100 percent assessment, but the normal thing is you wouldn’t require having 100 percent assessment in any subject, since about 1988.

As discussed earlier in this report in relation to semesterisation (see chapters 12 and 13), the move to continuous assessment, coupled with semesterisation and increasing student numbers, has imposed huge demands upon law teachers:

Continuous assessment in a sense is a good goal because continuous assessment provides formative assessment during the course of your subject and provides feedback, things you can build on, which is good for student learning. But the problem is that when everyone is doing that, the students and the teachers end up just in a constant treadmill of assessment. And when the student numbers are double what they were, it just is so greedy of time from the students’ point of view, and also from the teachers’ point of view. They really are run off their feet in terms of assessment. It affects learning in the sense that if students have so many assignments to do they won’t do them well and they will get into bad habits.

Further, as mentioned earlier, some law schools report that increased student enrolments has put pressure on teachers to move back to examinations in order to ensure that their assessment workload was manageable.

Alignment of objectives and assessment

In many law schools, it was law school policy to align subject objectives and assessment tasks (see Biggs, 1999; and Johnstone, Patterson and Rubenstein, 1998). As one focus group participant observed: “It is really important that what you are asking [students] to do in assessment clearly reflects the objects of the subject and the way in which you are teaching law.”

The case study below provides examples of some law schools’ policies of aligning learning objectives and assessment tasks.

Case Study 15.1 **Aligning Objectives and Assessment**

One law school is required to follow the *Code of Practice - Teaching and Learning*, which requires students be given specified information about the assessment in each subject. It is suggested that “this information include a statement of the learning objectives ... which each assessment task is designed to test. For example, a problem assignment might be designed to test analytical skills, research skills, professional competencies or a mixture. Wherever possible these should be stated explicitly to assist in formulating the criteria for assessment.”

Another law school’s *Guide for Teachers* states that “Assessment ... provides one means of evaluating and directing student learning and therefore should be closely tied to the objectives set for teaching and learning in a subject.”

One law school reported that, in 1977, a Faculty resolution was made, requiring teachers in every subject to state to students “(i) the subject objectives, (ii) the assessment program and (iii) how they are related. Teachers are required to discuss this in the first class in the subject.” The Undergraduate Education Committee collects all of those statements and makes sure that they comply with Faculty policy, and makes sure that there are not clashes in timing between assessment tasks in subjects. In practice, however, law teachers from this law school conceded that recently the Committee has not monitored this as closely as it might have.

At another law school, the subject convenor in each subject must tie subject objectives to the assessment tasks using the University’s Curriculum Tracking System, which requires that for each subject, the teacher must have a matrix which outlines subject objectives, and methods of assessment. The teacher is furthermore required to certify that particular assessment methods meet particular objectives. The subject outline must also reflect other subject design elements outlined on the Curriculum Tracking System. The Curriculum Tracking System can be accessed by the law school, the Faculty, the students and university administration, to enable each subject to be monitored closely. Interviewees from this law school reported that the Faculty’s Teaching and Learning Committee also regularly checks the correlation between the Curriculum Tracking System and subject outlines.

One law school that reported that mentioned that it did need to do more to ensure the policy of aligning objectives with assessment is implemented, reported that the school’s assessment guidelines require clear criteria to be specified for each assessment task, and that law teachers overseeing subjects ensure that the skills specified in the learning objectives are being assessed, and that teachers produce clear criteria sheets for each assessment task. The criteria then are used in the feedback cycle. “Some of this does fall down on the individual level but I’d say in 70–80 percent of the cases it’s working quite

well. And it's a matter of bringing the students with us. So it is what they've come to expect on completion of first year. How can we do the skills development if we haven't got the criteria against which to prove demonstration of skill acquisition? All this is also integrated now. Our whole program is predicated on an integration of [objectives, skill levels and assessment tasks]. While we have tutorial participation in all the subjects, what we're worried about is that there might be varying expectations in relation to that. So, without being overly prescriptive, there are some core matters that people should be assessing. And so [the assessment criteria specify] what issues are being assessed - expression, grammar, punctuation, spelling, proof reading, referencing. We just articulate them up the front. And those sorts of things are being carried through and [we have been awarded a grant] to help us regularise all the other things, particularly in the more difficult areas such as group work. That's one of the big ones."

This law school has constructed a skills table "that has levels of demonstrated ability for each of the skills at level one, two and three". This is stated in the front of the study guides, so students know that if their skills are being addressed in a particular subject, to which level they are being addressed. The school also has a template or a pro forma for the introductory part of each study guide, "which states these are the skills being developed, to this level, this is how it fits within the course, this is how it fits within the year, and this is how it articulates." The tasks are "embedded within the statements. Obviously that's going to fall down in individual cases and for individual students. They all won't make the most of it. But there's a genuine attempt." (See further Hinett and Bone, 2002: 55-57)

Examples of how most law schools were integrating the objectives of individual subjects into a coherent program are available on many law school websites.

The diversification of assessment methods

A consequence of a more sophisticated approach to assessment, including the adoption of "continuous" assessment and the alignment of learning objectives and assessment tasks, was that law teachers embraced a wider range of assessment tasks. Interviewees reported that the range of assessment tasks in law schools has diversified.

We have pretty diverse assessment methods, which we put in place really in the early 1980s. One of our major policies is that every subject shall have more than one form of assessment. All assessment schemes go to the Curriculum Assessment Committee for approval and if approval's recommended then the [School of Law] Board has to give that approval or withhold it. And then the schemes are published and are available on the web. All assessment schemes are required to be discussed with the classes at the beginning of the teaching period. I'd say there's a very wide diversity of assessment. Examinations are still very important as I think they are in most law schools. I would say most elective subjects probably have as their primary assessment a choice between an exam or research work [usually a research essay], of usually about 5000 words. Most subjects will have interim assessment as well as that final assessment. It's harder to have much interim assessment when you semesterise subjects obviously. I suppose that our most recent change in assessment in recent years is that nearly all of our subjects have a significant participation mark which is provided in relation to participation in seminars, which is not just attendance. So it's unredeemable. It can't be very high because it can't be double-marked. It's just the seminar leader giving the mark each seminar. This was introduced over a period of

time but it became fairly general by about 2000-2001. Once [the School's shift to smaller group] seminar teaching was really in place it became pretty general practice.

Another law school provided a list assessment tasks that included:

- take home examinations
- open-book examinations (the school never used closed book examinations because there was widespread agreement that “we don't want [students] to recite facts, we want them to be able to analyse and criticise. They don't have time to sift through notes”)
- research essays
- moots
- press file (in which students monitor some part of the media for particular legal issues)
- book reviews
- issues papers (where students are required to write a few hundred words identifying themes and issues in a particular area)
- class participation, which is one of the most common forms of assessment, and “is usually compulsory in early years and compulsory subjects, to make sure students do the reading and get used to speaking in front of colleagues, and are prepared to answer questions when called upon”
- requirements for students to access the world wide web, or take part in an interactive chatroom; assessment covers participation in these activities.

(For discussions of diverse assessment methods, see Hinett and Bone, 2002 and Sergienko, 2001).

This law school's policy is to let teachers decide what is the appropriate form of assessment for their subject. “The most common form is some form of mid-semester assessment, and some form of end of semester assessment, and probably class participation.” In the fourth and fifth years, “teachers “often let students decide how they will be assessed”.

One law school recently changed its assessment policy to make “research papers” a compulsory assessment in compulsory subjects

Previously students might have had an optional assignment paper, but nowadays in four of our core subjects, compulsory research papers make up between 30 to 40 percent of the assessment for those subjects. The students cannot escape the compulsory research papers any longer. That was introduced in 2002. Previously they just had optional assignments. They've criticised us for not developing their research skills, not withstanding the fact that they had the option of doing [optional assessment], so we've decided to force them to do it and remove their freedom.

A number of focus group participants commented that, if students had the choice, they were less likely to undertake research essays than they would have a few years ago, because of the pressures of paid work (covered in chapter 13). Many teachers thought this was particularly disappointing because

The research essay [enables students] to be able to enquire further into [different] kinds of policy issues. So that's a tool that's being used as well, to structure them in a way that gives them that opportunity to formally think about these things.

Despite seeing the value of research papers some law schools nonetheless reported that "save that there is an overall review of assessment to make sure we weren't heading to much one way [so] that it wasn't all examinations, there still tends to be a fairly heavy reliance on examinations. You do get subjects that are 100 per cent examinations." There were other similar comments made by focus group participants from other law schools:

My guess is that 80 per cent of subjects would have a final examination, which is probably no more than 50 per cent of the overall assessment mark. There's a fairly standard one or two assignments plus an end-of-semester exam, but there's no policy to enforce that.

Another law school had a policy that every subject had to have an invigilated examination. "This is at the request from the profession which had expressed a dislike of assessment methods other than examinations. The use of the internet to assess students is also viewed with suspicion by the profession." Consequently examinations constitute 40 to 60 per cent of assessment in all subjects. Teachers do use other assessment methods (including class participation, essays, class presentations), "but it is up to the teacher as to when and how to use these".

A third law school mentioned that, even though the school was moving towards a very sophisticated model of assessment, compulsory subjects would always include an examination; however,

in 90 percent of the subjects there will be some tutorial participation, that's become routine now. Again that's a big shift in the way it used to be. In one of the first year units it's 20 percent for tutorial participation, so we're trying to make them independent learners. You've got to come, you can't just sit there for the two hours in the seminar.

Many law schools, in fact, reported that most of the innovative assessment forms occur in tutorial participation.

In the tutorial participation will, for example, involved an interviewing exercise, or a negotiation exercise. In the tutorial program in Criminal Law there's an advocacy exercise which is built up on an oral presentation, which is done in a first year advocacy exercise. So in Crim, [they undertake] a moot type criminal law exercise and then split off – two of them have to advocate a line of argument. And we've got to call it the right name. That's another thing we learnt early on. You can't just call it Oral Presentation Two. You have to call it advocacy. So they have to advocate the line of argument. The big challenge of course is translating that into the external program. ... There are some skills that have to be done in face-to-face or you can tape it, but then part of advocacy is the interrupting, you know, being subjective, interruption half way through and continuing on your course.

In many law schools, and this has already been mentioned in relation to some, the teacher determines the marks for class participation, although one law school

reported that students “do a self-assessment in about week seven and the tutor hands that back with their comments on the accuracy of the self assessed mark. So there’s some sort of feedback there.” The tutorial participation at this law school might also include small assignments handed in to the teacher, particularly in first semester of first year. Students in those subjects are required to hand in work on a weekly basis, and it is returned to them with feedback. “So it’s a combination of examination, tutorial participation, usually some written work...”

In the elective subjects at this law school “there will usually be a paper or a take-home exam, assignment or take-home exam and then some measure of tutorial participation”. In some subjects, “student are assessed by viva. There is no [summative] peer assessment. And while it is completely foreign to us, there is some [formative] peer assessment in some subjects.”

Even though teamwork was seen to be an important skill to be acquired by law students, very few law schools had developed sound approaches to group work in assessment. Some law teachers in focus groups were well aware of the need for collaborative forms of assessment:

I think group research projects or group projects are another way of [improving student learning in times of diminishing resources]. It would require commitment to group assessment and maybe some kind of commitment to getting the students to reflect on how they could be mentors to other students and getting some credit for that. Giving students some reward for responsibility and for engaging in tutorials and so on. Instead, students are sometimes turned into sort of quasi teachers with power over other students. I’m really worried about this move. I mean there are industrial issues at play and those sorts of things but I’m also worried about the possibility that students could gain prestige and maybe even marks for being particularly dominating and for organising, rather than for being inclusive.

I always try to encourage students to collaborate in writing essays and so on, doing projects together because that’s what they would have to do when they go out into the workforce anyway. They don’t work in splendid isolation. I mean law actually promotes a degree of individualism that is actually quite hard to breed out and only a few students actually take up the offer of working together. I mean I don’t impose it, it’s always there as a choice. But I think it’s interesting that there is still that resistance because of the way that law tends to be, law as we understand it and as it has been taught, as a very individualistic sort of process.

Many law school staff, on the other hand, are strongly opposed to group assessment, although, it was felt that much of this opposition appears to be based on a misunderstanding of the benefits of group work, and ignorance of possible mechanisms to ensure equity between group members in the assessment process. Other staff were concerned about their ability to conduct group work assessment tasks without appropriate school or university guidance. Furthermore, quite a few law teachers reported that many students are opposed to group assessment either because they thought it reduced the competitive edge their law school had over others in the minds of potential employers, or feared that other students in the group would “freeload”, or because they were concerned that their own contribution to the group would not be adequately recognised by teaching staff. As one law teacher observed:

One thing which is very difficult – to have all these incredibly independent and personally motivated students, and they never want to do things together in groups. You tell them that in real life when you go to work, everyone works together with others in groups – you don't have to like them, but you have to learn to work together. We start them off in first year doing little things in groups, such as presenting in class, and they loathe it. They don't want to have to do it, and don't want marks assigned to one person and so on and so on. And I say that is all about you managing the group – make it work, you are all smart. That sort of aspect to learning is not just an individual thing, but a collective thing. They sit in class and won't put up hand or answer in case they are wrong. It is an incredibly selfish approach to learning. They think "I got here, I got a high [university entrance score], I am not going to give away anything, this is about me and my achievement". This is one of the biggest challenges in teaching.

Some law schools were willing to develop group assessment tasks, but were holding back until they had clear guidelines to ensure that such assessment could be successfully implemented.

We've really been waiting until the university has developed its own tool that we can pick bits and pieces out of. It's being done in a formative way so far, and students, even in first semester, first year, do a group presentation and they have a reflective sheet and they have to reflect on the way the group works ... They're given what might be useful to manage the group task and they have to reflect on this, and hand [their reflections] in with the outline of their presentation – that is, their reflections on how the group task went.

So we're slowly getting it. We've really got to be very careful ... and ensure that everyone, including casuals, are properly trained. ... We need to make everyone happy.

Case Study 15.2 **Code of Practice for Group work**

One law school's *Code of Practice* for group work was as follows:

GROUP WORK

The key consideration is that procedures for group work should be transparent, equitable and contain proper processes of review.

RATIONALE FOR GROUP WORK

The attributes of a [university] graduate ... states that our graduates will have 'capacity for teamwork'. Many members of staff believe that group work develops capacity for teamwork and prepares graduates to be effective in employment where they will be expected to work as part of a team.

GUIDELINES FOR SETTING GROUP WORK

Procedures for group work should be detailed (as with all assessment procedures) in the subject outline. It is possible that students may be consulted before rules are finalised. Any changes to assessment procedures following consultation with students will require written amendment, normally by the end of week two.

More than one model for teamwork is available and different groups in the one subject may opt for different models. For example some groups might prefer to meet within a formal structure with agendas, resolutions and minutes, others may prefer an informal discussion group. Imposing one or the other model may impede learning and prevent co-operation.

Staff should recognise that group work may pose special difficulties for students from non-English speaking backgrounds or students with a disability, and adjust their requirements and support accordingly.

It is desirable that staff in consultation with students establish ground rules for group work about:

- the conduct of group meetings – conduct and timing
- the responsibility of members to each other
- group contact outside of scheduled class times. [Many students might have] commitments which make it very difficult to attend the University outside scheduled class hours.
- Assessing the real contribution of each member to the group project (e.g by using individual process diaries).

Assessment of group work should not rest upon the student's capacity to sacrifice family commitments or to juggle the imperatives of work. In subjects that use group methods of assessment it is therefore desirable that some scheduled class times be dedicated to group meetings. ...

It is recommended that where students in any subject are awarded a common mark for group work, that common mark normally should not exceed 50% of the marks awarded in the subject.

DISBANDMENT OF A GROUP

Co-ordinators should provide, in advance, plans for alternative individual assessment for students whose groups disband.

PRACTICAL CONSTRAINTS ON GROUP WORK

Group work, under proper conditions, encourages peer learning and peer support and many studies validate the efficacy of peer learning. Under less than ideal conditions, group work can become a vehicle for acrimony, conflict and freeloading. It may also impose a host of unexpected stresses on, for example, students with overcrowded schedules living long distances from the university. Therefore it is the responsibility of staff:

- To establish explicit guidelines for group work to ensure that learning objectives are met and to ensure that they are compatible with University policies and codes.
- To manage the planning, development and implementation of processes and procedures for learning through group work.

Law teachers at the above law school reported successful use of group work activities in assessment.

Case Study 15.3

Student-led Classes and Group Work

Greig (2000) describes an assessment task in which students studying *Torts* were “required to take charge of the ‘teaching’ of seminars” (Greig, 2000: 82, and see 86-88 for her assumptions about student learning). Students worked co-operatively in groups of three to five and each group was assigned two weeks of classes to conduct. The teacher “had a high level of involvement ‘behind the scenes’ but ... left the creative process largely up to them”. The groups had to submit a plan of their meetings and intended tasks, keep a record of meetings, and “provide a ‘Reflective Diary’ at the end of the process” (Greig, 2000: 82). Students could decide for themselves how to conduct the classes, and were “given a number of tasks but with one vital instruction and mission: to actively engage the rest of the class in learning”.

The objectives of the group exercise were (Greig, 2000: 83) “principally to

- create an interesting learning environment
- integrate course material at a much deeper level by preparing the material for a ‘teaching situation’
- provide opportunities for students to work independently with the [subject] material
- develop teamwork
- develop oral communication skills
- encourage student centred learning.”

Greig (2000: 83-84) reports that students developed the following generic skills through this co-operative group assignment: oral and written communication; teamwork; personal skills (recognition of own abilities and skills, development of self-confidence etc); organisational skills; information gathering and learning skills; problem-solving; and information technology.

The group assessment item was allocated 20 per cent of the total number of marks for the subject, and 10 per cent was allocated to class participation. Other assessment tasks included an examination and an assignment. In the group assessment, each group could choose one of two assessment regimes: either each student would be awarded the same mark for the project; or the group could be given a global figure, and the group was responsible for allocating the marks between themselves. (No students chose the latter option). The seminars were assessed against the following criteria (Greig, 2000: 85):

- preparation of materials
- handling questions
- content (having regard to time restrictions, purpose and organisation)
- quality of contribution (including audibility and eye contact)
- generation of class discussion
- overall cohesion of the group.

In future, marks will be awarded for the Reflective Diary.

For a discussion of the evaluation of the exercise, see Greig (2000: 92-95).

Assessment criteria

Ten years ago, very few law schools had any policies that required expectations for assessment tasks to be made clear to students. Few law schools today can avoid this issue. Law schools now tend to provide more information to students than previously, on the expected criteria for performance in assessment, as well as make greater efforts to provide feedback on student performance. Although, most law school reported that there was room for improvement.

One law school reported that it was subject to a university policy that required the school to adopt criterion-referenced assessment, and in particular required staff to provide criteria for all forms of assessment. Its administrative guide specifies that:

Each course outline details the learning objectives of that particular course, the assessment tasks that will assess whether students have achieved those objectives, the assessment criteria, and the method by which feedback will be given to students on their performance in their assessment tasks.

Some teachers at this law school expressed some doubt that this regime was being effectively implemented within the law school.

The *Code of Practice –Teaching and Learning* at for one law school states that,

Ideally the general criteria for assessment should be stated in advance, so that students have some idea of the knowledge and skills they are required to demonstrate. Criteria can be stated in many ways. These depend on the type of assessment task.

Another law school reported that its university was currently developing requirements for “front end criteria to inform students before they undertake a task the general criteria against which they will be assessed ... This document will require us to take control earlier in providing students with criteria.”

Law schools that had good approaches for specifying assessment criteria often reported that such approaches were often driven by university policies. For example, one law schools assessment policies included the following:

Case Study 15.4 Assessment Policy

As a result of a change in university policy effective from the commencement of the 1999 Academic Year, final grades for Law subjects will conform to the following:

Pass level (P) [50-64]

The grade will be awarded where there is evidence that a student has undertaken the required level of work for the subject and has demonstrated at least an adequate level of knowledge/understanding/competence/skills required for meeting subject objectives and satisfactorily completing assessment exercises.

The student would normally have attained an adequate knowledge of matter contained in set texts or reading materials, and demonstrated some familiarity with major academic debates, approaches, methodologies and conceptual tools.

Credit (CR) [65-74]

The grade will be awarded where there is evidence that a student has undertaken all of the required core work for the subject and additional work in wider areas relevant to the subject, and has demonstrated a sound level of knowledge/understanding/competencies/skills required for meeting subject objectives and completing assessment exercises at a proficient standard.

The student would normally have attained a sound knowledge of matter contained in set texts or reading materials and have done wider reading, and demonstrated familiarity with and the ability to apply a wider range of major academic debates, approaches, methodologies and conceptual tools.

Students should have a reasonable opportunity of reaching this grade provided they have completed all subject requirements, demonstrated proficiency in the full range of subject objectives and shown considerable evidence of sound capacity to work with the range of relevant subject matter. A score in the range of 65-74 will be awarded.

Distinction (DN) [75-84]

The grade will be awarded where there is evidence that a student has undertaken all of the required core work for the subject at a high level and considerable additional work in wider areas relevant to the subject, has demonstrated advanced knowledge/understanding/competencies/skills required for meeting subject objectives and completing assessment exercises at a high standard.

The student would normally have attained an advanced knowledge of matter beyond that contained in set texts or reading materials and have done considerable wider reading, and have demonstrated a broad familiarity with and facility at applying a range of major academic debates, approaches, methodologies and conceptual tools.

The grade should reflect very high quality work which shows the student generally works at a level which is beyond the requirements of the assessment exercise and is developing a capacity for original and creative thinking. A score in the range of 75-84 will be awarded.

High Distinction (HD) [85-100]

The grade will be awarded where there is evidence that a student has undertaken the required core work for the subject at a higher level and considerable additional work in wider areas relevant to the subject, has demonstrated the acquisition of an advanced level of knowledge/understanding/competencies/skills required for meeting subject objectives and passing the range of subject elements at the highest level.

The student will normally have attained an in-depth knowledge of matter contained in set texts or reading materials and undertaken extensive wider reading beyond that which is required or expected. The student would have consistently demonstrated a high level of proficiency at applying a range of major academic debates, approaches, methodologies and conceptual tools and combining a knowledge of the subject matter of the subject with original and creative thinking.

The grade will be awarded in recognition of the highest level of academic achievement expected of a student at a given level of topic. A score in the range of 85-100 will be awarded.

Good assessment practice should also require teachers in individual subjects to outline substantive criteria of assessment performance for each assessment task (see Johnstone, Patterson and Rubenstein, 1998; and Hinett and Bone, 2002: 66). Some law school assessment policies provided guidance in this, for example, one law school's *Information Guide for First Year Students* emphasises that in all first year subjects "a significant proportion of the assessment [should be] allocated to tutorial and/or seminar contribution, to reflect their importance in the teaching program". The exact assessment weight, however, varied from subject to subject.

Building on procedures used in other law schools, the policy specifies that:

Case Study 15.5 Assessment Policy

The criteria by which contribution will be judged are attendance, preparation, quality of content, and contribution to group process.

Attendance is assessed differently in each subject. You will need to be aware of these difference and consult the subject guide for the precise weight to be given to attendance.

Preparation involves planning and managing your time to read the assigned material for each workshop, making an effort to understand those materials and to respond to the questions raised, and to prepare any written material or presentations as required.

Quality of content means your ability to ask or answer questions sensibly and in an informed way, to apply ideas and principles gained from your preparation to the issues raised in the workshop and to offer ideas or opinions which develop from your reading and participation in the workshop.

Contribution to Group Processes. This refers to your interaction with others in the workshop – both students and teachers. It involves listening to others, responding appropriately, being constructive in your dealings with them, and assisting in their learning. It also reflects your willingness to participate to the best of your ability and your level of interest and engagement in the class and in the material.

See also Nightingale et al (1996: 242-246)

Feedback

Law schools are now making greater efforts to provide students with feedback on their performance in assessment tasks, although many law schools appeared not to have any policies on feedback. In the past, students in most law schools could only expect written comments on written assignments and research essays, and no feedback on examinations.

Teachers reported that a consistent criticism from students is that they [students] do not receive enough feedback from teachers on their general progress, and on their performance in assessment tasks.

One that consistently comes up is students say they don't get enough feedback. Now I can tell you how much feedback they get and it's a lot, but a lot of it is not lengthy, personal comments on their papers. For example, you give them an assignment. We have a tutorial after the assignment. That's feedback because they can ask questions, you know, and that's where they get more detail about whether they're right or not.

That's not feedback to them. To us it's feedback, to the students it isn't. That's feedback. Or you do it in a lecture. You say, "The really good papers had these qualities and these are some good points which people made" or "some of the areas where a lot of people struggled with it are this and that". That's feedback from our perspective, it is not from theirs.

Some law schools have tried to develop policies requiring students to receive timely and constructive feedback on the full range of assessment tasks. One law school's policy for feedback is described in the following case study by one teacher from this law school.

Case Study 15.6 Feedback on Assessment

There are individual criteria sheets with a space for a response to each of the criteria specified for the task, so tick-a-box, you met this criterion well, very good or whatever. And there is a space for individualised feedback at the bottom of the sheet, and then hopefully some comments. [Some subject coordinators] send out detailed marking instructions and encourage staff to mark the assignment with some marks through the body because there is nothing more discouraging for students than to receive back a piece of work that looks like it is in the same pristine condition ... [in which] it was submitted.

Then general observations [about the way students approached the assessment task] are collated [from each member of staff responsible for marking the assessment tasks] and then put online. I think that on most of the online sites you'll find general feedback on each of the individual items of assessment. For example, "these were the things that were done well, and these were the things that weren't done so well. These are the things to look for next time..."

In our casual tutors' workshop, I give examples of a criteria sheet, filling in criteria sheets and the general feedback that's given on the outline site. So they have some sense of how that all flows through. And I show a particular page of an assignment with observations about content, spelling and awkward expression. ...

I think generally the feedback is pretty good and students seem to look for it. They seem to be used to it actually. So if it's not adequate they'll certainly complain to the lecturer. Because of student numbers, and some subjects are quite large, I suppose there are certain things that you can and can't do but generally it seems to be effective. If it's not then students certainly come forward and complain.

And the other really encouraging thing is I think that with examinations, there's a routine occurrence and expectation, which I suppose feeds the occurrence, of feedback on examination questions. This would be generalised feedback. First year students expect written feedback on their exam scripts, but I've said to them that they can't expect individualised feedback, given the enormity of the task, but it's possible for them to access their examination paper, and then there's a variety of feedback methods. We either put actual model student answers in one of the access collections so students can look at them, and then a range of comments, which of course will vary in intensity and depth, but most units have that feedback available. I did a quick audit at the end of this first semester just gone, and most subject web-sites have got information for students about available feedback and the process that is followed. You go and have a look at your paper, have a look at the model answers, and so on. It's a self-serving exercise to some extent as well. And that's the way it's been sold and I think staff have now come to realise that it does save them time. We used to have a stream of people outside the door with their examination papers saying, 'So where did I go wrong?' and now I think the feedback now assisting students has minimised workloads for staff.

Do students use the feedback? The opportunity is provided. The good students will utilise and look for it. The anxious mature age students are begging for feedback. For our external students, it's really what stands between them and insanity to a large extent. ... But the students, the majority of them are looking for it.

For some students, the motivation is if they fail, they want to know why. If they pass, they don't care.

Law schools are increasingly developing policies that require teachers to give students timely and constructive feedback on their performance in assessment tasks. Some policies are fairly rudimentary. For example, one law school's policy state that:

Interim Assessment and Feedback

Where interim assessment is concerned (that is, any assessment other than the final assessment for a subject), every effort will be made to provide feedback to students by way of written comments and/or class discussion. Students will also be encouraged to approach individual staff members with any queries they may have regarding their progress.

Remedial Action for Students Who Fail Assessment Exercises

Where students fail any exercise in {specified first year subjects}. The subject co-ordinator must ensure that all such students are given an opportunity to undertake a review of their performance. The review, which may be carried out either by the co-ordinator or by another teacher in the subject, is to take the form of an interview with the student to discuss the exercise and to identify how their performance could be improved.

Students in all other subjects who fail an item of assessment are also encouraged to seek a similar review of their performance.

The *Code of Practice- Teaching and Learning* at another law school recommends the following forms of feedback for essays and assignments:

As a minimum staff must indicate to students what the criteria for assessment may be, what is being done well, and what is being done badly. Economical ways to do this include:

- (i) Standard coversheets which set out the general criteria against which written work will be judged, and which provide for the marker to indicate in some standardised form the extent to which the specified criteria have been met by an individual student. Such coversheets also include space for specific comments by the marker;
- (ii) Marking sheets which allow the marker to tick a box (or mark a point on a scale) indicating the strength or weakness of the writer in meeting the objectives of the assessment (again, with space for comments);
- (iii) Sheets which indicate the main points or issues which students were expected to discuss, consider or solve in the assignment, possibly indicating some techniques or methods that could have been applied;
- (iv) Model answers with which students can compare their own efforts; and
- (v) Various combinations of the above.

This list is not exhaustive.

A third law school expresses its policy thus:

Student Examination Performance Review Sessions

Subject to what is referred to below, the following applies to all LLB ... courses offered in the law school in relation to providing 'feedback' to students. Course co-ordinators may choose to vary the procedure in which case each course co-ordinator should ensure that his/her study guide sets out the procedure to be applied in his/her course. However, all course co-ordinators should comply with the requirement of making available the material noted below ... (copies of the mark sheet, grade distribution and marking guide). Co-ordinators may elect to provide additional information such as markers' comments or copies of high quality answers.

After the publication of examination results, a student may consult with a course co-ordinator/examiner for the purposes of obtaining feedback about his/her examination performance, to assist the student to improve his/her examination technique and to better understand the methodology involved in the allocation of marks. Such sessions are not held for the purpose of improving a student's mark or grade in a course, except that such an adjustment may be made but only where it is revealed that there has been a mathematical error in marking or where some assessable material was not taken into account. These review sessions will be held in accordance with the guidelines set out below unless the co-ordinator/examiner has published different criteria for the conduct of review sessions.

- Each co-ordinator, as soon as practicable after the publication of results, will make available in the law school office, in the law library and/or on the internet course site the following:
- a copy of the mark sheet for the course, identifying students only by student number;
- a copy of the distribution of grades in the course; and
- a marking guide for each examination question.

- After perusing the above-noted material, a student may request a review session with the co-ordinator which will be held at a time or in one of the time periods specified by the co-ordinator.
- Normally, it is expected that review sessions will not be held in the week following the publication of results and will be completed before the end of the third week of the succeeding semester.
- The co-ordinator may provide feedback to a student either in oral session or in written form.
- In the event that the co-ordinator considers that a student's grade should be amended, the co-ordinator will complete the relevant form and justify the amendment to the Head of Department.
- Any such material as noted above which is placed in the law library will be retained there for a period of 6 months after the examination and then returned to the course co-ordinator who may choose to make it available on the course web page.

At one law school, teachers in many subjects make considerable efforts to provide students with detailed feedback on their assessment tasks. Feedback measures include standardised sheets which provide space for examiners to give detailed and individualised feedback against the assessment criteria for assignments; comments in margins on essays, assignments and examinations, and general comments of overall student performance in assessment tasks. Over the years teachers in some subjects have attempted to give students feedback on their examination performance. Such feedback involves:

- a standardised feedback sheet outlining the issues covered in the examination, and written comments on the sheet from the examiner as to how well the student met the assessment criteria (and covered the issues in the question);
- comments written on the examination, including marks awarded for each question;
- detailed written guideline answers to questions;
- generalised comments on overall student performance for each question in the examination; and
- sessions when students can have a look at their examination script, scrutinise the individualised comments on the examination, as described above, and compare the student's actual answer with the guideline answer prepared by teachers.

See further Johnstone, Patterson and Rubenstein (1998) and Hinett and Bone (2002: 70-77).

Peer assessment

Increasingly law schools use formative peer assessment to improve the quality of ongoing feedback provided for students. Examples of this are as follows:

- In some subjects at one law school, teachers require students to “do a test, swap with other students to get marked for feedback. This is an educational experience to show how they are going. They are not given marks for this.”

- In a first year subject at another law school, students are required to complete a written analysis of a case following a structure outlined in the subject materials. A two hour class is set aside for formative peer assessment of the task. The teacher collects all of the assignments, and then redistributes them for marking. The teacher discusses each aspect of the case analysis, and students mark the written response they have been allocated, provide detailed comments and feedback, and mark the assignment on a pass/fail basis. The marked assignments are collected by the teacher at the end of the class, and checked. “Fails” are remarked by the teacher. A student who has failed to complete the assignment to a satisfactory standard is then asked to rewrite and resubmit the assignment to the teacher, until she or he is able to attain a “pass”. Students are required to complete this assignment at a “pass level” before they can complete a subsequent case analysis assignment, which is summatively assessed.

For a discussion of student self-assessment, see Andoh (2000) and Hinett and Bone (2002).

Co-ordination of assessment tasks

Most law schools now try to ensure that there is co-ordination of assessment tasks across each year of the curriculum, to ensure that student assessment workloads are fairly distributed between subjects. For example, one law school provides a common handout to all first year students that explains law school assessment policies, and also attempts to “co-ordinate assessment deadlines” and other aspects of assessment. Co-ordination extends to ensuring that first year teachers are aware of the subject content in other first year subjects, so that learning across the year can be reinforced in different subjects.

Another law school aimed for “progressive assessment”.

Typically our students would do either four or five subjects per semester and in each of them there will be a progressive assessment in mid-semester. So we’re looking at trying to spread them out so they don’t have five assessments due on the same day. We have no control over subjects they do outside but we do have some control over subjects they do inside. So it ends up, say from the second month through to the exam time, they have an assignment or some assessment task happening every two or three weeks. So that is very intensive learning.

A theoretically grounded and integrated approach to assessment

Case Study 15.7 Redesigning Assessment Practice

In chapters 2 and 5 we described a major project in curriculum redesign at one law school – “to embed within the core LLB curriculum an integrated and incremental approach to the development of generic and discipline-specific capabilities”. Part of the project includes redesigning assessment practice. The following edited extract from Kift (2002a: 11-16) provides a useful framework for the design of assessment.

If we purport to teach to a broad range of capabilities that envisages student acquisition of generic and discipline specific skills, then our assessment practice must keep pace: authentic assessment tasks must be designed to test for mastery of both content knowledge and skilled behaviour. To promote acquisition of this new learning, attention also needs to be focussed on improving the quality of formative and summative feedback students routinely receive. In short, the driver is to “harness the full power of assessment and feedback in support of learning,” (Nightingale, 1996: 6) because

Assessment is not an end in itself but a vehicle for educational improvement. (AAHE Assessment Forum)

The task we have set ourselves is to develop an assessment framework that will provide the theoretical basis for models of best assessment practice for certain of the graduate capabilities. The hypothesis is that it should be possible to assure the quality of assessment methods for capability development by evaluating the efficacy of those tasks as against the framework developed. The framework will be discussed further below.

Of course, the role of any assessment will depend on the learning objectives being pursued. At a fundamental level of unit design, the type of information that can facilitate the efficacy of assessment tasks and *which should be communicated to students* is suggested by the following headings, all of which are directed at the necessity to be explicit about the skills objectives in the unit assessment information. Sample extracts from the Study Guide of one of the new first year units, *Legal Institutions and Method*, are provided under each head to illustrate unit practice:

- **State the skills explicitly and implicitly developed in the unit:**

Example –

In this unit, the **skills explicitly developed** are:

- oral communication;
- critical thinking and legal analysis;
- problem solving; and
- written communication including the use of plain English.

In this unit, the **skills implicitly developed** are:

- time management;
- independent worker;
- ethical behaviour;
- computer skills and information technology.

- **Why these skills have been chosen for this unit:** both in the *general sense*, for example that the skills in the 1st semester, 1st year unit are intended to provide a platform for the development of higher level skills in 2nd semester and the balance of the degree; and *specifically* for each of the explicit and implicit skills:

Example –

Explicit Skills:

- “Good **communication skills** are essential not only for success in your studies but also for success as a lawyer. In a recent survey of graduates and employers by the Centre for Legal Education (S Vignaendra, *Australian Law Graduates Career Destinations*, Centre for Legal Education, 1998) graduates and employers were asked to indicate the skills most frequently used by law graduates. Both employers and graduates rated oral communication as the skill most used in the work place.”
- “The study and practice of law will require you to possess highly developed problem solving skills. We will be introducing you to two of the legal methodologies for **problem solving**. Problem solving will also be part of the skill development in the other first year units of *Fundamentals of Torts* and *Contracts A*.”

Implicit Skills:

- **“Time management:** You should be developing and refining your time management skills very early in your studies. We have placed information about time management skills on the on-line site under Skills Material.”
- **“Ethical Behaviour:** In its 1993 Report *Complaints against Lawyers*, the New South Wales Law Reform Commission (NSWLRC) affirmed its strong belief (and recommended accordingly) that the study of legal ethics and professional responsibility should be an integral part of any law school program, whether this involves mounting a discrete, compulsory subject of dealing with these questions as a significant part of a larger subject. It is only during this formative period in a lawyer’s education that there is an opportunity for sustained study, discussion and reflection. As part of a general requirement for ethical [and honest] behaviour in the profession you will be required to exhibit ethical behaviour in all your dealings at law school. This includes your interactions with other students and with staff of the law school. To aid you, the Faculty has developed ‘*Student Conduct Guidelines*’ which set out certain expectations relation to your conduct between students and lecturers, between students and administrative staff, student conduct generally, and e-mail and voice mail etiquette. You will notice that compliance with the ‘*Student Conduct Guidelines*’ is one of the criteria specified in relation to tutorial conduct. Ethical behaviour will also be addressed in *Law Society and Justice* in semester 1 and in *Criminal Law and Procedure* in semester 2 of 2nd year.”

- **What is the learning objective in relation to the particular skills:** eg, what is the level of achievement expected for each skill on completion of the unit (in a first year unit by having regard to Level 1 criteria taken from the *Table of Core Skills*):
Example -

Skill	Level 1
Oral Communication	Can use active and passive listening with effect in communication in group settings such as tutorials. Is aware of the range of difference types of questions and their uses. Is aware of possible interpretations of non verbal communication. Is aware of techniques for effective verbal communication and is aware of the limits of verbal communication. Is aware of cultural difference in this context generally.

- **How will each of the skills be developed in the unit** (in terms of a process of instruction, practice, formative feedback, reflection and summative assessment)? This should reflect how the unit objectives, the teaching and learning approaches and the assessment are all related:
Example -

Oral Communication:

The elements of oral communication are set out in the extract from L Boulle, *Mediation: Principles, Process, Practice* in the Cases and Materials volume. You will note that the criteria for tutorial participation [set out infra and which accounts for 15% of the assessment in the unit] is closely linked to the criteria for effective communication in that extract. Your tutor will expect that you have read this material and are attempting to follow the criteria when participating in tutorial discussions.

You will receive feedback in relation to your performance in tutorials from the tutor. Prior to each tutorial you should use the questions posed under ‘Tutorial Performance Criteria’ [set out infra] in ... this Introductory Guide as a checklist. Following the tutorial you should again address the questions listed for tutorial performance and consider how your performance could be improved.

In Week 7 of the semester, your tutor will ask you as part of the tutorial to reflect on your performance to date in tutorials. The tutor will ask you to assess yourself

against the criteria provided for tutorial performance stating reason for your assessment and ways you will try to improve your performance prior to the end of semester. The tutor will collect this self assessment.”

- **How does this unit’s skills development relate to the year’s curriculum as a whole and, then, to the course as a whole?** Students should be informed very early in their studies how and why they are going to be taught generic skills, how these skills preface the development of discipline specific skills (in the motivational “real world” sense), and what part they, as students, should play in developing these skills:

Example -

How does this relate to the first year curriculum as a whole?

In the first year of your studies you will be given the opportunity to develop a basic competency level in each of the four explicit skills detailed above. This will be achieved by an integrated and developmental approach the first year curriculum. You will be required to use and build on the skills acquired in *Legal Institutions and Method* in your second semester units and in the later years in your degree. For example, you will be expected to use and develop your problem solving skills in *Legal Research and Writing, Torts and Contract*. **You should not assume that just because you were assessed on that particular skill in *Legal Institutions and Method* you will not need to use it again.”**

Equally as important as painting the big picture for students is the issue of explaining each piece of assessment to students in terms of, for example:

- The skills objectives of *this* assessment task;
- How those skills objectives link with the unit objectives;
- How do the skills developed in this unit form linkages with skills developed in other units (both horizontally and vertically);
- What reference materials/resources are necessary to complete this assessment task;
- Specific assessment criteria for this skills assessment task;
- The process for *this* skill’s development in *this* assessment task: explicit and precise details of the task to be undertaken together with details of the formative and summative assessment to be undertaken.

By way of example as to how a specific assessment task in a unit might then look, the following is provided. These instructions to students deal *only* with the procedural aspects of the task (the written assignment) and are intended to be later supplemented by the specific substantive content. Each assessment task is dealt with in similar detail in the Study Guide for the unit and is available at the commencement of the semester.

Example: Assignment

First semester first year example

***Legal Institutions and Method* Assignment**

Both internal and external students are required to do the assignment

The assignment will comprise 20% of the assessment for the unit. The assignment will require you to demonstrate written communication skills, critical thinking and legal analysis skills.

Collection date: xx April 200x (available at [] or via on-line site)

Submission date: xx May 200x.

What should you read as reference material?

The assignment will not require you to undertake any research in the library. The assignment will concentrate on your ability to read, analyse and evaluate a piece of legal writing (this may be a case or legislation) and then communicate the results in clear concise and plain language to a particular audience. Prior to commencing the assignment, you should make sure that you have read and understand the following:

- the *Good Practice Guidelines for Comprehension and Legal Analysis* (these can be found on the on-line site);
- D Clarke-Dickson and R Macdonald, *Clear and Precise – Writing Skills for Today’s*

Lawyer (prescribed text)

If you are an internal student, you will also have received written feedback from your tutor in relation to two tutorial questions commenting on the style and clarity of your writing and your demonstrated legal analysis skills. You should take that feedback into account when preparing your assignment.

If you are an external student, you will have received similar written feedback in respect on your External Exercise 1.

How does this link with unit objectives?

The Assignment is designed to assess Objective 4: demonstration of the skills of communication, comprehension, synthesis and evaluation with a view to developing life long learning skills and practices.

What skills are being developed?

The Assignment is particularly aimed at the development of your critical thinking and legal analysis skills and your ability to articulate your views in a clear and concise manner. Upon completion of the unit, it is expected that you will be able to demonstrate an ability to comprehend and analyse simple articles, cases and legislation. You should refer to the statement of skill levels under **Skills Developed** [infra in this Introductory Unit Guide].

How will my performance be measured?

Your competency in critical thinking and legal analysis will be measured by both the assignment and the exam. The criteria which will be used to measure your performance [and which are specifically articulated on the feedback sheet that you must attach to your assignment on submission] include:

- Presentation;
- Clarity of expression, grammar and spelling;
- Use of plain English;
- Demonstrated ability to properly acknowledge the source of material and properly cite cases and legislation;
- Demonstrated understanding of principles articulated in the case or legislation;
- Demonstrated ability to comprehend meaning in the text and make inferences;
- Ability to analyse text, identify lines of reasoning, arguments, consequences and logical flaws in the text; Ability to evaluate reasoning or an argument in light of the existing law;
- Ability to reflect on own perspective of issue, evaluate other perspectives to determine the weakest and strongest arguments;
- Communicate results of evaluation in a clear and concise manner having regard to the principles of plain English writing to an appropriate audience.

How will I receive feedback on my performance?

As a part of your tutorials (including tutorials held at the Attendance School for external students), you will receive feedback on your critical thinking and legal analysis skills prior to undertaking the assignment. In addition, individual written feedback will be provided to you on your assignment while general feedback will be provided on the unit's on-line site to assist you in improving those skills prior to the exam.

[The instructions go on to require the submission of an "Assignment Acknowledgement Form" with the student's assignment which, inter alia, deals with the issues of copying another student's work and plagiarism and requires certification by the student that this has not been done in this case. Plagiarism is explained and the relevant Faculty Policy is extracted in the Study Guide. This is an example of the implicit development of the "Ethical Behaviour" skill mentioned earlier. A "Practice Tip" is also offered concerning the desirability of retaining a copy of the submitted work in case of unavoidable loss or destruction.]

The criteria/feedback sheet which was developed to go with this piece of assessment is sampled as follows:

**Legal Institutions and Method
Assignment Feedback – Semester 1, 200x**

Name:

Mark: (20)

- Assignment Acknowledgement Form completed and attached YES
NO
- Cover Sheet attached (with word count) YES
NO

Criteria	Excellent	Good	Adequate	Fair	Poor
Written Communication					
Well organised and presented (eg use of headings <i>etc</i>). In particular, has complied with procedural requirements as identified in Instructions (eg, double spacing, <i>etc</i>).					
Uses plain English and appropriate writing style					
Demonstrates ability to proofread and answers are free of errors in grammar, punctuation and spelling.					
<i>Correctly acknowledges sources; esp correct citation of cases and statutes.</i>					
Critical Thinking and Analysis					
Responds to the questions asked fully and in sufficient detail.					
Demonstrates comprehension of meanings and inferences in text .					
Demonstrates understanding of difference between summarising and analysis and critical thinking skills. In so doing, demonstrates own critical thinking and analysis skills.					
Demonstrates ability to analyse sources of law utilised in judgment cogently (esp re Q1)					
Demonstrates an ability to evaluate a line of reasoning and provide own opinion (esp re Q4)					
Reached a conclusion based upon arguments presented.					

Examiner's Feedback**Reflection on Examiner's Feedback**

After reading the feedback from the examiner reflect on whether your previous ideas for improvement need reviewing. After completing this reflection you should consider adding it to your **Skills Journal for First Year Law**

Further issues in assessment

As mentioned in a previous chapter, most law schools reported that they had semesterised subjects in the LLB program. In addition, it has already been mentioned a few times in this report that the diversification of assessment tasks, coupled with the move towards multiple assessment tasks in each subject, has

meant that both academics and students spend more time with assessment tasks. As one interviewee noted, “there is some tension among academics to maintain this, because it is time-consuming and takes up resources. It takes a bit of effort to maintain the faith in assessment tasks and diversity, especially at the expense of teaching resources.”

Furthermore, many, if not most, law schools were concerned about parity of grades where there were multiple streams. For example, at one law school “small group teaching raises issue of distribution of grades. We have a grade distribution policy striking a balance between distribution of grades, class size and unevenness of quality of classes.”

A similar issue arose at another law school, which has students on two campuses, has an external program, and is concerned about equity between different types of LLB students. To ensure “evenhandedness in assessment”, the school has developed a presumptive quota system, or “a rough curve arrangement”.

We’ve got what we call the Grading Committee and before results are submitted, if they do not comply with the so-called presumed quotas or presumptive quotas, then an explanation by the academic staff member is called for.

The underlying reason for adopting this system of presumptive quotas is the multi-campus arrangement, along with... [multi-modal]... teaching and we found it unacceptable that in the same cohort that there should be major deviations. The deviations may be because of different marking standards by different individuals and in order to prevent this we’ve got these guidelines on presumptive quotas and assessments.

[The policy] gives a rough idea as to how many high distinctions, distinctions, credits, passes and fails and there should be in the units. It gives you a little bit more information as to the Grading Committee and how failed grades should, in actual fact, be treated.

And I think in our case it’s almost impossible to work without such an arrangement and policy for assessment.

A signified issue identified by most teachers who were interviewed for this project, or participated in focus groups, was “the increase in plagiarism off the web for research essays, and the destruction of library materials required for essays”. “It is very hard to be sure that you are getting an original piece of work now. It is a big problem with research assignments even though people really believe in them. It is very time-consuming to track down and find cheats.”

A suggested solution was “to require that students pre-work the essay with teacher”, but other teachers doubted the effectiveness of this measure, and pointed out that such a solution would be too time-consuming for teachers. Another suggested solution was for assessment to take the form of an issues paper, of only 1500 words, requiring students to research issues to be addressed. Students would outline issues that needed addressing or further research “without needing to come up with any solutions”.

See also Hinett and Bone (2002: 66-70) and Le Clercq (1999b).

Case Study 15.8 Handling Plagiarism

One law school provides all first year students with a handout that illustrates acceptable ways of referencing the work of others, and, more importantly, provides examples of use of original sources that constitutes plagiarism. Its assessment policies set out “the following steps to educate students and to identify cases of academic dishonesty:

- At least one lecture and one tutorial or workshop cycle in one of the first year subjects must spend time educating students about the details of university policies and procedures, the academic conventions for appropriate referencing, the lines between acceptable and unacceptable forms of collaboration for students, the existence and content of the *Australian Guide to Legal Citation*, the significance of the declaration that students are required to sign on the standard cover sheet for assignments, and the ‘plagiarism audit’ that will be carried out in the subject (see below).
- In all other subjects, these matters must at least be referred to in class and in the instructions given to students in relation to their first major written assignment. In all compulsory subjects, students must be given an opportunity to request more detailed instruction, in a form to be determined by the subject co-ordinator.
- In each compulsory subject, at least five assignments which have already been marked must be selected at random by the subject co-ordinator to be ‘audited’ for plagiarism. A copy of each of the selected assessment must then be re-read by one of the teachers in the subject so that any suspect passages can be highlighted, then given to the school’s Research Assistant for detailed checking of references. Unless any acts of plagiarism or academic dishonesty are discovered, the mark already given to the assignment is not to be altered by reason of the Research Assistant’s checking.
- Subject co-ordinators must carry out audits using the same process as set out above on assessment submitted by students who have previously been found guilty of academic dishonesty and co-ordinators are authorised to contact the Administrative Officer to discover whether there are any such students enrolled in their subject. Students who have been found guilty of academic dishonesty should be advised that their assessments may in future be subject to particular scrutiny.”

One of the most important factors in designing and implementing good assessment regimes is to ensure that the amount of staff time and effort that is put into assessment is properly recognised when staff workloads are determined. One Dean further elaborated,

I mean it's a real problem, to reward and recognise staff time in the assessment process but at the same time it needs to be built into a workload model which assumes a certain amount of assessment. So you can say that you're expected to teach nine hours, that you're expected to teach three subjects a year, and it assumes that in [a given] subject, that at each session you will be responsible for the assessment of 90 students. Now, as soon as you say that, and from my talks to other Deans of Law, then all you're doing is you're providing incentive for people to under-assess. You're saying: you're responsible for 90 students. How you assess them is your business. If you don't have highly motivated, highly committed educationalists, what you end up with is people who would prefer to give a multiple-choice test than a 5,000 word

research project on an individual topic that needs to be negotiated, over a period of time, with an academic. That has the potential to do damage in learning outcomes.

Further to this, another interviewee added,

We're working with students who are in the top two percent of the secondary school population. They come to Law, and not only do they find that they are doing something that they haven't done in secondary school, but we offer a grading path which necessarily means that they will be distributed across ordinary passes, credit passes, distinction passes, high distinction passes, and we have a very strict scale in fact for high distinctions and distinctions.

Now inevitably many of these students are going to find that this is not merely a shock but from their point of view, but terribly distressing. They've never received less than an outstanding mark in the past. They now find that they're getting pass marks. And in other faculties they're doing extremely well. They make comparisons between their marks in Law, their performance in Law and their performance in other faculties and their performance at school, and wonder what on earth is going on.

There are some serious policy issues about this too. Every law school that is as selective as this law school, and yet insists upon a grade distribution of the kind that this law school does, is going to find that its students are somewhat disturbed at the way are being graded.

Summary

Under the traditional model of law teaching, law teachers were not accustomed to outlining learning objectives for their subjects, and assessment consisted predominantly of end of subject examinations. This chapter has describes how, in modern Australian law schools, often as a result of university mandate, the traditional model of teaching has largely been abandoned. In its place, in part are policies that requiring subject co-ordinators to articulate clear learning objectives for students. While there are, no doubt, many perfunctory responses to these requirements, many law teachers take great care in ensuring that not only are students aware of the learning objectives in their subjects, but that such objectives go beyond subject content objectives, and also covers values, skills, attitudes, competencies and general attributes.

Furthermore, and again largely as a result of university-initiated policies, law schools generally require subject co-ordinators to ensure an alignment of assessment tasks with the learning objectives for all LLB subjects. Most law schools also have policies ensuring that there is more than one form of assessment in each subject. The result is that even though the end-of-subject examination is still the dominant assessment method in many law schools, in some law schools, there is an impressive array of assessment methods to gauge student performance. Some assessment tasks remain less well used than other, including group assessment tasks, but even these are being developed at some law schools.

Another notable improvement to law school assessment regimes – again largely in response to university demands – is greater attention to assessment criteria, and more feedback on student assessment performance against those criteria. This

practice, however, does vary significantly among teachers and among law schools.

Figures 10.9 in Chapter 10 shows data from the survey of penultimate year law students that was conducted as part of this project, specifically, the proportion of students who thought certain “key” assessment methods were used regularly. Figures 10.10 shows institutional variations in the frequency of use of some of these assessment methods.

CHAPTER SIXTEEN

TEACHING METHODS AND MATERIALS

In chapter 11, we described the move away in Australian law schools, from the model of teaching that assumes that knowledge can be passed from teacher to student, to a model that presupposes that students need to make their own sense of the subject matter (with guidance from the teacher) for learning to take place. This change in conceptualising teaching and learning has manifested itself in changes, for example, to law school assessment regimes, which was described in the last chapter. In this chapter, we describe how such developments have affected teaching methods adopted by law teachers and the teaching materials they use. In the same way that law schools have begun to move away from traditional assessment methods such as end-of-subject examinations, so, too, have many of them abandoned the traditional lecture in favour of other teaching methods.

Specifically, in this chapter we describe:

- teaching methods
- the use of teaching materials
- the use of information technology.

Teaching Methods

Very few, if any, law schools reported having developed policies on teaching methods; most left it to the individual teacher to decide what teaching methods were to be used from class to class.

There were, however, some attempt at some law schools to standardise the methods adopted. For example, one law school reported that, upon its foundation in the early 1990s,

there was more of an engaged sense that there were preferred methods and those that were not preferred. The magisterial lecture was not favoured, and there was a perception that we should use brainstorming and small group work within classes. ... There was a perception of a more prescriptive approach to teaching methods, [which] ruffled a lot of feathers, and the faculty matured and moved away from that approach.

The current position of this school is as follows:

[We have not] formulated a policy statement about teaching methods or ethos. There is a great diversity of teaching methods and assessment methods. Students are not told at beginning of the LLB program what teaching methods will be used. We are not saying as a faculty that we are making different pathways available to cater for different learning styles. We are not sure that we even say so to ourselves very often. Rather, we respond at the level of the individual subject (especially in later year courses, when there are so many demands on students). Teachers make it clear at the outset of subject that there are different assessment pathways, and the reason for this - that people have different ways of learning. [In one subject for example], there is a choice between small groups in one assessment regime, and no small groups in another...

Similarly, from another law school that did not have any policies about teaching methods:

There are no policies other than that there is a general practice in the school – of small-group teaching and the provision of subject learning guides. There are some subjects where that doesn't even happen, most importantly I suppose in subjects that are taught purely by external, non-law school, staff. It's much more difficult to manage that.

By contrast, one law school reported that it has put resources into developing the school's teaching policies and procedures – largely to ensure that subject objectives, assessment and teaching methods are properly integrated. This would require staff in each subject to determine “teaching and learning approaches in the light of subject objectives and assessment methods”.

Having said which, the teaching methods are fairly traditional. We've got the same resourcing issues as everyone else. Everyone knows that small group work is far more effective and this is what we try to front end that in first year by having one-hour lectures and two-hour tutorials. We're trying to encourage independent learning. So there are no lectures in Contract, which is very brave, because it's a quite difficult content. But it's a good unit to do it in. In later year subjects, it comes down to how innovative and experienced the team is. So we try a variety of things. Online teaching - we are just about to do a review of how our online integrates with our face-to-face, integrates with our flexible delivery in terms of external program and Summer semester.

But a lecture from the front of the class is still the norm in large classes. ... We are very much locked into this because of large student numbers. We run a two-hour lecture which we will repeat for the part-timers, which is taped and then sent to the external students. In a number of subjects, staff have come to realise that a two-hour delivery of content is not necessarily the way to do it. In some subjects we have cut back to one hour. [About a quarter of the staff] would do all different types of things, like breaking the class up into smaller groups etc. ... But that is probably something that we need to look at more closely – what are people doing in larger groups? So yes, it's a big issue and I'm seriously thinking about going back and talking to staff again about how you engage students in learning.

Some of the elective units do two-hour seminars with a notice board type of arrangement which drives the agenda. So there are a range of approaches. And online - there are particular innovators who have seized on online. But who knows what we could do if we had better resources.

A law school that was acknowledged as one of the better law teaching schools in the 1980s, reported that its approach to teaching methods had not changed in the past decade or so, “although the quality of teaching staff improves all the time”. No mere boasting, it echoes what many of the teachers who participated in interviews and focus groups reported – that the calibre of teaching staff is a reflection of the commitment to improved approaches to teaching across law schools. Even law schools that did not have formal policies about teaching methods, reported that staff's commitment to improving their teaching manifested itself in the diverse range of classroom methods:

Most of my colleagues put a huge amount of effort into their teaching. They take it very seriously and are very creative. There is diversity and part of healthy diversity is healthy experimentation to teaching methods and that diversity flows over to assessment, given that assessment follows pedagogical goals.

There are not many of the traditional stand-at-the-front teachers in the faculty at all. We tend to find that if we recruit casual teachers, they're more inclined to do that. They think it's safer to do that. But generally, I think there is a high level of commitment to creative teaching.

The school at which this interviewee taught also reported that these approaches to teaching were very successful, at least in terms of student evaluations gathered by the university's Centre for Teaching and Learning.

Not all law schools were adopting a diverse range of teaching methods and some law schools thought they lacked the necessary resources to change their approach to teaching methods.

From a practical perspective, our teaching loads are substantial because we're small and we have a very high staff: student ratio. That limits the ability of the individual to be tremendously creative because more creativity involves more time, more time is something that we don't have a tremendous amount of. So it tends to mean that people give the traditional two hours of lectures and one hour of tutorials each week and that happens right throughout the semester.

Undoubtedly there are individual teachers within even such law schools who are thinking creatively about teaching, and one such teacher described an approach to large class teaching that was designed to increase student participation in their own learning.

Case Study 16.1 Managing Learning in Large Classes

“With large groups you could break the group up into small bits, and you can ask them to talk amongst [themselves] and report back. You could have the students discussing things and the lecturer might move in and spend five minutes with one group, listening to what they're saying, contributing a bit, and then move on to the other group and then have the whole group come back and feed back the [responses to the activity]. So it is more a 'facilitational' role during those break-out group periods, and then you could come back as a big group and then do an overall wrap-up. I don't think the lecturers found any difficulties in that when they did it. Again, because we're not limited to contact hours, you can assign lots more work outside of class time and there are all sorts of things that could be done. ...

One of the ways in which you can cope with larger classes is reduce your assessment burden by, instead of marking six assignments, and you've got six different individuals, you get them to work in groups and you mark one assignment. Now if it's purely designed to reduce workload and you just said: 'Oh you're all going to work in groups and I'm just going to mark you as one assignment' there are all sorts of problems because group dynamics are very different. You've got to teach them how to do it and you've got to be prepared for the problems that arise. But if you do it once and you know it's done, you can transfer that. You get better at it as time goes on and it becomes less demanding

because you know what you're doing. You're not reinventing the wheel each time and you know how to deal with the problems that can arise. And so over time it should become less demanding on people to do it that way. There will be less assessment. And that's one of the ways in which we try to sell the group work to this one class: 'And look, you don't have to do an assignment, a 3000-word assignment in this class. All right? You can be relieved of that obligation. This is not additional, this is in place of. You'll be working in groups. You'll be doing a group presentation. You'll be doing a couple of very small, group-dynamics type of assignments you submit, but they're only a page or two in length. And you're learning new skills at the same time, skills that are important to the workplace and all that.' So that's how we've sold it and it's ongoing right now. It has yet to be evaluated."

Another interviewee described how, in Constitutional Law, teachers have divided the students into small groups, in order to enable them to do their learning in small groups.

They're still having lectures and so on but they're having workshops where they are in permanent groups of four to six. And they turn up ... beautifully prepared, as a rule. Students might occasionally just not turn up or they might turn up unprepared, but their legal preparation is something I haven't seen for such a long time. Because they know they will be letting the rest of their small group down if they're not prepared, and they won't be able to contribute and that will be a problem. ... Because they're all small groups, my role as facilitator is to go around and I end up spending 20 minutes with each group, but by the time I get to a group, they know exactly what it is that they don't understand, what they're having a problem with. They are asking very specific, direct questions and I give them fantastic help. I know it's really good-quality learning and they know it's really good (or I hope they know) it's good quality learning. But it's something I haven't seen before.

For useful guidance on using group work to enhance student learning, see Michaelson et al (1999) and Taylor and Collier (1999).

Other teachers spoke about the use of problem-based learning and one teacher described the use of problem-based learning in an *Evidence* class.

We have the tutorial before the lectures, initially because of a problem in scheduling, but it drove us to what was problem-based learning. We had written [a problem] with the boundaries drawn and were very clear about what they had to read. They had to read this case, that case and this excerpt from the text. And then the lectures were just sort of a back-up or clean-up. They would just kind of summarise and deal with questions.

The students were predictable [and raised objections] but looking at the [student evaluation data] it was quite interesting because [the data showed that students had] grasped that they actually learned. They figured that out. And in fact informally people tended to say that: 'Well, it was way too much work'. But we really weren't assigning any more work than any other subject, but they really had no alternative but to actually do it. They had to actually read the cases, they had to actually do it and make something of it.

Another teacher, in a Corporations Law subject, broke his class into groups of three or four students and, using his contacts with community groups, youth groups, volunteer organisations, sports clubs and similar groups, assigned students to an organisation where the students, after signing confidentiality agreements, took written and signed instructions for the organisation, evaluated the existing constitution, and redrafted its constitution in line with the instructions, and other issues identified by the student, and then “saw it through to a shareholders' or members' meeting”. The staff member’s role included supervision of each student group and their professional relationship with the client. The university provided insurance.

As mentioned in an earlier chapter, ‘guest lecturers’ are a common feature of law teaching. Recognising that students would benefit from a different perspective on a subject, particularly a ‘practical’ perspective, law teachers often invite practitioners to give a class or part of a class. It is not uncommon for this process to be unsatisfying for students, because the visiting lecturer may have a poor understanding of teaching, or her/his segment may not be properly integrated into the subject. One teacher gave an example of an approach which sought to ensure the best use of guest practitioners.

Case Study 16.2 Use of Guest Lecturers

“In my subject ..., a local specialist firm prepares case studies based on real client issues and scenarios, and when we get to the back end of the course, they come in for an afternoon, brief the students in the class, and have a manager going around to each of the groups in the class (3-4 students), who prepare a presentation of the problem, under the guidance of the firm. Students have access to the members of the firm over that week as they are preparing, and then they make presentations to a partner of the firm, and they get feedback.

But not all professionals are good at tutoring. We have a very solid group in the profession [in our area] who are very solid teachers as well as practitioners, and they participate as tutors in the program. ... We would rather have [practitioners] *co-teach* [emphasis added], to ensure that it is not just a war story session, and so we can maintain quality. ... [We] are looking to increase practitioner involvement in subjects even more. The profession was involved in the set-up of the degree, but their actual physical involvement in curriculum is a more recent phenomenon. The most important thing is that there be a strong educational control over process. *It is vitally important that it is a team effort, because the profession does not have expertise in the design and presentation of material* [emphasis added]. This is quite resource intensive – you need the teacher, maybe two teachers and the professional trying to work it all out. It [produces] an increase in workload, but the benefits are many. It is important that the professional understand the purpose of [their involvement]. We have to ensure that they are not coming with misconceptions as to what they are there for. That needs to be clearly identified. Where possible there should be quality control of the materials which professional are delivering, so it fits in with course objectives [and relates] to the learning process which should take place on a continual basis throughout the course.”

There are many more creative approaches that Australian law teachers are adopting in (and outside) classrooms; the above examples represent just a few of these approaches.

Teaching materials

During the mid-1980s, it was not uncommon for law teachers simply to prepare a reading list for their subjects, one which mentioned topic headings and listed cases that would be discussed in class (which often was required reading before class). This might be coupled with a casebook, or students might be required to find cases in the library.

This situation has changed. Now most, if not all, law schools have policies that includes a “template” specifying what sorts of materials should be distributed to students and often, how much reading should be undertaken each week. For example, one law school has developed *Guidelines for Subject Outlines* that specifies what should be included in subject materials. These guidelines, however, do not include specifications for subject content, which is left to the discretion of the individual teacher. Nonetheless, the school does monitor subject content to ensure that there is no overlap among subjects.

Other examples of informal and formal policies about subject material are as follows:

- Teachers must provide reading material in the form of a textbook, casebook, or materials prepared by staff. There is a common template (not mandatory), which mixes cut and paste materials with text in varying proportions.
- Teachers must provide a subject outline, as well as any other materials that students are required to have for the subject, including questions to guide their reading and class discussion. The sort of materials provided, including reading materials, is decided by the course convenor, who is given flexibility in this area by the law school. On-line materials and the Internet are utilised in some subjects, but there is not a consistent approach to the use of either.
- A pro forma subject outline guides what should be included in teaching materials. The introductory part of the subject outline should include basic subject information, including information about assessment, “and then there is a substantive part which is the lecturer’s written outline, which varies in detail”. Usually the latter includes the outline of the subject, and pre-reading. Some teachers use a question and answer format. “We are not prescriptive.” And then there’s tutorial problems, in whatever format, “and that will vary greatly. For example, one subject includes legal interviewing.” This school reports that there is a trend away from using “the cases and materials approach to teaching materials, where the materials produce all of the cases that need to be read, because students can access cases on-line, and the teaching materials can link students to on-line sites where the cases can be found”.

The university is additionally developing a subject materials database, “which is just the online digitisation of reading materials. Apart from a small minority, students appear to have voted with their feet and seem to want to use on-line sites”.

- The law school’s administrative guide includes the following provisions:

Course materials

Course co-ordinators are required to make available, free of charge, a course outline, with a maximum length of 20 pages, containing material under the following headings:

- overview (credit point value/admission requirement)
- objectives (teaching methods)
- rationale
- course structure
- reference material
- contact details
- tutorial topics
- policy in relation to the University Disability Action Plan
- assessment - including reference to:-
 - mode of assessment to be adopted;
 - assessment criteria;
 - policy for non-compliance with assessment requirements such as late submission of assignment material;
 - policy to be applied to requests by students for review of their performance;
 - policy on lodgment and collection of assignments
 - policy on special examinations

In most cases, course co-ordinators will provide a more comprehensive study guide than the 20 page handout and where the information noted above will be reproduced. In the case of LLB students, this may be made available for purchase from the private provider on campus. Students should be encouraged by co-ordinators to download the material from the web-site or obtain it from the private provider rather than collect the free handout material from the office. To that end, the law school office will make available only so many of the copies of the free handout material as are required from time to time.

Teachers are encouraged to include in their course materials learning activities and self-assessment exercises.

Course co-ordinators should ensure that the course outline material or the more extensive study guide should be completed using the law school’s standardised template and lodged with the webmaster 1 month before the commencement of semester...

Uploading of the Study Guide to the Web

All study guides in both undergraduate and postgraduate courses are to be placed on the Law School's web site. Coordinators are to supply a minimum content conforming to the Law School policies.

- Some law schools encourage teachers to use the web as much as possible in preference to hard copy materials. At other law schools, some students objected to having to pay (on a cost recovery basis) for teaching materials and one law school responded by sending materials to all students electronically.

We e-mail it to them and we make it available on websites. So when the students enrol in a particular subject, if there are course materials to be provided, we don't print them any more, we basically zap it to them and they can print them out themselves. All the students get their own university e-mail address, so they can make their own arrangements with printing or handling it however they wish. We also put them in PDF files that are available on the website. We do produce copies that go into special reserve and we do make some copies available for sale through the student book shop on the understanding that these are materials. If they want to buy them on a cost-recovery basis they can. Now the other group of students are grizzling that we aren't selling the stuff anymore, that they want to buy the stuff instead of having it zapped electronically.

The law school does not prescribe what sort of materials teachers should prepare.

Individually they are obliged to provide students with a synopsis which indicates all the assessment tasks that the student will be required to do, and a broad outline of what materials they will need to be familiar with to obtain those assessment tasks, when things are due, what will be expected of the student. That's required from the university level. If at that point a lecturer wants to put together their own case materials, they can. If they prefer to use a text book they can do that. But we leave [teachers] to their own devices.

- Not all law schools have policies on teaching materials, thereby leaving it to individual teacher to develop their subjects in any way they choose. "The staff put a lot of thought into what they've chosen as text books, but let them use their own teaching materials if they feel there are no suitable textbooks."
- A few law schools mentioned that semesterisation had favourable consequences for the use of teaching materials

I think one of the main effects was the restructuring of all of our subjects so that they could be taught in a semester, rather than simply compressing all that material that you taught over a year into one semester. That required of course a complete restructuring of the subject, and in particular that was supported by the development of the study guides for each subject. And the study guides are provided to students. They're all on the web. Everything, all the materials, are web-based and students can purchase hard copies of those materials, but they're all web-based and they don't have to purchase them if they don't want to.

This year was the first year all of the materials were on the web. We don't provide hard copies. If [students] need to they can go and buy them from the image-and-copy centre within the university. We've negotiated good prices for them and we send the materials to them and all of that, but this is the first year that everything is web-available on the university's platform. And that seems to work pretty well. And that again requires a lot of work. If you've got hundreds of pages of material on each subject it's a huge amount of work for teachers to put them up on the web themselves, which is what they have to do.

- At some law schools, it was the external program that tended to show innovation in the use of teaching materials. One law school reported that it has an extensive external program, and was, up until recently, facing challenges in trying to develop its teaching programs on an equitable basis.

Well now we have online delivery the differences are quite limited. The area that's causing us to think very carefully is the skills program of course and we're investigating that at the moment under a further university large grant, because while there are some things you can do quite innovatively online, in terms of skills delivery, there are some things that we're still struggling with about how we do it other than face-to-face. For example, advocacy. The advocacy skills are very difficult to [foster] other than face-to-face and we've investigated a range of possibilities there, taping, video taping...

- Some regional law schools reported that policies about teaching materials were developed to address their remoteness:

The fact that we're a regional university almost means by definition that you'll run many of your programs externally, and that impacts directly on the teaching and learning, and also impacts directly back on internal subjects. [In most subjects] external materials become available to internal students as well. I think the [external subjects] are slightly better organized. The internal subjects are impacted on by the quality teaching that occurs externally.

[This law school] has had a very good reputation for high quality external materials that are properly desktop published, are generally reviewed by outsiders, though not always, and that go through a process of proper education design. We also have a pretty good reputation in terms of delivery generally for this reason.

At another regional law, all lectures are audio taped and sent to students on audio tape. From 2000, lectures in some subjects lecture have been put online as a sound file, which can be accessed by students on a password protected site.

- From its inception in the 1970s, one law school has had an interdisciplinary or "law in context" approach to law teaching:

Because the subjects were very different at first, [teachers needed to create] materials which were major teaching tools and it was usually in

the absence of an appropriate book. These days the teaching books are much more appropriate because they're very much contextually-based teaching books, teaching resources, and there are many suitable books that are used for teaching purposes.

We have guidelines as to what would be the appropriate size and length of materials, readings expected from week to week, that sort of thing. But it's not like we have a written-down coherent policy. You know, you can't pull a chapter out of a manual and say this is what it is. It's a collection of policies, both university-wide and local practice.

Many law schools report that many of their staff have produced casebooks that have grown out of their teaching materials. As the above remarks suggests, some casebooks have attempted to take account of educational theory in their structure and style. They furthermore:

- begin topics with examples or case studies which are meaningful and relevant to students, and help students to make sense of topics by drawing upon their own experience;
- link the subject matter to other areas of law, so that students can build on their previous learning;
- choose cases that best illustrate the principles to be learned;
- do not present students with too much material;
- enable students to further develop legal skills (statutory interpretation, reading cases, drafting, dispute resolution, negotiation, client interviewing and so on);
- include activities (questions, problems, case studies and so on) that enable student to engage with material, and to construct their own understandings of the subject matter;
- experiment with activities that enable students to test their understanding of a topic;
- provide students with a theoretical framework to understand material;
- alert students to the affect legal principles and institutions might have on particular groups (non-English speakers, women, people of colour, lesbians and gay men, or people with physical or intellectual impairments, etc); and
- illustrate the operation of the legal principles with empirical studies.

See Johnstone (1996) and Johnstone and Joughin (1997), Rowntree (1994) and Race (1994) for further discussion of these principles.

Law publishers, however, in their efforts to expand the law publishing market, are producing "more and more nutshell and tutorial series", which present the law as skeletonised and decontextualised principles. As one interviewee remarked:

I don't think Australia is particularly well served by the textbooks. I think most of them are fairly narrowly focused, not particularly pedagogically creative, and can actually drive a subject in ways that can inhibit any aspiration, more so than, say, some of the US textbooks and some of the UK textbooks.

One interviewee identified a major issue facing law teachers, particularly in an era of multiple demands on students,:

It is getting more and more difficult to get students to do all the preparatory reading, so I think lecturers are going to have to be far more strategic. When you know that students can't do the 50 hours reading that you thought they were going to do, you have to be a lot more careful how you select the material, and that means a lot more preparation and work.

One of the strategies is to try to make class participation successful so that encourage them in that kind of way. You also need to change your assessment methods so that students can cope – so its more work for academic staff, and more frequent marking. Another strategy is to delegate to students leadership in parts of the class which means that they must have actually done their reading beforehand. One can also use multiple-choice examinations, which we use each semester, which covers material students should have been reading and discussing.

These remarks reflect the frustration felt by many law teachers, and emphasise the importance of following basic principles of teaching and learning outlined in chapter 11.

A few law teachers thought that, to a large extent, students' unwillingness to read was often a response to signals they were receiving from their law teachers.

Students don't come to class not having read as a general rule. I mean obviously if you start lecturing them only, they'll stop reading, but if you maintain a situation where it's clear that that's what they have to do, they will do it. And they *do* do it. I mean in this law school students read. And it's one of the few law schools where the senior students won't tell the junior ones not to bother. Because you know how that happens. All lecturers in first year always say you must read, everywhere. But here we have the advantage of a culture that runs through the whole law school and so senior students, and in particular, [and students who are peer tutors] certainly teach their students that they must read before class and it's a waste of time otherwise. And you can reinforce that. I sometimes have a little tantrum and leave the room. Early on, you know, if they seem to be getting a bit slack, I throw a wobbly and it usually fixes them.

Information technology

In most law schools, the last decade has seen significant changes in the use of technology in the classroom. One interviewee who taught at the law school where he completed his LLB elaborated:

In terms of technology, it was very much straight lectures when I was [a student] here, with teaching seen as a straight teacher-student relationship where knowledge was imparted from the teacher to the student. I think that now there's a lot more active use of technology – overhead projections, Powerpoint, videos – something just to stimulate the class and I think much more an appreciation of a move away from: 'I am the teacher you are the learner' to 'this should be a joint learning experience.' So people tend to, in my experience, structure things to play on [students'] strengths and appreciate that different [students] have different strengths.

But some law schools admitted that their use of information technology was minimal:

Most of us would use the old-fashioned lecture technique where you dispense wisdom and people write it down. We don't have lecture notes on the server. We don't have sufficient IT resources or time to have our lectures up to the standard where we can put them on the web and I don't know whether that's going to evolve.

For those law schools using information technology to a significant extent, in the vast majority of cases, web-based material was seen as supplementing, and not replacing, of face-to-face teaching. For example, one law school has piloted web delivery of integral components of subjects, and all of its subjects have a website, which contain all the material for the subject, and all notices. Nevertheless, the law school's focus is on face-to-face teaching, and the school has no plans to move to on-line learning.

We see information technology as very much on campus technology, and as an aid to our personal relationship with the student – not as a substitute relationship with that. So it is fine for students to email questions to teachers – even the most computer illiterate staff answer questions via email. But this is seen very much as a supplement to face-to-face teaching.

Similarly, another law school reported that:

Our policy is to seek to augment existing subjects with material on the web, rather than to deliver subjects via the web (except for special electives which are themselves involved with the Internet). There is a strong disposition to teach face-to-face in small groups, and not to substitute that with web-based learning, but to reinforce it and support it, where it is useful. I don't think we are doing that fast enough, but we will soon be appointing a faculty e-learning co-ordinator to reinforce the development of electronic teaching modes. This has some priority but there is a grave reluctance to *run* down that path because it is so at odds with small group, interactive learning.

This view was echoed by staff views in focus groups:

Rather than teaching completely on-line, I think using it as an adjunct is good. It allows quiet students or students from other backgrounds to reflect on material, and to think about it more deeply in their own time. I can access material whenever I want, and can organise my time more efficiently. It is not about putting all notes on line, which is very time expensive. Rather we should set up facilities like a discussion board. It is a bit like an apprenticeship, and we need to train students – what is the nature of discussion, what is a discussion board. But as semester goes on, we can reduce this support. The workload is a spike initially, but it goes down. It also means that I can get away to a conference because there is some teaching on-line.

One law school mentioned that it embraced information technology in its teaching and learning programs largely to service the external program and also in response to university policy. While the school does not have a clear policy on how the Internet will be used in teaching, most of the teaching staff use powerpoint, and students routinely demand that powerpoint slides used in class be available on the subject website three or four days before the class. "The better students print them out, and before class they do the reading, and they read the

Powerpoints ... so they are far better able to understand the class. ... It gives them a capacity to engage in the lecture.”

The university of which this law school is part has an expectation that all subjects will have online sites, and furthermore has three levels of sites. The third level is totally interactive, the second contains all the resources, including powerpoint slides and other communication mechanisms, and the first level “is a mere presence”. Most of the law school’s materials are at level 2, “with an encouraging amount at level 3.”

This school additionally expects all staff “to be able to send out notices, put up PowerPoints or put up files” on the website, and the university provides regular training courses on the use of the web. Students are expected to check on the web that all of their marks for assessment have been correctly entered, for example.

A law school with 80 per cent of its student body enrolled in its external program mentioned that both internal and external students are taught by the same staff, and are issued with the same study guides and teaching materials.

The principal difference is that the external students don’t have the opportunity to come to lectures and tutorials but instead have the opportunity, particularly in large enrolment subjects, to come to short residential schools. Depending on the subject, they also may get the benefit of tapes of lectures and they also get the benefit of chat rooms and on-line services – in some subjects, generally the core subjects. What we have tried to do in the last couple of years is to extend those net-based services to external students, starting with early year core subjects and working progressively through the program.

Another law school offers 13 LLB subjects on-line to external students.

A law school that reported that its university has gone a long way down the route towards web support and web dependence, mentioned that this has been a result of a genuine attempt by the university to increase the flexibility of delivery of curricula, using information technology and the Internet. Each subject in the law school has website with basic tools on it (e.g. Blackboard), to enable communication with students and to send them materials. A noticeboard is included, on which staff can put up weblinks that students could access directly, as well as a discussion board that accommodates both word and excel files.

Now we could go a lot further down that route and put entire courses on the web, with self-testing activities. Some staff are doing this. That must make it easier for students. The university is not saying that this is the way you must do it. Rather we are being encouraged to determine where our strategic priorities are in terms of spending money that the university has to develop courses in web format. But schools are not being told ‘you must use this in a specific way’. The university is not coercive - rather it comes from our own sense of what we need to do to retain students, to engage them, and to help them negotiate all other demands that they face.

But not all law teachers were positive about the use of information technology at their law school:

I don't think that it is done all that well. Most of us just get online and then hope everything looks after itself. There has been no real attempt to evaluate it in the law school. Part of the problem is that most people don't know what is out there and what is available, and even if they did, the question of how to do it and get it going in their courses would take a lot of time to find out and implement. There are still voices around faculty who point to the limitations of on-line delivery because of limitations to access.

Interviewees often observed that the shift to web-based teaching is potentially very significant, but that law schools needed to do more to support these developments.

I am really attracted by the idea that students can access learning activities at a time and place convenient to them, and by the idea of doing assessment at a time and place convenient to [students], within certain time periods. What you lose is interaction – on-line discussion is not the same. We have not yet conceptualised all the things we can with the web. We need staff development training and support on learning to use the web to teach law. Most importantly, we need to explore *what is applicable to our discipline* (emphasis added). The development of information technology approaches in law teaching is being done on an individual basis, and it is a staff development issue. There is a basic university template (blackboard) but beyond that staff have to do their own thing - but we don't have the time to do that training.

Policies for the use of information technology were not universal and some law schools reported that there is “a policy of encouragement” about the use of the Internet in teaching, “but beyond that, nothing specific”. One such law school commented that their university intends to improve the use of Internet-based materials in teaching, and provides considerable resources to the university's Centre for Flexible Learning “which supports the development of on-line units”. This allows some law school staff to use the web as an alternative teaching strategy “but this has been found to be very resource intensive”.

Another law school that did not have specific policies with respect to the use of IT, mentioned that the law school nonetheless had “a very modest, very conservative” engagement with information technology in the delivery of subjects. Some staff “use an online delivery system for part of subject material”. Some teachers at this law school reported that the university had not supported staff in the use of WebCT, “so in fact I would be counselling staff who wanted to use WebCT to be very, very cautious about it. On the other hand, student uptake of electronic resources is just astounding, .. and their expectations of technology are far greater”.

These changes in the use of information technology in law schools were not necessarily seen by staff as being advantageous to them. A considerable proportion of focus group participants mentioned that the move towards giving IT a greater emphasis simply meant that they spent a lot of their time responding to students by email.

The bane of my life now is email. You have students in your class sending 100s of emails. This is very time consuming, on top of all the administrative stuff. In affect with email you are always available.

Students constantly email you. That's another massive change. You can spend a couple of hours a day just on email. We are dealing with a generation of students who are attuned to electronic stuff. That's changed dramatically in five years.

Other staff liked the flexibility of email. It meant that they could spend more time away from campus, for example, to attend to family responsibilities, but still nonetheless be available for students because they could answer emails at their own leisure. Another teacher mentioned,

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Those students who, for whatever reason, like a more flexible approach to their study value it more highly. My perception is that so far that generally means that the school-leavers don't like it very much because they want to come to class and meet their friends. They value the social environment. Whereas our mature students of course, as I say, have a life outside law school so they appreciate anything that allows them to access materials and to participate when it's most convenient for them, and not necessarily having to come to scheduled class times and things like that.

I think it provides flexibility, which can often assist people because they can then do their learning at times and locations that suit them. I think particularly if you are trying to teach people who communicate in writing, then generally speaking the Internet is a very good medium because you can easily share written work and view it and view others and compare and critique. And plus of course the fact that it allows access to so many legal resources. The amount of legal information that's available on-line is probably better now than we have in our library in many cases.

I think it can promote good learning in some aspects. I think it probably promotes reflection and consideration of ideas and thoughts but it's not quite as good at stimulating creative thoughts because of the time lag and the maybe the lack of some interpersonal cues.

I think it does and it can stimulate more self-directed learning, or independent learning, because no one is going to force you to sit down at a terminal and access the website and participate, so I think it does tend to put the onus on the student to participate, to motivate themselves and to discipline themselves. And I think that's very good because that's what lawyers need for instance in practice, is those kinds of self-discipline and management skills. That's really what it is, time management skills, and a lot of teachers are aware of it so it's much easier just to be told to come to class, go to tutorial, whatever. So I think it has the potential of helping students to learn these skills. Independent learning.

I think generally law schools could do more on-line. My own view, not necessarily the school's view, is that it's possible to teach well almost totally on-line but it's also possible to teach well face-to-face and practically speaking I think what law schools should be doing is trying to come up with a balance between the two. Originally I think I tried to do too much on-line, and so recently I've been reintroducing more face-to-face to balance it up. So generally speaking I guess my approach today is to sort of have a half-and-half, 50-50 face-to-face and on-line.

But I should say that the university policy now on flexible learning is slightly different and, as I understand it, and [the university] will ask teachers to incorporate alternative modes of access to the same subject. So instead of having half the lectures face-to-face and half online, all of the lectures will be face-to-face

and online. So it will be up to the student basically to choose which mode they wish to participate in.

Teachers identified that there were some disadvantages to encouraging students to access material on-line and to generally use the Internet:

Students sit at their desks and in their own homes, and have access to millions of things on Internet, which they use indiscriminately. So we have to teach them to discriminate, and having them engage with a mass of material in quite a different way is difficult. I think that inhibits their learning. They are overwhelmed, and they don't know how to evaluate what is available to them, etc. That is a modern problem.

The big danger is in students getting demoralised when accessing material on the web or on CD ROM. Once a student gets into a pattern of saying 'I am not understanding, I am not enjoying it, therefore I will pretend it is not happening', you have lost them. It's a hard job I find, just keeping them at their work, and keeping their morale up. I get a lot of 'I hate *Aegis*', I am not going to get the hang of this and won't pass exam' etc. Most students go through this.

Schools that claimed to have "strongly embraced information technology" have "gone on-line" with most subjects; however, by and large, "the precise use of information technology varies from law teacher to law teacher". Furthermore, IT tends to be used only for specific parts of the program. For example, at one law school, IT is "a primary vehicle" in the Professional Legal Training program, which can be done completely on-line. For the rest of the LLB, IT is by-and-large just used as an adjunct – for example to provide subject outlines, to make provisions for accepting and sending out assignments, for providing discussion lists and so on (i.e. no differently to how it is used by law schools who think they have embrace IT only variably). Admittedly, some electives are offered totally on-line, but on the whole, this school is unlikely to replace face-to-face teaching, especially in the core program of the LLB, with on-line programs. In fact, the general view in the school is that discipline in class is a very important part of the law degree, and that class interaction is important for understanding the social orientation of law. Different considerations apply in the postgraduate programs because "it's a more open market and time constraints are quite different for postgraduate students". Post-graduate students are often already in full-time work or overseas and therefore it's less possible for them to attend classes.

Another law school that is moving towards giving great emphasis to IT, mentioned that this came about because the school offers LLB programs on two campuses, which are just over 300 kilometres apart. As such, IT is used in a very specific way – largely video-links from the first campus to teach small groups on the second campus.

It certainly has influenced delivery here. It's something which is used... only for the smaller groups and yet we do maintain a sort of traditional style of teaching in terms of large lectures with tutorial groups added in. So you find for the stuff that's taught on each campus it's taught in that fashion and has been, as I understand it, since the school was established. The use of the link means that we effectively end up with small-group teaching for the subject where that occurs. So we've got a bit of a bifurcation in the manner in which some courses are taught.

And it does raise issues of style. We've tried to run some courses with a more student-centred approach, in conjunction with the link, and found that that tends not to work as well as it might. But staff are pretty confident using the technology now and a lot of the initial concerns about the way it operated have been dealt with. It places constraints upon the manner in which people normally deliver lectures, but normally people have become reasonably free-flowing and can do as they wish. It's rather more constraining in the manner in which they have to deliver the lectures and the types of material and additional material they can use.

You've got a document reader typically sitting next to you and you can flip what amounts to overhead slides and ordinary pieces of paper on there, you can feed a Powerpoint presentation and so on, but you have to be rather adept at pressing lots of buttons, and different staff members at different times, according to their learning curve, where it's been steep they've tended to struggle a bit and that's made the students unhappy and created all sorts of problems. So it was a bit of a struggle, but we've had some years at perfecting how we do it and we're reasonably adept at it now I would think. Certainly the level of student concern about the use of the link has diminished markedly in [recent times].

It does mean that we have people who are quite committed to their teaching and quite innovative to try to work out ways they can add things in and so forth. We've got people making use of the Internet, Blackboard, which allows lecturers to put material on, to interact with the students, and so on. It's not dissimilar to systems that are at a number of other universities.

It's been used for both campuses here and we make reasonably extensive use of e-mail to keep students informed because, as you can imagine, trying to keep courses essentially identical at two different locations creates some problems. And we have lots of interaction between the staff members in terms of finding out what they're doing and so on and cooperation in marking and assessment and so forth.

But certainly we've got a number of staff who are very keen on using electronic materials in quite a wide variety of ways, setting up web pages and hypertext links to all sorts of things and that's to be encouraged, and there are various programs within the university to assist staff in acquiring those sorts of skills.

Another law school that also mentioned that it embraced IT, claimed to use it more pervasively than to primarily meet specific needs in the program or to service specific aspects in the program:

We use a computer conferencing program called First Class in every single subject. All our study materials are available online and could be accessed through First Class. Then we also encourage students to post questions on First Class and it's answered, not only by the lecturers but also by all the other students. It's a sophisticated e-mail program so if you post your question all the other students can see your question and they can respond and the lecturer will also respond and in that way you encourage discussions on the Internet.

[First Class] is like a chat room but the advantage is that you don't need to be online at that stage, even though you haven't been online when the question was posed or the debate took place, you read all the responses and the lecturer's answer or response, one hour, 10 hours, 20 hours, whenever you open the system and follow the whole debate.

In the case of our postgraduate programs the only way in which they can access their exam papers, which is normally a take-home examination, is with First Class. So we use that very actively.

Another interesting way in which we use IT is [in relation to] our first-year core units, [for which] we have e-tutorials. We allocate the students to groups and we have got a lecturer who would post questions and expect responses from the students. There is a slight problem with the system. It's not a compulsory component and students tend, after the first few weeks, not to participate as actively as we would hope that they should participate.

The most comprehensive and best-resourced use of information technology, however, was found at a first wave law school. At the beginning of 2001, it appointed a Director of Educational Technology, whose role "is to promote amongst the other academic staff the appropriate use of technology".

The position was introduced as a response by this faculty to the university's teaching objectives on multimedia and curriculum transformation. This university I believe is unique in Australia for its systematic, top level approach to curriculum transformation. It has set itself a very clear objective that it will differentiate itself, it will enhance campus-based learning by the appropriate use of learning technologies, and put the money in to achieve some good results in those areas. For about the last five years it's put in several million dollars every year ... into teaching and learning technologies and towards kick-starting faculties into thinking about how it can be best applied.

So my role is an extension of that strategic direction if you like. My role is to apply that and to actually realise some of those strategic goals. And now that we've got the facilities, my role is to provide staff development seminars, training for staff, demonstrate some of the opportunities, actually produce the multimedia, produce some good examples of the technology which we can showcase, and bring the broader faculty forward.

This school takes a "multi-tiered" approach to staff development in IT:

There's semi-regular staff development opportunity, normally every month or so. We might get an expert in, a visiting expert. It might be somebody from another faculty on campus, who comes in and speaks about their use of technology, or indeed it might be one of our own staff members.

So we try to run a seminar on staff development to do with learning technologies – hopefully law relevant but not necessarily law specific. We offer funding opportunities to the staff, where they can apply for grant money to develop or at least apply technology in their subject. It might be to greatly enhance their web page. It might be to produce a quiz tutorial. It might be to produce a full-blown major multimedia product that will transform teaching and learning in a very significant way.

My role is to oversee that process, and to provide advice, guidance, recommendations, and assistance, or if they've got ideas to assist them with bringing those ideas to fruition.

The Law School's information technology strategy has been built up slowly over the past six years or so,

because I think the law is a remarkably difficult area to apply multi-media learning technologies because of its very nature. ... [Simply outlining] black and white issues and multiple choice questions [is not appropriate for] many of the styles of learning and deep understanding that we want to achieve.

At the end of 1996, we had a website but we had very little educational material on it. It was more promotional- and administrative-type material. Since then, and it wasn't that long afterwards, we managed to get many of our subjects online. Nowadays every single law subject has a subject web page.

We have our reading guides online, we have handouts, we have recommended readings, we have links to materials, we have in-house materials up on the subject pages, we have a system of facilitated conversations between the students, be it just e-mail addresses or formal web discussion boards – the usual sorts of things. Nothing terribly advanced or different, but it's the fact that all of our subjects have it that I think makes the difference.

One of the most interesting uses of information technology in teaching and learning is in this school's extensive graduate program, where many subjects are taught intensively. Multi-media is being used to try to engage students both before and after the intensive period of face-to-face teaching.

In the graduate program we teach intensively, and that's one area which technology lends itself to, because we can bracket the intensive course with technology to allow the students to start linking to each other and the lecturer, and come to grips with some of the issues before the class, and after the intensive one-week period, they can continue to liaise with each other and carry on conversations, discussions, arguments even, after the classes.

They can discuss the essay topics and the issues involved or if there's new developments, after the end of the class, we can still do that using the technology. And that's proving to be very useful. That's one of the things I'd like to enhance even more. We're still very much at the start of a learning curve for us, or the application curve, in the graduate program but clearly technology and Internet communications can play a clear role in our intensive graduate programs.

We pay as a faculty to ensure that our graduate students have free dial-in access. They have to have their own modem, but we will pick up all of their telecommunication charges.

This law school has also recently moved into a purpose built new building, with state-of-the-art facilities:

All of our lecture theatres have a very high standard of audiovisual fit-out and most of our lecturers will choose to make use of that in some form or another. So PowerPoint, recording of lectures and making them available on the website afterwards, allowing students in the classroom to plug in their laptops or utilise networking to bring up the subject law page or other related materials and refer to them in the classroom and allow the discussions to thread off in different directions based upon those materials, that's something we're seeing more and more of with these facilities.

I think that is a differentiating factor. That we're actually using technology in the classroom, not the lecturer but the students, to engage with the material. And that is different and it is very exciting. I think that's got a lot of possibilities.

This school's strategy of "integrating multi-media into the curriculum" appears to be bearing fruit. From 1996, the school began to develop a number of multimedia products, initially in a fairly small number of subjects but now most of its subjects have some form of multimedia application. This is particularly true of the earlier years of the LLB program but is also true of some of the final year subjects.

We created a multimedia product called the *Legal Research Workbook* which allows students at the university to learn about basic legal research skills and the electronic resources available and also all the printed resources available to them. ... In our first-year [undergraduate] subjects, we have regular class times scheduled in the small seminar rooms. We'll go to the computer lab and we'll go through a computer-based exercise, with the lecturers present and the librarians present to guide them through the materials. The materials do a good job of guiding the students anyway, but the lecturers and library staff are there as experts to come up with specific content questions. Some of these we've developed in-house and some are commercial products off the shelf from various law courseware publishers. But the point is we've integrated them into the teaching program. They're not just stuck to one side.

Many of the subject materials we've produced ourselves. [For example], we've developed an *Evidence* multimedia project and students use that as their form of assessment in the subject. They're presented with a fact scenario and a series of videos, audio clips, and documents relating to a crime scene. They have to prepare a brief of evidence which they submit electronically through the multimedia system.

In *Native Title*, this year they've just deployed a major multimedia system which has replaced a lot of the in-class [teaching and] learning, and a lot of the assessment is now online. We're adopting that type of interaction which involves presenting information, some interaction, submission of essays and then either peer review or self review with computer guidance of their answers. Instead of just presenting the material and then giving them an assessment task, we've combined it and merged it in. Students will go through a series of context-based situations and problems, they'll apply the law or work out which law is to apply, they will develop a number of advice documents and they will work through and produce a major assessment item at the end of the multimedia class. There are a number of assessment tasks, with feedback and with looping within the product. So students might not do so well on all the assessment tasks but there's feedback and they might be able to enhance their initial assessment, and that initial submission will be used in later parts as well. So if they may not have been directly on track, they might be able to get back on track and utilise that submission later on. We're using this model in a number of subjects. We'll be completing more of those this year.

In *Dispute Resolution and Legal Ethics*, we break the class up into small groups of four or five. Each group is a virtual law firm. We pair the [groups] up, appoint a defendant and we let them litigate at least the pre-trial phase of a fictional scenario in a fictional case. And so they get semi-real-world experience with the processes involved with the pre-trial phase of a case.

So that's a few of the big multimedia products. There [are] other ones which we've deployed and they've significantly changed the subjects, the way they're taught, the way they're assessed, and significant proportions of the subject are now online.

When I say ‘online’ people can access it anywhere in the world but it’s nonetheless based around face-to-face teaching. It’s still the core focus of all of our activities, both here in the law school and the university generally. ... [W]e’ve very much focused on the face-to-face side.

All the money they’ve put into the university is to enhance the campus-based learning, and we see multimedia as a differentiating factor.

The school’s next step, in relation to its multi-media project, is to proceed on a subject by subject basis.

We haven’t tried to take an overall approach and say, ‘All subjects must do this, this and this’. We only do what seems appropriate at the time. So if we’ve got a person who believes they can make use of technology somewhere in their subject, I will do everything I can to encourage it.

If there’s a subject where there’s no use for technology, I will discuss with the co-ordinator if there might be some way we can introduce it, but I don’t go in thinking that you must introduce it either. There may be very good reasons why there’s no multimedia or other type of technology involved. And that’s certainly fine. I don’t see my role as achieving 100 percent web utilisation or multimedia in every single subject. That’s not what it’s about.

We have champions - staff who are interested in technology and willing to run it. We let them run, achieve hopefully good outcomes, and evaluations are a major part of determining the success or otherwise of these initiatives, and when we do get a good outcome, we showcase it to the other staff. By getting these initial runs on the board has been very helpful. It’s taken us a long time. We started off in 1997 just with getting subject pages on-line. Now we are getting half a dozen or so new projects every year in different subject, with staff wanting to do something new and interesting and innovative with multi-media. ...

The School evaluates all projects and is subject to the university’s evaluation and assessment of teaching processes (like many other law schools – as will be discussed in the following chapter).

All of our multimedia is ultimately driven by the academic in charge of the subject. We don’t impose it without their full involvement or indeed leadership. Whenever we deploy the multimedia, there is the expectation that there will be evaluation. It’s demanded by the university and demanded by the faculty. We do expect them to make a judgement at the end of how well it went and where it didn’t go well to come up with strategies to try to mitigate those problems or hopefully get rid of them.

We would hope that we would get a research outcome and that might involve something as simple as a preliminary presentation to the staff of their multimedia product.

And as we’re doing more and more multimedia, we’re getting more and more examples and it’s becoming very hard now for even our new academic staff to not realise the capabilities and it’s up to them now to choose and make a judgement call as to if they can make good use of it.

If you look at the ‘Student Evaluation of Teaching’ form which the university uses across all its faculties, you’ll see a number of the questions are devoted to getting the

student feedback on their use of the different technologies and how they rate the different technologies.

In addition, there is also a “technology usage evaluation”:

From the technology side, the university has been very stringent with only releasing central funds for multimedia if there's a very clear-cut design process and evaluation process. Evaluation takes [place] throughout the design and implementation stages and then following the implementation there will be an evaluation process. We've been able to not only develop our own but to borrow other faculties' implementation strategies and we often go into a multimedia project with certain outcomes in mind, not just learning outcomes but also research outcomes, producing a research paper that will explain the strategies, the development strategies, the learning outcomes and what has been achieved.

So we try to take a fairly holistic approach, not just to the design but to evaluation as we're designing it, and as we're implementing it, getting peer review, getting external review for some of our projects such as [the one in *Dispute Resolution and Legal Ethics*], getting the students' feedback afterwards. ... [In that subject] we're about to do a historical student review [of] a multimedia project which has been going for five years. We're going to go to the alumni. We've done evaluations on the current year. Now we have to go and look at students who have graduated for the last four years and get them to reflect upon what they thought of the introduction of the multimedia project [in the subject]. Because it's been in use for so long, we can now get the graduates' perspective. Whereas in the other multimedia ones it will just be the current students. So that will be very interesting.

Question: What sort of student feedback are you getting?

Mixed. Very rarely is it bad but often it's average. Sometimes it's really good. A good example is ... our oldest multimedia project [in *Dispute Resolution and Legal Ethics*]. It transformed a lot of the teaching and learning in that subject. Some of the negative feedback that we got was because we required the students to work in teams and this is a final year subject and we thought this was a good thing because in the workforce they will be working in teams. Students hate working in teams. They loathed and detested it. So we got a lot of criticism about the [subject's] multimedia project, not because of the multimedia, the technology or because it was difficult to use. It was because they had to work in teams. That was a key area.

We always get some negative feedback about technical problems, especially in the first year a tool or learning product is used. Normally that tapers off quite rapidly in subsequent years.

Generally the students find it useful. When it's *replacing* [face-to-face teaching and] learning or replacing assessment that's when we take particular notice of the feedback. If it's just *supplementing* the learning process, if it's providing a different avenue to gaining knowledge, or to reinforce something that's been presented or perhaps slightly extend something, that's perhaps not as critical as something which is the only form of assessment, or it's the only way to learn about a particular portion of the subject, then that's fine.

And in general we've been very successful with those areas. *Evidence* was a very straight-forward multimedia project but it was 50 percent of the assessment last year and 100 percent of the assessment this year and the feedback was generally very

good. In some ways students were just submitting a standard essay, doing it online in response to multimedia materials. It's very much a multimedia project but in some ways the assessment, although it was 100 percent, or will be 100 percent, was still fairly standard.

The school reports that there are no issues of equity of access for students, largely because of the extensiveness of the school's facilities:

Clearly if it's multimedia it's not available in any other format, there are equity issues. We have 120 computers available for students, our lecture theatres are now like computer labs, so you can bring laptops in and sit down and use the theatres as a computer laboratory.

We don't get equity concerns now from students, not with access to the computers. Perhaps five or six years ago, or even four years ago, yes we did. Not many but there were some. But in terms of direct access to computers, that's not a big issue. Because we'll schedule classes in the computer labs to ensure they have access at particular times and then they're open till 11 o'clock at night anyway in the law school and the [university's] 24-hour [central campus laboratories] on campus are open all the time, so that's not a big issue. All of our multimedia products can be accessed off campus as well.

I guess some of the issues for us in the design process to ensure that it works on Macs and PCs, or if it might only work on one platform (which normally it doesn't) but if it does only work on one platform to ensure that there is fair access for Mac users or IBM users or Unix users or whatever the case may be.

Most of our products are web-based but not CD-ROM based, which helps. Perhaps our biggest concern, on the equity side, is disabled access. And that is an ongoing issue for us, particularly with web-based [programs] because the web imposes certain limitations. If you want to get rich interactivity on the web, you often will encounter disability access issues. We're certainly very conscious of those and we do everything we can to get rid of those during the design phase. If we're left with any [further issues] we try to address it with providing additional support to those students where we might actually provide a tutor or equivalent to sit down with those people to go through the exercises, with presenting the content. But that's probably our biggest ongoing concern. Even people with different versions of web browsers and they might find it difficult to access the material. So that's a particular issue with the multimedia.

This law school reported that its students appear to have a high level of skill with multi-media tasks:

In the undergraduate program there is no longer any resistance by students to technology. They all know how to use computers. As little as three years ago there were still significant numbers of students who weren't comfortable using a computer but it's almost zero now for those in the undergraduate program. In the JD [Juris Doctor] program, all of the students are computer literate. If they're not on Day 1, they are by the end of the first week. So computer literacy in the JD program is very high.

The graduate program is probably where some students come in and still have that reluctance to use technology. They still resent the fact that they have to go to the Internet for cases and legislation, that it's not in a book somewhere. And I think

that's the nature of the fact that there's more mature-age students. They did their initial training in a different age, if you can call five-ten years ago an 'age'. But their backgrounds are different so in that sense I suppose there's still a degree of reluctance to use computers in the graduate program.

The final comments about the use of IT in law teaching comes from one interviewee who advocates that IT be viewed within the context of what law teachers are trying to achieve in legal education, especially those teachers in law schools that do not have the resources to invest extensively in information technology:

I think a lot of people have this 'toys-for-boys' kind of conception of information technology and because one university has got web CT, everyone wants to have web CT. I don't think many people actually think laterally about information technology and what we've been trying to do is convince people that they can get [IT resources that are] quite cheap, [and] actually quite useful, and that allows students to interact with staff and other students, and to provide basic information on a platform.

Because it seems to me many universities invest large amounts of money in web CT and things like that and then they use them as static platforms just to put lectures up. We don't actually need an expensive and elaborate and complex piece of software to do that. We've got a portal that basically is just a nice face to the world in terms of allowing us to do uploads and I found the largest impediment, is where you're having a series of intermediaries between the lecturer – the person responsible for the subject – and the students, in terms of technology. In other words, if people can actually upload material themselves in a simple way that doesn't involve a lot of technical knowledge, you actually achieve the result, whereas if you have elaborate technology you [will have a low uptake of technology] because it's hard to learn.

So I think people have to have a perspective on technology. It's just like anything else in teaching, something that might facilitate learning. It's not the be all and end all of it. I'm quite proficient at Powerpoint but I think people just kind of use it as a prop in a way that's not always particularly constructive.

You hope people don't naively expect that by putting things on web CT or by using multicasting that you're somehow going to achieve better pedagogy as well as saving money and it's not going to work. You have to still have people contact.

The other thing we've been looking at is using wireless LAN [Local Area Network], rather than invest in new lecture theatres have all got plugs and network connections. I'm more interested in using something that allows flexible utilisation of space, which is a wireless LAN card that we'll lend to the students. They can immediately be on the net [with any laptop] and using material without having to plug into things and we can use then any space as a computer lab. This is one of the problems with universities in the way that they been designed. Physical design, in terms of teaching, doesn't allow an enormous amount of flexibility because you might want to sometimes be teaching in a computer lab, sometimes teaching in a fixed lecture environment, sometimes you might want a data projector and all those things might not come together and I'm trying to look at how you can create flexible work spaces for students, to allow mixed delivery, get them to work in their own study circles in a way, using that flexibility to their advantage.

We've gone, via the library, down the route of significant amounts of electronic delivery, which largely seems to work. Unfortunately some parts of it don't and we're negotiating that at the moment. We use the library a lot. But what they usually do, and they haven't got the resources to, when they scan documents, to scan them into a document format, like a Word formatted text document. So they actually take PDF photos. They're graphic files that are quite large. So if you're actually delivering on-line to student's houses, and you've got it feeding into one machine, it consequently crashes. So we try to negotiate some of the utilisation of technology but then perhaps it has been not piloted properly or... so those things are irritating.

It's also finding the right resources at various stages. We're also trying, as many other universities have, to work out the best way to put lectures on-line so that the students can access their own lecture material, not just the written lecture but maybe the oral presentation. But you've got to also, you know, have privacy concerns with staff to negotiate, privacy concerns of staff and so on and so forth. So those things take time and what technology you use is also important because sometimes it doesn't work.

“Teaching and learning principles first, technology second”

As mentioned already a few times in this report, the 10 years (at least) has seen a shift in how law teachers view teaching – an increasing number believe teaching is about facilitating active student learning. As such, legal education should engage students in a critical dialogue with each other and with legal materials. At the same time there has been a revolution in information technology which, through “flexible delivery”, could have the potential to undermine these developments in teaching and learning in law by reducing the place of face-to-face classroom teaching in law programs. Many teachers have argued that the shift to “flexible delivery” at some universities is being driven by budgetary pressures to reduce the costs of running teaching programs and by marketing imperatives to capture a greater share of the educational market. This could be achieved by attracting students to educational programs that don't require student attendance on campus (McNamara, 2000a), or so it is believed the thinking goes. If this is the thinking at some universities, then the challenge for law teachers is to ensure that teaching and learning principles remain paramount, rather than a passing concern, in the development of information technology-based teaching strategies. In other words, that teaching strategies that rely on IT be based on teaching and learning principles, and are carefully evaluated, and regularly, to ensure that student learning is enhanced by the use of IT.

During law school visits for this project, many staff nominated as examples of good teaching the practices of some of their colleagues in using the internet in their teaching. In most law schools there are one or two teachers who are developing exiting internet-based teaching activities.

Case Study 16.3 Use of the Internet in Teaching

One good example is to be found in Lawrence McNamara's report of a project in which he developed a web-based tool to replace face-to-face lectures in a large first year subject (2000a) and (2000b). As he notes (2000a: 152),

the aim is to explore the educational literature and apply it to the demands of flexible delivery so that even in the absence great technical expertise or an abundance of resources, web-based delivery might still be educationally valuable and administratively manageable. .. [T] critical and reflexive approach to law teaching which dominates the best of contemporary practices in the classroom should similarly inspire our excursions into cyberspace.

McNamara's project was university funded, and was driven by the need to address the administrative pressures of timetabling and large classes in the first year "introduction to law" subject, and complying with his university's objectives of flexibility in subject delivery, but at the same time it raised 'the possibility of significant developmental benefits, including the introduction of flexible learning in a foundation subject at the beginning of a student's university education' (McNamara, 2000a: 153). McNamara then surveys the teaching and learning principles, and observes that there are many helpful and theoretically sound guides to developing print and web-based materials (Johnstone, 1996; Johnstone and Joughin, 1997; Race, 1994; Rowntree, 1994; and Laurillard and Margetson, 1997). Teaching *with* the internet, rather than *through* the internet (which would involve using technology as the sole vehicle for learning), the use of the web in this first year subject was intended to replace the lectures in the subject. Students continued to participate in face-to-face tutorials in the subject. McNamara's use of the web to replace lectures entailed:

- a simple, informative web page, which was easy for students to download;
- web-based lectures posted each Monday evening;
- these lectures were linked to material that students would discuss in tutorials in the following week.

McNamara did not simply transpose 'face-to-face' lecture notes onto the web page. Rather, the role of the web lecture was recast.

The prospect of web-based lectures raised some difficult issues. How could a meaningful explanation of the readings be provided, especially for more difficult pieces, without that being merely a simplified and less voluminous precis of the materials? If the focus was to remain on the course readings as the object of study, how could the pitfalls of an approach centring around reading lecture notes be avoided? (McNamara, 2000a: 165).

Rather than provide students with written explanations of the readings, McNamara developed web-based lectures that (McNamara, 2000a: 167-168)

"were a guide to the readings (just as face-to-face lectures were also a guide to the readings) with a great deal of specificity, premised upon student centred learning as the most effective way to achieve the subject and faculty objectives. The lectures sought to take students through the readings very closely, posing questions and directing them to those particular passages in the readings which best explained the

article or extract at hand and drew their attention to the issues which were the focus of the questions.

Web-based lectures in this way still serve the explanatory purpose of lectures. Arguably, they enhance some aspects of the learning process because they allow students to work through the material at their own pace. They enable the lecturer to direct students comprehensively through the argument, focusing on the crucial issues, showing students how to read a complicated piece of work. Such instruction cannot be done in a face-to-face lecture.”

[One extract] of the lectures follow[s].

INTERNATIONAL LAW & THE ACQUISITION OF SOVEREIGNTY

What is sovereignty? If you are not sure, get out a dictionary and look it up before you move on. The British acquired sovereignty over Australia under the rules of international law. International law is a body of law established by custom and by agreement and which regulates the relationships between nations. Among the relevant aspects of such law in the 18th century were rules about how countries(of Europe) could acquire new lands anywhere in the world. There were three ways identified:

1. Cession (which involved treaties)
2. Conquest
3. Occupation of land that was terra nullius

If Britain, for instance, acquired land by any of these methods, international law recognised that such an acquisition would be valid. The correctness of such an acquisition could not have been adjudicated in British courts; it was the prerogative of the Crown. While the acquisition itself could not be adjudicated in the British courts (the municipal courts as they were referred to in the judgment), what was an issue for the courts was the system of law to be applied in the new colony. That is, the acquisition of sovereignty is not justiciable, but the consequences of such an acquisition are justiciable. For instance, the question might be whether British law applies immediately? Or does the existing law of the land continue? Or is it some other arrangement that occurs?

Now, under which of these three modes of acquisition was sovereignty acquired over Australia?

The acquisition of sovereignty

What do the three ideas mean? First, cession refers to the making of treaties. Conquest – well, that almost speaks for itself. But the “occupation of land that was terra nullius” – what does that mean?

In short, it means that there was nobody on the land at all. This method of acquisition referred to “desert uninhabited countries” which were then occupied and became the property of Britain. This doctrine – the doctrine of terra nullius – was, however, expanded beyond such empty lands to include some inhabited lands.

- What were the characteristics, as the British perceived them, of such lands – “countries already peopled” – to which the expanded doctrine of terra nullius applied?
- Why would treaty or conquest not be applicable, in British eyes, to the “occupation” of such lands?
- Does this mean there are four or three categories under which land might have been acquired by a foreign power?

To prevent students from dealing superficially with questions the web-lecture aimed to 'expressly presenting complex questions which were then the focus of seminars' (McNamara, 2000a, 169). For example, the web lecture questions that were to be discussed in seminars, asked students to compare and contrast materials, arguments or themes, from the different readings, and reminded students of the subject's analytical objectives, and also of the fact that the questions asked in the final examination would build upon the analysis of the materials in seminars.

McNamara (2000, 170-171) posits that,

"the web-based form of this teaching strategy may hold great possibilities because it enables students to travel at their own pace, and for each student to engage in the dialogue individually. The dialogue in the web-based format is more significant than in, for instance, a pre-written study guide because it takes account of feedback, understandings (or misunderstandings), or developments which occur from week to week. The conversation which constitutes teaching occurs not just within the web-lecture, but within the subject as a whole."

The strategy was then evaluated (McNamara, 2000b) using a) student evaluation surveys in the last class in the subject, b) two student focus groups, and c) the lecturer's reflective journal. The evaluation data was then analysed in the light of relevant educational literature. McNamara (2000: 199-201) concluded that such an evaluation suggested two revisions to the way the subject was taught. First, given the self-learning objective of the subject, this self-learning emphasis needed to be made more explicit to students, and students needed to be made more aware of the desired approach to learning, and helped to develop the appropriate skills. Second,

"the entire course structure needs to change, not just the web component. The question then becomes not how to replace face-to-face lectures with web-lectures, but what one does with all of the teaching and learning processes in the subject. ... The re-worked model turns on a framework for student inquiry, which pulls student-centred learning from the periphery to the centre of course design, structure and content."

McNamara concluded that (McNamara, 2000b: 176-177):

"Where web-lectures are employed, the key implication for course design and structure is the need to reconceptualise (rather than replace) the lecture and establish the web as a teaching and learning resource within a broader student-centred framework for inquiry. There is, however, a more significant and more broadly conceived argument ...: in the push for increased flexible delivery, the core concern should not be technology but the objectives and practices of teaching. The point ... is to make the technology work for teaching, not the other way round."

The 'core conclusion' was that (McNamara, 2000b: 197)

"It is not the medium that matters, but how one teaches within both the opportunities for adventurous teaching that the web provides and the constraints of the technology which removes us from the classroom."

For further discussion of this method, see also McNamara (2001).

Maharg and Paliwala (2002) also outline ways in which electronic resources might promote independent student learning. For some evidence that "electronic

delivery of law subjects can improve the assessment performance of “weaker law students”, particularly when used when structured group work, see Cartwright and Migdal (2001), Jones and Randall (2000), Chetwin and Edgar (1999), Paliwala (2000) and Zanglein and Stalcup (1999). For information about IOLIS - the interactive CD-ROM for law students - produced by the Law Courseware Consortium, based at the University of Warwick, see Hall (2002) and www.law.warwick.ac.uk/lcc/iolis.

Summary

Reflecting the new approaches to law teaching discussed in chapter 11, and in particular a conception of teaching that envisages law teachers as facilitators of student learning rather than as transmitters of legal knowledge, law teachers in most law schools are rethinking teaching methods, and are choosing discussion-based teaching methods, small group activities, and occasionally teacherless groups, to supplement, and even replace, lecturing. That is not to say that the lecture method is not extensively used in law schools, especially for larger class teaching. Rather teachers in smaller classes are moving to discussion- and activity-based teaching, with some able to use such approaches in larger classes. This chapter provided some examples of the many inventive (and theoretically sound) teaching methods used inside (and outside) Australian classrooms.

Complementing these changes in classroom teaching methods, and further motivated in some schools to meet the demands of their external study program, has been a rethinking of the extent and delivery of subject guides and materials for students. Gone are the days of mere case lists for each subject. The content of subject guides in many law schools follows a template, which ensures that students receive all essential subject information, including learning objectives, details of assessment tasks, and the scheduling of topics. The style of teaching materials is developing, and many teachers now include, in addition to key cases, introductory text, topic summaries, questions to guide reading and class discussion, and other activities (including hypothetical problems, simulations, real-life examples) to provide a context for student learning. While some teachers are using the problem method and genuine Problem-based Learning methods, this is an area in which law teaching is lagging behind disciplines such as medicine.

Subject texts are also changing – for better, and for worse. Some are clearly based on key principles of teaching and learning, and begin topics with examples or case studies which are meaningful and relevant to students; link the subject matter to other areas of law, so that students can build on their previous learning; enable students to further develop legal skills (statutory interpretation, reading cases, drafting, and so on); include activities (questions, problems, case studies and so on) which enable student to engage with material, and to construct their own understandings of the subject matter, and so on. But at the same time, law publishers are producing more and more “nutshells” and “tutorials”, which do not encourage a deep and contextualised engagement with learning about law.

Most law schools now require teachers to use the Internet to support teaching, so, at the very least, at most law schools, subject guides and other materials are placed on law school websites. Some teachers are embracing information

technology, and using Powerpoint in classroom teaching, establishing chat-rooms for students, providing students with opportunities for on-line learning, and using other Internet based teaching methods. Most technology-active law schools have expressed a preference for using on-line teaching as a complement to, rather than a substitute for, face-to-face teaching. Despite all of these significant changes, reports of the uses of IT in teaching that have been carefully evaluated and found to be effective are still rare in law. The chapter, however, includes examples of carefully evaluated use of information technology in teaching.

Figures 10.5 and 10.7 in Chapter 10 show data from a survey of penultimate year law students that was conducted as part of this project, specifically, the proportion of students who thought certain “key” teacher-led formal and informal teaching and learning methods were used regularly. Figures 10.6 and 10.8 show institutional variations in the frequency of use of some of these teaching and learning methods. Figures 10.1 – 10.4 include overall and institutional evaluations by students of teaching and teachers, also taken from the same survey. The last section of Chapter 10 – which describes data from student interviews and focus groups – includes some students’ views of what they considered to be “new teaching methods”, including group work.

CHAPTER SEVENTEEN

THE MANAGEMENT OF TEACHING

In chapter 11 this report outlined the characteristics of effective teaching, and suggested that Australian law teachers were beginning to accept that teaching should be about the facilitation of student learning, rather than the transmission of information to students. In chapter 12, we mentioned that since the late 1980s, there had been major changes in Australian law teaching to accommodate this shift in thinking about the purpose of teaching – the most significant developments being a move in many schools to smaller group teaching, a trend to student-focused teaching, improved subject design, better support for teaching, and widespread evaluation of teaching.

This chapter is concerned with these latter two issues. It describes the approaches law schools have taken to manage and support teaching. It begins with a brief outline of how law schools allocate teaching responsibilities. It then describes the ways in which teaching is evaluated, assessed and appraised. After describing the approaches some law schools have taken to support teachers and teaching, it suggests a strategy for supporting and promoting effective teaching that might be adopted or adapted by law schools.

Allocation of teaching responsibilities

In most law faculties, the allocation of teaching responsibilities is delegated by the Dean to the Head of School or to a senior staff member, and in most law schools, the responsibility is delegated by the Head of School to a staff member who has overall responsibilities for teaching and learning. Practices vary considerably between law schools, although there is a trend towards law schools developing formulae to govern teaching allocations. But even within these formulae, there is considerable variation – the formulae themselves tend to vary according to whether they take into account matters such as preparation time for new subjects, whether the teacher is convening the subject or not, and labour intensive assessment.

Examples of how teaching is allocated in law schools are as follows:

- Teaching responsibilities are allocated equally to staff, irrespective of their seniority to ensure that the teaching load is not overburdening junior staff. Every member of staff needs to achieve certain teaching credits by automatic debit each semester – measured by the number of classes taken and the types of students in the class. “It constrains the allocation of teachers to classes, but gives a strong sense of buy in and fairness.”
- The Head of School allocates teaching responsibilities “in splendid isolation”, and each member of staff must accrue “a rigid number of points each year” according to a chart developed by the school. “It seems to me to be the easiest way through, and it limits the arguments and objectives that people might make.”

- The Deputy Head of Schools allocates teaching responsibilities, after consultation with staff. Teaching allocations are done “on a pragmatic, *ad hoc* basis within the parameters of the policy on teaching allocations, which was revised in 2001, and is publicly available on university server”.
- Staff have to gather a certain number of points to meet their load. The teaching workload model is under review at university level, because each faculty and discipline has a different model, and there is no consistency. Currently, staff tend to teach in their areas of expertise and research interest.
- Each staff member teaches eight hours a week each semester. This is generally made up of five hours in a core subject – usually a two hour lecture and three hours of tutorials. The remainder of core subject is taught by tutors, drawn from a good group of contract tutors, “who do not do any co-ordination”. The other three hours are taken up with electives – undergraduate or postgraduate. Each staff member teaches two of three semesters and the remainder of the semester is for research, curriculum development and designing new subjects.
- The Dean allocates teaching responsibilities, by drafting two documents – one showing who teaches each offered subject, and the other outlining the teaching responsibilities of each staff member. These are distributed to each staff member, “so that it is transparent and equitable”.
- The “Expectations of Teaching” [Policy] concentrates on responsibilities in the three main areas – teaching, research and service – and contains guidelines as to how teaching (in terms of both hours and FTSUs) is balanced against the other two areas.

[The school’s] also has got an expectation as to how many articles, refereed articles, you should publish and what percentage of time you need to spend on your administration.

Everybody knows exactly what is expected. And I send to the whole school, every year, the number of teaching hours for each staff member. I also send information on how many students each teacher has and wherever they are under or over the average, we make adjustments.

I personally think that this is quite a good way of managing the staff and whereas it was originally received with a little bit of scepticism, I think there’s a lot of satisfaction and also general agreement that our system of work allocation is quite fair in the school.

Part of [the Performance Planning and Review Process] with each individual staff member every year is to see whether they meet the standards in that document and if they don’t, we make sure that there are measures in place to make them do it the next year. But of course it’s very difficult at the end of the day. What can you do if a staff member does not perform and if the staff member is not interested in promotion, for instance?

- The Head of School allocates teaching responsibilities using a formula:

This is a formula that takes account of the number of lectures and tutorials staff are required to give, whether they're giving lectures or tutorials for the first time – they get an extra loading if they haven't taught the unit before – so for original lectures they get a bonus or a loading. And the formula also takes account of repeat lectures, if you're teaching torts and you've got two groups and you're giving lectures to both groups on a particular topic, you don't get as many points for the second group of lectures. They're repeat lectures. And it also takes account of the administrative responsibilities within the unit and the number of students enrolled in the unit. So all those things: face-to-face teaching; whether it's new lectures and tutorials or past; administrative responsibility; and the number of students enrolled.

- The Head of School delegates the timetabling and teaching allocation tasks to an experienced staff, who then feeds it back to him.

I overlook them to make sure that equity of a sort exists and then send it around to the staff for comment. [We try to ensure that] no-one is teaching more than two subjects at any particular point of time, that there's equity in the distribution as well, so on and so forth. It's also overlooked at the faculty level, by a joint management committee for the whole of the faculty, not just for the school, to ensure equity across the schools and keeping in place with the enterprise bargaining rules.

Obviously I try and use some sense in terms of people's expertise, ability to work with other people, in terms of fairness and equity, in terms of distribution of load. ... It's a fairly straight structure so it doesn't matter what you are, you tend to do the same load. You might be able to claim credits for a larger number of things that you're doing, like running centres or institutes or whatever else, as other responsibilities.

- A formula is used – that has been borrowed from two other law schools - that factors in class size, and whether the teacher has taught the subject before. The application of the teaching formula for each person is published so that all staff can see how it operates.
- A sophisticated formula was recently replaced by a simple policy of eight hours face-to-face teaching a week as the benchmark – “whether it is a repeat hour or a seminar or a lecture, we rate it the same. We used to have a really elaborate weighting system, which was totally unsatisfactory and as far as I could see all it did was engender anxiety and negative feelings in people.” The Dean discusses teaching responsibilities with each member of staff and publishes the allocations for the purposes of transparency.
- Some law schools have no fixed formula. At one law school, part of the annual staff appraisal involves the staff member providing a statement of their teaching preferences for the following year. These preferences are analysed “to develop a preliminary allocation of responsibilities” that is

circulated to all staff in August. Staff can then discuss this allocation with the Deputy Dean.

- Similarly, preliminary discussions at the end of each year with each member of staff to find out their teaching plans for the following year. The Dean then circulates a draft of teaching allocations, which is discussed by all staff, and then revises the draft in light of this discussion. “This law school has been very resistant to formulas for teaching workload.”
- A normal teaching load would entail seven to eight hours of classroom contact each week.

I think it’s more onerous here than elsewhere, simply because you have a smaller number of staff and the staff have to spread themselves more thinly. Your options in a small law school aren’t as great as they are elsewhere.

But the process here is an informal one of consultation with each member of staff. But at the planning stage for the next semester, we sit down with the staff. We have a performance management process here. So it tends to be a more informal process of sitting down with staff and asking them what they want to do and then putting it together and then the next stage is a compromise stage because people can’t always do what they want to do because we have a small number of staff.

Evaluating the impact of teaching

In chapter 11, it was suggested that law schools should develop a “scholarship of teaching”, which involves an informed, reflective and evidence-based approach to improving student learning. As has already been noted in other parts of this report, there are good examples of approaches to teaching that have been carefully evaluated (see Saenger et al, 1998; and McNamara, 2000b and 2001). It, however, appears that such approaches have not yet taken hold in many Australian law schools – many law schools were not able to point to ways in which they evaluated the effectiveness, from the point of view of student learning, of their approaches to subject design. As one Dean observed, “we have some indicators of quality, but none go directly to the question of the learning experience of students, and of assessing it. We have no systematic process whereby we do evaluate that, except as aggregation of individual experience”. This school, however, did take measures to evaluate individual subjects:

A good example is what we did for a new elective ... [It] was quite heavily web-dependent, and most was done on line, and only a fraction of the teaching involved face-to-face contact. How did we evaluate that? We gave students the standard teaching evaluation questionnaire, and talked about it with teacher who ran it – she shared her experiences and told us what she thought worked and what did not.

One Dean, during a discussion about the impact of change in the school to smaller group teaching, commented that “there’s so little literature on this, and we don’t have a system of peer review, or any system of moderation”.

Another remarked that the evaluation of the impact of teaching on student learning was

a matter really for the teachers in each subject. We have student evaluation of teaching on a semester basis and the teachers themselves in all of the compulsory subjects meet in groups and they're the ones who actually do the assessment of the teachers' work and decide whether or not a particular form of assessment or task had met the objectives that they had been designed for.

One interviewee suggested that her law school needed to appoint an "evaluations officer" to evaluate the effectiveness of teaching and learning initiatives in the school. But in the interim, the impact of teaching was evaluated by student evaluations of subjects and of teachers. "Some people have been feeding back to students on how their feedback has impacted on subject delivery. Now we are trying to regularise that, to make sure we all take a uniform approach."

This school also uses focus groups with first year students to find out about resources, how students use online material and how their skills development is progressing. "We're just about to embark on focus groups with second year students now to see how effective that program is. What did they think we were doing?" These types of focus groups were difficult to run, and the school found that it needed someone with special skills in evaluation to monitor the quality of teaching programs. The school is also trying to monitor what teachers were doing with their study guides and their assessment regimes. "We need to quality assure things. If we say we're doing 'this', are we doing 'this' and what's the checking mechanism?" Quality assurance is part of the responsibilities of the Assistant-Dean (Teaching) and the Teaching and Learning Committee at this law school.

Evaluation, Assessment and Appraisal of Teaching

Traditionally (see Ramsden and Dodds, 1989) educators have made the following distinctions in relation to monitoring their teaching:

- the evaluation of teaching (where teachers seek evidence of the effectiveness of their teaching from a variety of sources for diagnostic purposes, so that they can identify their strengths and weaknesses, and remedy their weaknesses);
- the appraisal of teaching (where management is involved in "the positive and constructive identification of a person's needs in the area of improving teaching, the provision of feedback on teaching performance, and assistance with improvement so that effectiveness is increased' (Ramsden, 1992: 224); and
- the assessment of teaching, where management makes judgments about teaching effectiveness for the purposes of recruitment, confirmation of appointment, promotion and/or satisfactory performance.

Not many Deans and Heads of School reported that their faculty/school distinguished clearly between these different purposes and approaches to the management of teaching.

It is now common for law students to be asked to complete questionnaires about their experience of a subject and the way it is taught. But the purpose of these surveys, and the processes adopted, vary considerably between law schools. Such surveys are also affected by provisions in enterprise agreements, which, in many cases, prevents management from viewing the results of student surveys.

At some law schools the evaluation is voluntary, others still distinguish between subject evaluation and evaluation of the teachers in the subject. At the latter set of schools, poor responses from students could lead to management action.

The following are examples of how law schools evaluate their teaching and what they then do with these evaluations:

- A range of evaluation processes are adopted, including recommendations by the university to evaluate subjects every third year through the Student Evaluation of Teaching and Learning (SETL). “We have in fact done it more often than that, and if there are particular reasons for evaluating a subject, the Head of School will suggest to the staff member concerned that that subject be evaluated.” SETLs can be utilised to either to evaluate individual teacher performance, or to evaluate the subject as a whole. If problems are uncovered, the teacher is made accountable to the school’s Teaching and Learning Committee and to the university’s committee. “Further, the Head of School will talk to the lecturer concerned and remedy whatever the problem is.”

In addition, each subject coordinator must give a report about the subject, and about how junior staff are teaching in the subject.

- Individuals evaluate their teaching practices through the various teaching evaluation instruments.

The results of these surveys are not generally available. They are only available to the teacher concerned, which means that if you are trying to build up some kind of evaluation at a departmental level, you are relying on two things. The first is anecdote, which is not satisfactory. It doesn’t provide me with any quality assurance as to how things are tracking. It’s a gap that we’ve identified and we’re working on.

The second is through performance management reviews which we conduct to identify, for each teacher, goals with respect of performance in teaching. Staff prepare a teaching portfolio [for confirmation and promotion, which includes details of teaching evaluation surveys]. But that’s still in the area of staff development as opposed to program development.

- There is a widespread practice that every teacher should have every subject evaluated using a university-wide student evaluation instrument. This is not compulsory, but if a staff member wants to be promoted, get an increment, or have their appointment confirmed, they will need to demonstrate a good and consistent record in effective teaching. This includes student opinion. All staff are subject to an academic review every

four years if they have not applied for a promotion or increment in the intervening period, and in this review, they are required to demonstrate that they have conducted a proper assessment of their teaching, and that their teaching is at least satisfactory. The university has yet to decide whether it should make this mandatory, although informally it has expressed a preference that it be a compulsory process.

The school has procedures in place to make it easy for teachers to implement student surveys. This includes putting the forms in staff pigeonholes, a process for smoothing the administration of the surveys, which adhere to the principles of student confidentiality (teachers do not look at the results before assessment tasks are completed). The survey used to be “qualitative in nature”, but the law school has since followed the university recommended “quantitative and qualitative” model. The school buys the forms from the central testing body (which come at a price of 8c each, due to the cost of processing the data) and students fill in the multiple choice survey with pencil. A “qualitative feedback component” is also included.

This process has been a voluntary one, which has ensured that staff “buy in” to the idea of evaluations “without alienating students too much. A problem with this approach is that I am not sure it has picked up those people who are not going for promotion – they are usually the ones [whose teaching] is most unsatisfactory.” The Head of School thought that the weakness of making the evaluations voluntary is that it prevents [the Head of School] from routinely scrutinising teaching evaluations – “voluntary means the results are kept confident”.

- “All staff are encouraged to completed evaluations. I won’t say its mandatory – they are all encouraged to do regular subject evaluations.” This requires obtaining feedback from students about teaching, and as in other law schools, the results of the survey go only to the teacher.

As the Head of School, I refuse to look at them. However, having said that, lots of people come and talk to me about their teaching evaluations so in my role as Head of School, staff talk to me about what was said, but it’s their choice to do that.

The university has just embarked on a process that other universities have had for some time I think – annual performance reviews – and undoubtedly people will be presenting me with evaluations there, I suspect, although I couldn’t vouch for that because we’ve only just started so I don’t know how that will work out.

At present teaching is only appraised on appointment and promotion. Student evaluation data constitutes “about 90 per cent” of the evidence teachers use to support promotion applications.

- Staff are encouraged to survey students using questionnaires prepared by the university’s Teaching and Learning Centre. Staff are encouraged to use the survey results to support promotion applications. In addition,

during annual performance reviews, staff are asked to discuss teaching issues.

- A subject co-ordinator could ask the university's Teaching and Learning Centre to administer a survey to students to seek their perceptions about teaching and about the subject.

It is a matter of choice for the co-ordinator, but staff applying for promotion within the university, and who did not supply information of that kind, would be greatly disadvantaged in their application.

- The university runs two types of surveys.

One is a survey of a subject, its content and structure and materials and things like that, and the other is a survey of the teaching in that subject. And the school has always encouraged staff to make use of both of those surveys to get feedback from the student's perspective. The subject surveys have been compulsory until this year and then as a result of financial constraints, this year there's a policy of alternating so that a subject will be surveyed every second year rather than every year, or every offering, and the teaching surveys have always been voluntary.

- All members of staff have annual staff performance reviews, in which staff are expected to produce evidence of their performance across the board, including in teaching. "The only evidence we have to go on is teaching evaluations. It is possible in that process to pick up signs of particularly good or bad teaching." In 2002, the school considered asking staff to also produce evidence that they are engaging in a process of reflection and considering improvement of their teaching and their subjects. Staff at the school also reported that the university's higher education support unit had helped staff develop their teaching:

The [support unit] developed a software program which enables you to tailor a course evaluation questionnaire to your particular interests, all sort of different questions, and I've always used that, and no one evaluation is the same. [In each term] I'm try to evaluate different things, in terms of new initiatives and how they've gone and so on. You also do a teaching evaluation just for yourself, it seems to me. I usually do the ones that don't have standard quantitative responses because I'm not really interested in the ones that apply the standard. I'm more interested in the qualitative responses... I think it's really, really important to get away from the standard model of evaluation, like some produced by the Teaching and Learning Support Unit. There are about 10 questions. I also find that valuable, particularly if you've been trying something new in the course. You really want to find out what students have to say about that. You ask them: "Did this work for you?" and "What would make it better?"

There's also always been, in addition to the student evaluations, a strong encouragement to utilise peer review, both of teaching materials and of presentation styles. And also self-reflective evaluation which here takes the form of a teaching portfolio. It is a document sent from the university, in which one is supposed to reflect at more or less greater

length, upon one's philosophy of teaching and how that manifested itself in terms of course design, in terms of the way objectives are structured, in terms of the choice of presentation techniques etc.

The content is fairly flexible and it shouldn't be too long, but it does mean you have to produce it when you're being reviewed, when your tenure is being reviewed and when you're being promoted, or every two years otherwise. I reckon that being required to think about those things is quite valuable, to articulate it. And if the university sees it as about recognising good teachers, then I think it's then a matter for the university to take those portfolios seriously.

And it's not supposed to remain static so you keep your portfolios and develop them.

- There are three levels of student surveys. The university requires all subjects to be evaluated by student survey every second year, by a centrally administered student questionnaire. The data is processed centrally by the university, and then sent to each school. This process provides teachers with evidence to support applications for promotion. "This is one of the most transparent methods for providing information about teaching." Also, within the school there is an annual survey sent to graduates upon the completion of their degree, to evaluate the program that the graduate has just completed. This data is used by the school to improve the degree programs. Thirdly, teachers may develop their own evaluation instruments to seek feedback from students at the end of the subject, with a view to using the feedback for improvement. This is voluntary, and the teacher can decide whether to use the feedback to improve the subject.
- The Dean scrutinises each subject evaluation and each teacher evaluation, by students. The subject evaluations are not confidential, but there is no procedure for distributing the results beyond the Dean's Office. The university, additionally, requires the school's Teaching and Learning committee to "conduct whole-sale reviews of subjects". The committee reviewed first year subjects in 2001. The review includes, amongst other things, a student evaluation and a survey of first year teachers (covering meetings between staff, changes to the subject in response to student evaluation data, the problems that have arisen in the subject, and so on). The results are written into a report.

The university also has a mandatory staff performance review, which is both summative and formative. "The tenure and promotion process tends to track quite closely the documentation people prepare for their staff performance, so that part of what they are doing in performance reviews is building up a profile which they can use for tenure and promotion applications." In the review process, the supervisor and staff member discuss the student evaluation of teaching data, the teacher's teaching philosophy, how they might develop and improved it, and what sorts of things they could do to obtain a different perspective.

The university has a good staff development unit that puts on seminars and workshops throughout the year. And the supervisor may recommend staff attend these. The supervisor and staff member agree on what should be done and in the following year, we check what has been done.

The university has been quite good [in relation to the student evaluation of teaching scores]. Even low scores are by no means fatal. The university is looking for your reaction to those scores. They're looking for what you get from them, what you have done to try to modify what you try to do to get them up. They take into account whether you are dealing with large classes or small classes, compulsory classes, elective classes etc. ... And people get promoted even though their scores are not superlative. ... They show that they have taken [student data] seriously, they respond to them and they try to do things differently.

- It is compulsory for teaching to be evaluated by students and for teachers to then share the results of the survey with the Head of School; however, staff may choose which of their classes will be evaluated.
- Some law schools poor results by student evaluation can lead to management action. The policy at one law school is as follows:

To assist in the enhancement and monitoring of teaching quality, all teaching staff are required to have a survey of their teaching completed at least once per year. All classes, both lectures and tutorials, in all first semester courses will be surveyed. In second semester, surveys will be conducted:

- in all classes taken by those members who were not surveyed in first semester;
- in classes where members choose to be surveyed again; and
- in classes nominated by the Head of School.

For this formal process of evaluation, the law school will utilize [a student evaluation of teaching instrument developed by the Faculty] rather than the [teaching evaluation instrument devised by the university's support unit]. Staff members who wish to undertake [the latter] survey may do so *in addition to* the use of [the former] by making their own arrangements with [the unit]. ...

When staff members have [Faculty administered survey instrument] results returned to them, they are to submit them to the Head of School for review. Any other Head of Department within the Faculty and the Executive Dean may request a copy. Compliance with this policy will be assessed as part of the review process for the allocation of the 5% teaching component of the Faculty budget.

Each semester, the chair of the Teaching and Learning Committee will complete a schedule for the conduct of the ... surveys by members of [student law society]. The procedure for the conduct of this survey is as follows:

- the survey will be conducted in a nominated period towards the end of the semester;

- survey forms and collection envelopes will be supplied to course co-ordinators in numbers sufficient for all lecture/seminar/tutorial surveys which are to be conducted;
 - course co-ordinators are to distribute survey forms and collection envelopes to those lecturers/tutors who are to be surveyed in their respective courses;
 - for lecture groups, the survey should include both a subject and a teaching evaluation, both of which are included on the survey form;
 - it is the responsibility of each staff member to ensure that sufficient copies of the survey form for each class are available at the commencement of the class;
 - surveys should be conducted at the beginning of a session rather than at the end thereof;
 - a member of the [student law society] survey team will attend the class and distribute the survey forms;
 - by way of explaining the nature and importance of the survey, the lecturer/tutor should give to the class the following information about the survey:
 - that you value student opinion and that you would like students to give you feedback on your teaching and/or your course (and, if the teacher so chooses, that the results may be used as evidence concerning teaching e.g. for tenure, promotion or employment);
 - that responses are anonymous; and
 - that the questionnaires will be returned to the teacher after the examination period so that you can read the comments.
 - the lecturer/tutor should then leave the room until the survey is completed;
 - after the forms have been completed, the law society representative will collect them, place them in the collection envelope which comes with the survey forms, seal the envelope before leaving the room (preferably in the presence of the lecturer/tutor) and then forward it to the faculty for processing.
- “The staff member leaves room, the students complete the survey, the surveys are placed in a sealed envelope, collated and processed centrally, and the results available in the next semester and published in the library. Staff can be dismissed if the surveys reveal a low level of student satisfaction with their teaching, although there are many steps, including remedial processes, before a dismissal can take place.”
 - During the annual Academic Performance Planning and Review Process, staff must address all teaching issues.

During this process, the Head of School agrees on an individual basis with individual staff members that they should participate in student evaluations, and they need to convince me every year that their teaching after the evaluation is considered to be satisfactory. If it's not satisfactory according to the student evaluation, we, on an individual basis, make arrangements for improvement.

We will for instance let them attend certain teaching seminars or send them on courses for PowerPoint training and try our very best wherever we identify difficulty to improve their teaching skills if it's considered not to be satisfactory.

- Student evaluation surveys are conducted using a university designed questionnaire.

The law school reviews the results ... subject by subject, stream by stream, semester by semester, as a standard routine, and ... looks at two things. ... Are there any indications of problems? They will be dealt with on a case by case basis. If there are any outstanding results, what sort of lessons might be transferable from those experiences?

In addition, a committee of the university's Academic Board reviews each faculty annually and the Vice-Chancellor's office conducts periodic reviews of each Faculty, which involves a "very detailed analysis" of teaching in the law school, looking at each type of student (HECS-funded, fee-paying etc). Each staff member has an annual appraisal, an element of which is an appraisal of teaching. The appraisal includes an examination of student evaluation data, "but it is not confined to that". The staff member also prepares a report that forms the basis of discussion, in which they can "set out any matters that they want to draw our attention to for inclusion in the appraisals, and also for them to express their views on any issues or problems".

In the graduate program, the Associate Dean (Graduate Studies) examines the data from each subject evaluation, "and writes to each teacher congratulating the teacher or suggesting areas of improvement".

- The compulsory student evaluation of process is administered by a central university body. The data goes to the individual teacher, and "the numbers" go to the Head of School, but not "the comments".

If there is a problem, the Head of School can discuss it with the staff member and find out: was there a problem with this? Our students seem to be moderately satisfied. Where they raise particular issues about particular things, I'll talk to the staff member concerned, we'll have a chat about it and once again it remains reasonably informal and because the staff by and large are responsive to concerns that are raised and are generally keen to try to make sure that everybody's happy. So if the students are upset about something the response I've had from staff where that has occurred has always been constructive. If it was destructive, I imagine I'd have to start initiating formal memos indicating to that person you should be doing X, Y and Z, but I haven't had to do that.

The evaluations are "made available to promotions committees and tenure confirmation committees. Appraisal is optional for tenured staff, and compulsory for staff on probation.

We set out a plan, and the plan will be in the order of five or six pages long, essentially identifying areas in terms of research and teaching that the individual is working on, career goals and the like. What things they need to realise those career goals. What expectations the university has from them. All of that is put into a document and discussed at some

length then I sign it, they sign it, and it goes off to Human Resources and is stored.

And so then 12 months later we have another discussion, we go through all the things that were said, what's happened to that person in the preceding 12 months, if they've done all the things that they were planning to do, everybody is happy and there's ticks in the boxes when it comes to promotion and the like.

- Some law schools admitted that, as far as the evaluation, assessment and appraisal of teaching is concerned, "we are very weak in that area". One such law schools has a requirement that "quality assurance" student surveys be administered at least once every two years, "but whether it's done I am not quite sure. There are no other formal processes of evaluation, although the school had been on a retreat the previous year, where teaching had been discussed."

The changes in the assessment and evaluation of teaching have not escaped criticism. One interviewee observed that there was an essential "paradox" between the twin requirements of having to teach greater numbers of students, and having greater levels of accountability for the quality of teaching:

Because of the effects of 'massification', it means that we have these huge numbers and we can't offer quality, which is the one-to-one and the small group, with essays and continuous assessment. But we have to spend all our time, for accountability, filling out endless forms and saying how wonderful we are and how much quality is in our teaching. We now have this new agency set up to vet the quality and already something's going around. People are having to subject themselves to various processes to demonstrate that it's the highest quality.

Again that's motivated by competition because you've got to show that you're excellent and doing all these things because if you're not your competitor's going to be doing it ... But I am a little bit cynical about the whole exercise and the way that we only hear about all this emphasis on quality, at the time that we are creating the conditions whereby it's impossible to offer a high-quality educational program because of these dramatically increasing numbers.

Some interviewees thought that students should not be surveyed in every subject. "They get fed up with it, and react against it. I think it can be usefully done every few semesters, and not every subject all the time."

Other interviewees and focus group participants commented that the requirement to use data from teaching evaluations ensures that student demands are given importance to the extent that staff cannot afford to alienate their students in any way. It was thought that this could inhibit innovation and teachers who want to challenge students more (this is also discussed in chapter 13).

Furthermore, it was felt that given most teaching evaluation questions are pre-set, teachers cannot ask questions that are important to them. "Standardised forms are great for management/DETYA who want to look at statistics etc, but not very effective for what we do, and not a benchmark of quality."

A further identified difficulty was the emphasis that it was felt most staff placed on the overall ‘satisfaction with teaching’ item:

Students differ in terms of what they think is good teacher, and some students just think it is the person who gives highest mark. People learn to manipulate the system – staff get students to fill in [evaluation questionnaires] before the assignments are back, and students judge teachers based on the marks [the students] got [from the teacher].

Other interviewees were concerned that assessment of teaching quality is primarily determined by students:

I think it’s quite interesting that we’ve been quite resistant to having our peers assess our teaching quality and often academics are resentful of having any quality, especially one who’s in a more senior position coming to their class. It’s like the old inspector idea in the schools. So it tends to be done now by the consumers, our students, who are now our consumers. They are the ones who judge, and sometimes of course they can judge, but there are some things I think maybe they’re not always such good judges of. I say that in a slightly paternalistic way there, but you can see because who is defining the knowledge?. They’re not really in a position to be able to gauge that, especially the students who are just out of school.

One Head of School thought that most of the input that teachers are given in their teaching appraisals are fairly “static”.

Because most of them are around student evaluations, which I think are reasonably unreliable. People also rely on (sometimes more reliable but subject to envy, tensions between staff, whatever) a peer evaluation of people’s teaching. You know, mixtures of a couple of different things. I occasionally go and sit in on someone’s class just to see how things are going. And sometimes the open-ended questions on student appraisals, well sometimes they’re the most useless part but sometimes they’re the most useful part, because I think the students are exhausted - they’ve got to fill in so many questionnaires.

Peer Assessment

Very few (if any) law schools required peer assessment of teaching, although some commented that it occurred informally “at the level that the colleague may ask a more senior colleague to visit one of the classes and to give feedback, usually because they would want someone to give them a teaching reference”. Interviewees at another law school also mentioned that at their law school “there is little peer evaluation of teaching, although it is done informally by teachers asking others to look at their teaching”. Other law schools also mentioned having “informal” peer reviews and that “reports by peers – not necessarily senior members – are often included in applications for promotion”.

Another law school mentioned that peer review is conducted “on a needs basis” with new members of staff:

As part of their induction process, the opportunity for peer review will be provided. If there are problems identified through student evaluations with teaching, depending

on the nature of the problems, peer review will often be used as one way of dealing with those problems. And most important of all, in all the compulsory subjects, teachers meet and work as a group so it's not a Faculty imposed peer review but it's more a question of co-operation amongst the teachers themselves. ... It is a quite informal peer feedback mechanism when appropriate.

Others also reported that when working in subject teams, this created "natural peer review":

In all core subjects where you've got a group of teachers working together, there's usually three or four teachers in each subject, there is a course coordinator and part of the function of the course coordinator is this function of supporting other staff and of providing opportunities for staff to engage in support and peer review is part of the support, I think. So it does exist on that level. Difficulties and problems that arise are things that I'll usually be aware of and deal with in essentially I suppose as I see fit, which usually means discussion with the staff member.

Another law school also highlighted the advantages of team teaching:

The effect of teaching in teams, which can be two, three, four people with different levels of experience, is not just in terms of benefiting the pedagogy. It is also to provide some mentoring and overview but not in a threatening kind of managerial sort of way. In other words to provide a sort of spread of experience and the creativity and enthusiasm of young staff with the experience of the older staff, but in a way that they can mutually benefit. So it's not a formal appraisal mechanism but a self-reflective mechanism built into it I guess.

At law schools, the smallness of the school meant that peer review was more easily fostered:

Because it's a small law school, you tend to get lecturers going in and sitting in on each other's lectures, so you get the informal feedback that way from your colleagues. It's done out of a matter of interest. It varies. Sometimes it's done out of a matter of interest. For example I know one of the lecturers said he's got to go today and sit in on another's lecturer's lectures because he's just interested in what his teaching style is. Sometimes what will happen is a lecturer, particularly a newer one, will come and say, "Look would you mind coming in and watching me? I'd like some feedback". And sometimes they just go in because they might be interested in some topic that's being lectured. So there's all sorts of reasons why it happens.

While many law schools saw the benefit of peer review, not all thought that it worked effectively in practice. For example, one Head of School commented,

I've been asked to peer review a colleague, but I think we haven't really got right into the best form of peer review. I'd like there to be a bit more. From a formative point of view I don't think we're judgmental enough.

I think peer review will probably develop as we get more and more of this formal accountability, and people will see the value in accumulating evidence and perhaps of just formalising the benefits of team teaching. Most of us team teach and it wouldn't be difficult to fit peer review into that relationship for mutual benefit, and an awful lot – I mean team teaching does have that great advantage in that there's a lot of collaboration and a lot of informal assistance and counselling in the broadest sense

that happens. But of course nothing ever gets recorded because of lack of time and this is essential.

Another law school that has tried to actively foster peer review reported,

We discussed at the beginning of this year a system under which more experienced staff members can attend, on invitation, the lectures of some of our junior staff members and then give them some feedback on their teaching. They are also welcome, the junior staff members, to attend the sessions of the more experienced teachers and we combine this arrangement with a system called the mentoring system.

Every new academic staff member has got an academic mentor. In fact they've got two mentors, a mentoring group, and they meet on a regular basis every six months and report to me, and give advice to the junior academic staff members about how to improve their teaching skills, research skills, how to participate in administrative activities and then this is also a condition for them becoming or getting a continuing position.

So after I receive a report from the mentoring group, after the first three years of probation I then report to the Dean, based on the reports that I receive from the mentoring group, as to whether the staff member, as to whether the position should become a continuing one.

Informal Feedback

Smaller law schools in particular mentioned that staff received a lot of feedback about teaching through informal contact with students.

With a small law school we get a lot of informal feedback from students and there's always been a good relationship between staff and students here. Students just wander in and out of the law school and knock on doors and come in all the time. Students who come from other universities always comment on how much more informal it is here than elsewhere. So we do get that.

Other interviewees mentioned that their law schools did try to encourage teachers to seek information about their teaching from a number of sources, for the purposes of improvement.

Lecturers who want feedback on specific issues can use questionnaires that are available on the web that were developed by our Centre for Teaching and Learning and in addition to that, sometimes people get specific feedback about aspects of the course that they particularly want to know, how it has been received, how it has worked and what the students think about it. So we get feedback from students constantly, both in a centralised and in an individual way.

In terms of getting feedback from colleagues, people who want that feedback basically know that they can always request a staff member to go along to classes and provide them with feedback – and that's fairly common. It's particularly used by more junior members of staff and perhaps when they're seeking promotion and they have to demonstrate teaching excellence. They'll then start to think about how that's going to work for them and they'll use people who are faculty people who are known to be really interested in teaching or have a reputation for good teaching, to provide

them with that feedback. But it's not formalised. It's not compulsory. So it's basically a combination of student review and peer review.

“Of course, a lot of evaluation is done by word of mouth, from students to lecturers about other lecturers.” Another interviewee further elaborated:

Because of the teaching spaces being close to offices [in our law school], we teach in public in this law school. As a consequence, we get pretty good feedback, and [the Head of School] gets wind very quickly whether someone is not performing. We also get quick feedback, and have a close relationship with, the student law society. Again this is borne of small group teaching mode. There is not a lot of distance as are in other law schools.

At some law schools, students produce a “Student Alternative Handbook”, “where students give their own evaluations” in the form of informal comments about subjects, their usefulness, and the teachers in the subjects. At another law school, the Law Students Society initiated its own survey of students in response to student complaints about the introduction of a teaching initiative that students were unhappy with.

In summary, reflecting broader university policies, themselves responses to government calls for more accountability from universities, most law schools now have policies for the student evaluation of teaching and of subjects. In some law schools, this is a voluntary process, with management only becoming aware of evaluation data when teachers apply for confirmation of appointment or a promotion. In other schools, management is informed of poor performers, and will then take action to improve the teacher's performance. Increasingly law schools are making it compulsory for teaching, and subjects, to be evaluated by students, with evaluation data going immediately to management.

As noted also in chapter 13, there is some scepticism within law schools as to whether (a) it is appropriate for teachers to be so heavily scrutinised in an era of increasing class sizes and diminishing resources; and (b) whether compulsory student evaluation processes do anything to promote innovative approaches to teaching and subject design.

Law schools also report that there is very little peer evaluation of teaching, although it does occur informally in some law schools.

Encouraging, supporting and promoting good teaching

At this law school there has always been a commitment to teaching, caring about students, doing innovative things We have a commitment to caring about teaching so that we have changed what we do. We develop our program, we sit down and talk about it, we have had teaching interest groups, which have certain life spans, but we care about this stuff, we talk to each other, learn from each other, we share experiences, we share materials. It's a collegial atmosphere, and it is an atmosphere in which we all want to teach well. That helps.

As mentioned in chapter 12, since 1987, there has been a greater awareness of the importance of support programs for teaching. A variety of factors might explain this development.

Also mentioned in a previous chapter, in 1987, the first Law Teaching Workshop was held in Mount Broughton, New South Wales. Initially run by two Canadian academics, from 1988 the workshop was run by Australian law teachers for their colleagues. Workshops were held annually until 1997, attracting between 13 to 25 law teachers for each five-day workshop. After a lapse of some years, the workshop was reinstated in 2002, with a shorter program.

There is no doubt that the workshop has had a notable impact on the development of teaching and learning in law in Australia. Many Australian law teachers mentioned that the workshop represented their only significant exposure to a fairly systematic framework for teaching and learning. The “hands on” nature of the workshop has furthermore enabled teachers to experiment with new approaches to teaching, and to see good teachers in action.

A number of interviewees indicated that their law schools were committed to sending staff to this workshop.

In my view the best resource for improving teaching is the ALTA Law Teachers Workshops and we finance a couple of people to go to that every year. It's excellent. It's a week-long residential course and that's what I advise all new [teachers] to go to. And it's that sort of thing that you need that actually introduces you to effective methods of teaching and learning. Also it just keeps you in contact with what other people are doing. You continually get new ideas about what other people are doing.

Another law school's strategic plan in the late 1990s specified that every member of staff should be required to attend a teaching workshop within the following five years, the ALTA workshop main one the school had in mind.

The ALTA workshop spawned an interest in law teaching, and, after completing the workshop, more than a few teachers founded groups within their own law schools to support and improve teaching. One law school's teaching interest group meets monthly, and the co-ordinator secures credit for the work of organising the group. Another law school's teaching interest group

convenes from time to time, discusses issues in teaching and learning and identifies training needs. A few years ago it identified that people needed to learn to use powerpoint, so everyone was trained in that. The group discusses things like how you use small groups in big lectures, how would you run tutorials? It also facilitates informal peer review.

From the early 1990s, law schools began to create appointments for Directors of Teaching within the school (sometimes referred to as the Associate Deans for Teaching and Learning or something similar). Although the job descriptions of those occupying this positions does vary, the creation of such positions signalled an awareness by Deans and Heads of School that law teaching was about more than about curriculum development, and that the law school itself had to develop

mechanisms to help staff develop their understanding of, and skills in, teaching and learning.

Furthermore, the late 1980s saw the beginnings of what was to become a standard fixture at many law schools – seminars on teaching and learning. One law school reported that “from time to time we have a teaching interest group, and this has recently been reconceptualised and revitalised and it is now called a teaching and learning seminar”. This is a monthly event.

[The seminars] provide a continuous and active focus for discussion about teaching and learning, about the philosophy of teaching, so it’s important that it’s conceived of as a rank-and-file activity. It’s not handed out from on high. It is a meeting of teachers who talk about learning and talk about teaching methods, who talk about the philosophy of teaching and share ideas about addressing problems.

This school has furthermore appointed a Director of Teaching and Learning,

to ensure that the teaching and learning seminar is not handed-down-from-on-high. It’s a collegial activity so the Director of Teaching and Learning has got to really have a deft touch to make sure that this atmosphere is maintained. In fact, this person doesn’t organise the seminar, somebody else does. But this person will also be the focus for interacting with the university when we’ve got these rules and policies coming out of discussion and so on. There’s a review of undergraduate education taking place at the moment, the Director of Teaching and Learning plays a part in generating discussion here so that we can respond to that review.

At other law schools, the Assistant Dean (Teaching and Learning) is given a nominal budget for teaching and learning, and some of that money is used to encourage staff to seek further funding “to develop teaching tools”.

One law school that organises teaching seminars for its own staff, invites knowledgeable law teachers from other law schools (for example, a seminar was given by a recent National Teaching Award winner) and from other parts of the university (for example, a workshop on assessment was given by the university’s Learning and Development Unit). Furthermore, this law school attempts to ensure that members of staff are informed on advances in technology and aids to teaching, and tries to distribute as much information from the university as possible on teaching and learning. (These activities were previously organised by the school’s Teaching and Learning Committee but this has now been disbanded as a result of the school merger into a larger Faculty.)

Another law school that has a Teaching and Learning Committee mentioned that the purpose of such a committee is primarily to encourage and stimulate good teaching by the staff.

So it does things like holding seminars where issues are discussed and ideas are thrown up to improve teaching. Sometimes we invite people in to help, give presentations, and an example of that is recently inviting the university’s Teaching and Learning Centre staff to lead a discussion on supervising student research.

Also that committee has helped to write a guide for teachers. It’s a bit out of date and we’re just revising it again this year. [It] is intended to help teachers

understand the requirements of teaching a subject, particularly in coordinating the subject. In other words being in control of the subject and it includes a lot of technical detail about what should be done and when, but also some other ideas.

Law schools did also report that teaching support could either take place at the school/faculty level or the university level:

At faculty level we would put on probably one or two teaching workshops a year, which would have a different focus, depending upon what we felt we needed at that particular time. And they would sometimes be in-house things and sometimes we would pull in a teaching expert from outside. And then at university level the Centre for Teaching and Learning has a whole series of different courses that we encourage people to go on. Everyone has access to a staff development fund of \$3000 per annum and that can be used to support research or teaching, so that people who want to go on courses where there are fees involved, they can use that resource.

Similarly, at another law school:

We've worked very closely with our teaching and learning centre ever since there has been a teaching and learning centre. We have also appointed a Director of Teaching, we have regular teaching seminars, and every year we have a two-day teaching workshop. So that's evidence that we value the concept of teaching very, very highly. We usually have at least one teaching seminar a year, which is usually a two day affair and then we have a four or five smaller seminars on teaching. And both the university and law school give this emphasis.

At a third law school:

All new staff are required to engage in a semester-long university teaching course which can be done on a face-to-face basis or on-line. We've got some new appointments at the moment and they're doing it about half and half because it depends on whether they are available to go to the face-to-face course. And all of them have actually reported that it has been really valuable, to such an extent that I must say as Dean I've thought to myself that it would be a good thing in fact if everyone did it (and I include myself in this) every five or six years. The course is offered by the teaching and learning unit within the university, and I think that's pretty highly thought of.

I've also been looking into trying to set up some sort of post-graduate diploma course – not so much set up but construct one, with one of the teaching units in one of the other universities, like a DipEd I suppose, but structured for law teaching. I've got material together for that and we'd be pretty keen to get that in place and get people to engage in that.

And also I've offered school support. Anyone who wants to can go on the ALTA law teaching workshop and again I hope to do that myself. And also I've done these university teaching courses too, but I did them a long time ago when I started teaching. There's a lot of new things to learn. There are a lot of new things to learn about teaching theory and learning theory, as well as learning and teaching technology, which most of us just learn on the run and presumably don't learn very well. It's not a good way to learn.

As this school is moving to a smaller group teaching model, it makes greater efforts to promote discussion about teaching between staff members.

We do it quite often because the methodology in terms of the small-group teaching and seminar teaching is still pretty new and is still something that people do wish to discuss and it becomes relevant each year in terms of assessment and so in fact I would say there'd be at least one School Board meeting a year where these sorts of things are discussed quite extensively. And when we were setting up the new system we had staff meetings and development meetings and retreats, lengthy meetings and retreats to discuss these sorts of things and for the specific purpose of discussing teaching methodology.

Even where teaching interest groups have ceased to operate formally at law schools, many schools reported that there was a very strong informal network of teachers, and/or a formal network operating through the Director of Teaching, which involved informal discussions and seminars about teaching.

Within the staff seminar program – and we try to have a few every semester – there is a facilitated interchange of ideas between staff. Staff describe new approaches to teaching and curriculum design, outline the difficulties they faced, and the areas in which the approach was successful. “Here’s what we did. What do you think? Here are things to try. If you want to do this, here are things to avoid.”

At some law schools, teaching staff may present discussion papers on teaching and curriculum issues during the staff seminar.

At a few law schools, in addition to formal or informal meetings about teaching, one teacher would be charged with the task of assisting her/his colleagues with teaching on a one-to-one basis. At one such law school, the staff member who was recently awarded a Vice-Chancellor’s Teaching award has “received a lighter teaching load this year ... and for the rest of the time he goes around to staff and gives them one-to-one assistance on improving their teaching”.

Interviewees and focus group participants also mentioned that both formal and informal mentoring at their law school was not uncommon. At one law school, senior colleagues would encourage others to attend teaching development sessions held by the University’s educational support unit “and it’s useful to get this type of encouragement. You may not do these things otherwise”. Another law school ensures new teaching staff work with experienced subject co-ordinators. “We would never be putting a young staff member out on their own.” A third law school established a mentoring scheme, which unfortunately, in recent years, has slowly dissolved:

We were to have more senior members be our mentors. And it was not to pick us up on anything, it was very confidential, it wasn’t to be used for promotions or anything unless we wanted the appraisal to be used in that way. It was an opportunity for us just to sit down and [the mentor] to say: “Well what are you doing?” and “Where are you going?” and “What about with research?” and not to tell me off or anything like that but just to say, “How could you be assisted to do more?” and that kind of thing. Personally I thought it was quite a wonderful process.

On a more formal level, some law schools have encouraged, and supported, staff to undertake graduate certificates in higher education. It is clear that in some,

though not many, cases, the targeted staff members have completed the certificate “and come back with an excellent understanding of the theory and practice of teaching and learning, and have made substantial academic contributions to the literature in teaching and learning”. One law school reported that one of its staff members had taught a postgraduate legal education subject within the school, which had been completed by some of the school’s junior staff.

Other schools have induction programs for new teachers “that has worked very successfully with the younger teachers in early stages”. At other law schools, formal induction programs that also cover teaching are open to other staff as well, and not just new recruits.

While all the examples thus far in this sub-section indicate that the move towards re-conceptualising teaching has led to teaching committees at some law schools, staff appointed to specifically oversee teaching and learning at other law schools (or even the same law schools), the organisation of teaching seminars, encouragement to attend the ALTA workshop or university-based teaching workshops, informal and formal mentoring, and induction programs for new recruits, interviewees and focus group participants nonetheless thought that structured programs to support teaching and learning was still absent at most law schools. Furthermore, they reported that a lot of the initiatives mentioned above are dependent on the energy of committed individuals. In addition, despite the seminars, mentoring, et cetera, often the difficult teaching and learning issues are left to the subject co-ordinators to resolve, who themselves are inadequately supported by the law school.

Teaching awards were looked upon favourably by some law teachers, who thought that they not only generated some of the support that law teachers wanted and needed, but also brought some law teachers some much needed recognition. Most universities have an annual round of teaching awards and often teachers could either self-nominate or be nominated by students. The Dean or Head of School occasionally encourages particular teachers to apply and some law schools have set up formal processes for identifying potential applicants. As the application process is time-consuming at most, if not all, universities, potential applicants are identified by the law school well in advance of the application date, and at some law schools, applicants are given administrative assistance. Award winners earn for the law school recognition in teaching (which many schools consider important for the added benefits this leads to) and sometimes, other added benefits. Award winners usually make presentations about their teaching in university-organised formal seminar that are attended by teachers from both within the law school or elsewhere in the university. Very few law schools, however, ask awardees to make presentations within law school.

Recipients of the university teaching awards are often seen to be well placed to earn a National Teaching Award.

While one law Dean commented,

These awards re-inforce each time that good teaching involves more just a charismatic or popular classroom performance – we look for good materials, whether someone has published a casebook, or influenced the national curriculum.

other interviewees expressed caution about the usefulness of teaching awards in promoting teaching.

The awards for teaching in the university usually go to people who use technology well, or who use new forms of assessment, but not really to very good teachers in everyday practice. They reward people who experiment and who students like.

One Head of School advocated less formal forms of encouragement:

I don't necessarily give people flowers and lots of chocolates, bottles of wine (although I think it's good) but I try to reward them through the acknowledgement of good teaching practice in school newsletters, through e-mail distribution lists, or just basically at school meetings, identifying what I think has been quite a constructive engagement of teaching issues in a difficult time in the evolution of the school.

Other interviewees also argued that true recognition of good teaching is not always “tangible”.

It is culturally supported in the sense that at end of day, teaching is seen as an important activity – and if you are not a good teacher you don't earn the respect of your peers. Certainly you won't get promoted. You are faced with the great pain of the small classroom with a group of students who are highly vocal and with high levels of expectation as to quality teaching. There is not much social distance in that situation, and most students talk. ... Most importantly, you have to be a good teacher to get promoted. Teaching is important here, and we attract people who place a value on teaching. We get extra money from the university because we have good teachers, attract good students, and punch above our weight, and give kudos to university. And that reinforcement of teaching flows back in.

Such comments further re-inforce the need for structured mechanisms for support of teaching within law schools.

There needs to be much more candour in the way issues of pedagogy are discussed. And that seems to me to be in itself quite a difficult matter because people feel threatened. Some people are very good small-group teachers, some people aren't. No doubt those who aren't can be improved, just as some people who don't like lecturing are very ordinary at it, can find that with certain techniques they become better at it. But they'll never be very good at it. And it's the same I think with smaller-group teaching.

The way to go forward [on this issue] may be to have subject orientated discussions. So the Tort teachers when they get together (from within the institution) might well talk more openly and more meaningfully about teaching, than would otherwise happen if we're simply bringing people together from different subject. I don't know. But to my mind there is no question that there has to be a lot more general discussion of pedagogical problems than there currently is, and proper mechanisms in place within which to do this.

Teaching and Learning Strategies

Many law schools reported that committees within the law school that are responsible for teaching and learning concentrate principally on curriculum development, with only marginal attention given to the development of policies and processes aimed at staff's approaches to teaching.

Other law schools reported that their teaching and learning committees did, in fact, develop teaching policies.

These policies take two forms - (i) the formalisation of what we already do, and broadening it to cover the wider evaluation of teaching on an ongoing basis, so that we don't just use teaching evaluations, and have a wider basis for evaluation (for example, a process which evaluates objectives, materials [and the other elements of subject design]); (ii) a more structured ongoing staff development and training program in different techniques. For example, we have identified areas of technology where even the most computer illiterate have been given classes to help them use powerpoint and websites. We need to formalise that more.

Some law schools reported that they did have an overall teaching and learning strategy, but that this was essentially led by their university. Nevertheless, some universities require the all schools, including the law school, to reflect on teaching and learning, and to plan initiatives. At one university, each faculty has to produce a faculty teaching and learning plan, which has to be linked to the university's plan. The university then provides support in the form of teaching and learning grants, which are aimed at projects that seek to improve teaching and learning in a particular way. Applicants have to ensure that their applications are linked in some way to the school's teaching and learning management plan, "the priorities and indicators in our faculty-based plan".

A strategy to improve teaching

Essentially, academic leaders need to create a school environment in which all members of the school work towards improving their teaching on an ongoing basis, base their teaching strategies on a reading of the educational literature, and constantly seek evidence of the impact of their teaching on student learning.

This will involve academic leaders developing a vision of how teaching should be carried out within the school, pioneering new approaches to teaching, encouraging risk taking, providing models, promoting teamwork and collaboration, removing obstacles to good teaching, and encouraging and rewarding good teaching practices, including evidence-based evaluation of teaching for the purposes of self-improvement.

Most teachers "can benefit from reflection on how they teach as a beginning step in becoming better teachers", and that this involves "an increased understanding of how learning takes place." (Lucas, 1994: 102) Ann Lucas (1994: 102) asserts that it is the head of the law school's job to "initiate this awareness".

Paul Ramsden (1998: 170) provides the following advice to academic leaders:

In no other area of academic leadership is personal commitment to the goal of high quality and productivity ('modelling') more important. Simply stated, you must believe that good teaching matters. You must act in ways consistent with your belief. We need first to address our own preconceptions about effective teaching and learning, and if we are not already aware of the substantial literature and research on the topic of effective learning and teaching in higher education, we might spend some time becoming familiar with its basic ideas and associated implications for curriculum structures, teaching methods and student assessment. ... It is important to escape from some common myths about teaching in higher education if we are to help our staff teach effectively.¹

Drawing on the work of Prosser and Trigwell (1999) we can identify different levels of influence on student learning within law schools.² These are:

- the *university and Law School context* – university and Law School policies and procedures which affect teaching and learning;
- *teacher thinking* about student learning;
- *teacher planning* (otherwise known as *subject design*) – establishing course aims and objectives, and then determining subject aims and objectives, assessment tasks and criteria, the sequence of topics, learning activities, and materials;
- *classroom teaching strategies* – selection of classroom teaching methods and media.

Prosser and Trigwell provide examples of strategies that can be adopted by law schools to ensure that teachers are provided with the means and incentives to learn about each element, to address each element, and to take a reflective approach to teaching in which self-evaluation, based on qualitative information drawn from a range of sources is central.

The components of such strategies might include (Ramsden, 1998: 169-82; Lucas, 1994: chs 4 and 5; Martin, 1999; Ramsden, 2003: chapter 12):

- (i) initiating a debate about what constitutes good teaching within the school, and establishing a set of shared aims, educational values and strategies which outline how good teaching will be achieved within the school;
- (ii) appointing good teachers to the school;
- (iii) supporting teachers in their efforts to improve their knowledge and understanding of each of the elements of teaching and learning (through the development of a teaching and learning library within the school, encouraging teachers to undertake formal education in teaching and learning, and supporting attendance at teaching conferences and workshops);
- (iv) promoting a "scholarship of teaching" and greater discussion and collaboration in teaching by organising regular discussions, workshops and seminars about teaching issues, and by emphasising the importance teamwork in teaching (especially in large subjects with more than one teacher);
- (v) encouraging teachers to evaluate their teaching, drawing on appropriate sources of information as possible in order to develop and implement, with financial support from the School, a teaching plan;

¹ These "myths" are outlined and addressed in Lucas, 1994: 102-104; Ramsden, 1992: 87-88, Weimer, 1997; and Ramsden, 1998 170-171.

² Many of the ideas in this final section were inspired by a paper by Professor Shirley Alexander (1999).

- (vi) establishing the goal for each staff member of ongoing professional development in teaching, and emphasising that becoming a more effective teacher is a life-long process. This emphasis on the long-term also takes pressure of junior staff, who can set a series of staggered goals for their teaching, rather than feeling that they have to master everything at once;
- (vii) encouraging teachers to document their approach to teacher thinking, subject design and classroom teaching strategies in teaching portfolios which support their applications for appointment, conformation of appointment, and promotion;
- (viii) encouraging teachers to research issues to do with teaching, and to publish articles on teaching in refereed journals;
- (ix) promoting teamwork and exemplary and reflective teaching practices by carrying out, each year, a research project on an aspect of teaching identified by the retrospective survey of teaching within the school and by a survey of developments in teaching and learning;
- (x) promoting a coherent curriculum, with subjects (particularly assessment tasks) building on previous student learning and assessment, and an appropriate mix of legal doctrine, legal theory and practical instruction spread through the subjects on offer;
- (xi) promoting a rigorous approach to subject design (clear subject objectives, a variety of assessment tasks targeted at the objectives, concise and accurate assessment criteria, activity-based teaching materials, and detailed and helpful feedback to students on their performance in learning and assessment activities) (Biggs (1999) refers to this as “aligned” teaching”);
- (xii) supporting innovation in subject design, particularly in large subjects, by providing funds to research aspects of teaching and learning, by giving staff relief from other duties to develop teaching initiatives, or by seconding educational experts to the school to help staff review their subjects;
- (xiii) disseminating throughout the school examples of good teaching practices, so that innovative teachers receive recognition for their efforts, and their good practices can be adopted by their colleagues;
- (xiv) creating a teaching support committee, responsible for organising activities to help teachers explore teaching issues, read the literature on teaching and learning, share information on teaching, and so on;
- (xv) developing a mentoring system, so that inexperienced teachers can meet regularly with experienced teachers to discuss issues of concern to them;
- (xvi) conducting an audit of factors that teachers consider to be impediments to good teaching, and then developing a strategy to remove those barriers; and
- (xvii) liaising with the student body to identify and resolve teaching and learning issues as soon as practicable.

Academic leaders within the school need to “show the way”, by asking others to visit their classes to provide peer feedback on their teaching, by openly seeking advice on teaching issues from colleagues, by discussing teaching initiatives they are undertaking, and reporting back on their success, by admitting their mistakes, and by actively participating at all meetings to discuss aspects of teaching. It is only by talking about their own teaching, and creating a climate of openness about teaching, and trust and support, that academic leaders can find out what other colleagues are doing with their teaching.

Implementation of the strategy

The following checklist provides some ideas for a teaching strategy that aims to stimulate improvement to each element of law school teaching:

1. *Teacher thinking* (about student learning) might be improved by:
 - Making available key works on student learning in the school's teaching and learning library;
 - Encouraging staff to participate in a reading group within the school, where key books on student learning will be discussed;
 - Encouraging and funding teaching staff to attend conferences and workshops on student learning;
 - Encouraging (and subsidising) teaching staff to undertake courses on teaching and learning;
 - Initiating and funding research project on student learning within the school;
 - Instituting a policy of a show of evidence of an understanding of theories of student learning, to be included in teaching portfolios prepared in support of applications for appointment, confirmation and promotion.

2. *Teacher planning* (subject design) would be improved by:
 - Making available key works on subject design in the school's teaching and learning library;
 - Building up a collection of material exemplifying good subject design (e.g. examples of clear objectives, assessment criteria, feedback mechanisms, activity-based materials) in the school's teaching and learning library;
 - Organising workshops on subject design for teachers (particularly new teachers);
 - Establishing a peer mentoring system for new teachers;
 - Inviting experts in tertiary education to give seminars in which they outline recent developments in educational theory and practice, and likely future developments in teaching and learning;
 - Organising working groups on specific aspects of subject design in which groups of teachers can work together to plan and structure their subjects;
 - Initiating and funding research projects on aspects of subject design (selected from issues raised by the retrospective course survey, or prompted by changes in university teaching and learning policies), resulting in exemplary teaching practices that can be used by all teachers within the school;
 - Organising seminars, conferences and workshops exploring aspects of subject design, or show-casing exemplary subject design practices;
 - Encouraging teaching staff to evaluate the design of their subjects by drawing on appropriate sources of information (including student and peer evaluation), and providing bursaries to staff to implement a plan for improvement arising out of the evaluation;
 - Asking staff to reflect upon subject design, and provide examples of their subject design practices, in teaching portfolios;
 - Assessing the performance of teaching staff in subject design in all confirmation and promotion decisions;
 - Providing staff who have engaged in informed and reflective work in subject design with credit for that work in the allocation of teaching responsibilities.

3. *Classroom teaching strategies* would be improved by:

- Making available key works on classroom teaching methods and media in the school's teaching and learning library;
- Organising workshops for staff (particularly new teaching staff) on approaches to the selection of teaching methods and media;
- Organising seminars and workshops on specific teaching methods and media, and to showcase exemplary methods;
- Ensuring the availability of required teaching media in classrooms used by school teachers;
- (independently of the assessment of teaching processes required by the university) encouraging teaching staff to seek *qualitative* information (from students, peers, and the university's teaching and learning development unit, etc) with which to evaluate their classroom teaching performance, and to develop a plan for improvement;
- Encouraging and financially supporting staff to attend courses and workshops on teaching methods.

4. *Evaluation* would be promoted by:

- Making available key works on evaluation in the school's teaching and learning library;
- Organising workshops on evaluation for staff (particularly new teaching staff);
- Liaising with the university's teaching and learning development unit to ensure that there is strong support for staff wishing to evaluate their own teaching;
- Ensuring that a retrospective course evaluation is conducted annually;
- Providing bursaries to teachers implementing a teaching improvement plan;
- Awarding prizes for demonstrated exemplary informed and reflective teaching practices, to be judged by an expert panel based on submitted teaching portfolios.
- Requiring all applications for confirmation and promotion to be supported by evidence, in a teaching portfolio, of (a) regular self-evaluation of teaching, and (b) the development and implementation of teaching improvement plans;
- Assisting teaching staff to prepare teaching portfolios to support their applications for confirmation and promotion.

5. *Relationships with students* in relation to teaching and learning would be improved by:

- Encouraging students to elect representatives in each subject who could regularly meet with teachers to discuss progress in the subject, to raise issues of concern for students, and to suggest solutions to problems;
- Establishing a complaints procedure for students who are unhappy with the teaching of their subjects, and who have raised issues with their teacher without successful resolution;

- Establishing a student liaison forum, comprising staff and students, to meet bi-monthly to discuss teaching and learning issues.
6. *The Teaching Strategy itself should be evaluated* by an appropriate outside body (for example the university's teaching and learning development unit) to ensure that it is in line with contemporary thinking about the promotion of teaching and learning, and that it justifies the school's resources (money, staff time etc) expended.

Summary

This chapter describes the way in which teaching is managed and supported in law schools. As with most of the other issues examined in this report, there has been considerable progress in this aspect of law school life began in the mid-1980s.

In most law schools, teachers are either required, or strongly encouraged, to have their teaching and their subjects evaluated by students, usually by asking students to complete a written questionnaire. There are other forms of student evaluation, but these are not utilised by all law schools. Peer review, for example, was less commonly utilised than student evaluations, although many schools reported that peer evaluation took place informally, and usually at the initiative of individual teachers.

Support for teaching within law schools has taken the form principally of teaching interest groups, seminars on teaching, law school encouragement of ALTA Law Teaching Workshop attendance, and occasional mentoring schemes. A few teaching staff have also successfully completed graduate certificate-level qualifications in education.

Many interviewees and focus group participants reported that a more systematised support for a scholarly approach to teaching is required at most law schools, which would include measures to ensure that teachers individually, and the school as a whole, evaluate the effectiveness of teaching in terms of its impact upon student learning.

CHAPTER EIGHTEEN

REPORT OVERVIEW

In accordance with the AUTC project brief, this report attempts to provide a detailed ‘stocktake’ of curricula and teaching and learning in Australian law schools. Specifically, it documents approaches adopted by Australian law schools in relation to:

- undergraduate law curricula, principally for the LLB program;
- graduate and postgraduate law curricula;
- the processes and procedures adopted by law schools to oversee undergraduate, graduate and postgraduate programs; and
- teaching and learning in law schools.

Most of the data collected for the report was gathered during visits to 27 law schools (there are 28 law schools in total in Australia at the time of writing), to interview key law school staff (as identified by each law school) and conduct focus groups with law teachers. Interviews and focus groups were also conducted with (primarily) penultimate and final year students and separately, employers of law graduates. The breadth of the project brief, coupled with the limited time and resources available to conduct this project, led us to choosing a project design that invited teachers, students and employers to self-select their participation in the project, to speak in their own words about a range of topics within the parameters set by the project brief, and to provide their understanding of, and opinions on, these topics, as opposed to representative findings. For this reason, in our reporting of the data collected, we have relied heavily on the use of quotations from interviewees and focus group participants.

The data collected from interviews and focus groups was supplemented by numeric data – statistics and factual details that law schools provided about student enrolments, undergraduate and postgraduate programs, etc; and results from a written survey of penultimate year law students (the design for which, contrary to what was required for interviews and focus groups, required that the data be representative).

Chapter 1 provides a more detailed description of the project design.

The recent history of legal education in Australia

Since the late 1980s, there have been significant developments in legal education in Australia (see Goldring, Sampford and Simmonds, 1998). Law schools, for a some decades until this time, aimed their LLB programs at school-leavers, taught the LLB as a stand-alone program, and then offered few combination possibilities with Law (usually Arts/Law, Economics or Commerce/Law and/or Science/Law). Furthermore, the aim of teaching at most law schools was to impart the content of legal rules to undergraduate law students, with very little attention given to the teaching of legal ethics, legal theory, or generic or legal skills in the LLB program. The lecture method was, at most law schools, the unrivalled teaching method, and most students were assessed by end-of-year examinations.

Postgraduate coursework programs were few in number, and confined to a handful of law schools.

Since 1987, the number of law schools has more than doubled, and there have been dramatic changes to the funding environment within which law schools operate. There have furthermore been notable changes in the thinking, focus and substance of legal education: Law schools continue to move away from their traditional “trade school” approach, “towards the classic, liberal model of university education” (Chesterman and Weisbrot, 1987: 718) and give greater attention to general and legal skills teaching. In addition, as a result of a differential system of student contribution to the cost of their education, law programs are now assigned to the highest charge band; however, they are allocated the lowest level of funding. As such, law students are charged on a full cost recovery basis while law schools operate in a system in which they are starved of resources. This has been the situation for some years (Chapter 1) and, for this reason, the issue of resource allocation is a recurrent theme in this report.

A review of legal education in 1987, widely referred to as “The Pearce Report”, recommended significant changes to legal education, some of which have had long reaching effects. McInnis and Marginson (1994: 243-244) remarked that “a major effect of the Pearce review was to generate a new culture of evaluation, review and improvement” in law schools. The ‘Pearce Review’ even preceded the changes brought about by the ‘Dawkins Reforms’ of 1987-1989, and “prepared law schools for the changes in advance. Even before the Committee’s work was complete, law schools were already out of the ‘comfort zone’, and this was well before the Dawkins hurricane hit.”

The changes to legal education over the last 15 years, therefore, have been widespread and significant. In the words of one observer of legal education in Australia (Le Brun, 2000a: iii)

Legal education in Australia is markedly different today from what it was, say, a decade ago. Changes in curriculum, teaching approaches, and assessment strategies have occurred that could not have been easily predicted in the late 1980s. The introduction of generic and lawyering skills into the undergraduate law curricula, the situating of legal knowledge in the context of its use, and the creation and adoption of more creative and wide-ranging assessment tools, to name three innovations, have changed the way many, if not the majority, of students learn law, learn about law, and learn about legal practice in Australia.

Law schools, over the last ten years, have also been making choices to actively emphasise their distinctiveness, and to differentiate themselves, particularly in relation to their local competitors. Most first and second wave Australian law schools mentioned that they ‘reinvented’ themselves, partly in response to the recommendations and suggestions in the Pearce Report, and partly in response to the emergence of more law schools. The third wave law schools were, in the main, set up to offer a different, and what was seen by some of them to be a better, model of legal education than what they thought was offered by the “traditional” model. Chapter 2 outlines what each law school thinks distinguishes it from, principally, its local competitors. Perceived points of distinction are many

and cover class size, city/regional/international focus, and emphases on skills training, clinical programs, international exchanges and postgraduate programs.

Nonetheless, despite these claims of distinctiveness, some uniform trends have emerged, particularly in relation to the LLB program. For example, at most law schools, there has been a significant trend towards teaching legal skills, and at a growing number of law schools, there has been either a formal or informal infiltration of professional legal training. Most law schools now give greater weight to legal theory and ethics teaching and a growing number of law schools have a strong commercial law focus, and increasingly “an international focus”. Many law schools also express a greater commitment to reducing class sizes; however, funding constraints have frustrated some law schools’ efforts in this area (chapter 11).

Law schools that are able to attract postgraduate students have been increasingly “beefing up” their graduate and postgraduate offerings and/or upgrading their higher degree research programs. This, in no small part, has been a response to the funding situation that has, over time, forced many law schools to use their postgraduate programs to cross-subsidise their undergraduate programs.

For some law schools, the past 15 years has been a period of great stability and not of flux, and these law schools have been affected only by issues such as the introduction of the Priestley requirements (Chapter 1), or the semesterisation of subjects. This is particularly true of the third wave law schools, which introduced into their curricula, upon inception, many of the (seemingly radical) changes that first and second wave law schools have had to make to theirs. And the period since their establishment has largely been a process of refining curricula at third wave law schools. Admittedly, some third wave schools that began with ambitious programs have had to wind back what they saw to be important initiatives (again, in the face of inadequate resources to support their educational vision) but only a few of these law schools – possibly none of them – have ever professed to have made radical changes to either their curricula or to their approaches to teaching and learning.

Overseeing curriculum development

According to McInnis and Marginson (1994: 243), the Pearce Report instilled a “culture of continuous improvement” in law schools and this was seen to be necessary because,

In recent years, Australian higher education generally, and the legal education sector particularly, have been under sustained pressure to adapt to the demands of a changing, discriminating and competitive higher education marketplace. Tertiary legal education has been subjected to intense scrutiny by government, employers, University management, professional bodies, the judiciary, law reform agencies and, not least of all, an extremely diverse student cohort. All stakeholders demand that law faculties should be accountable at every level for the quality and efficacy of the professional education they offer. The result has been that the fundamental orientations of legal curricula have had to be reconsidered (Kift, 2002a: 1).

Almost all law schools reported that their curricula are subject to regular review

(Chapter 8). Most law schools now have committees overseeing the development of their LLB programs and membership of these committees usually includes students, and occasionally members of the profession. The functions of these committees vary from school to school, but in the main they are charged with the responsibility of ensuring that the Priestley requirements are met, that new elective subjects are vetted, and that the overall direction of particularly the LLB curriculum is monitored. In a few of the newer and/or smaller law schools, these matters are dealt with in full staff meetings. In addition to the overseeing committees at most law schools, increasingly many of them have also established external advisory committees, which include students and members of different arms of the legal profession, who advise on curricula in light of their knowledge of legal practice and/or consumer needs.

While all law schools with graduate and postgraduate programs do have committees to oversee the curriculum, in many law schools this is done by Directors of Studies and Advisory Boards, rather than by a more formal law school committee.

Reviews and consultations about curricula

Most first and second wave law schools have been subjected to many reviews in recent years (chapter 2; chapter 8), and many of the reforms to curricula were the result of law school-initiated reviews. Third wave law schools also reported that they either have been recently reviewed, were in the process of being reviewed, or were about to be reviewed; however, as mentioned above, the reviews have rarely produced as many radical changes to curricula as experienced by some first and second wave law schools in recent times.

At all law schools, reviews of curricula could be initiated by the school, by the larger faculty (for those law schools that are part of larger faculties) or by the university. At a few law schools, university-initiated reviews could be “quite formal, and sometimes more sinister” than law school-initiated reviews and a few law schools are wary of them. Other law schools are able to see the benefit of reviews, irrespective of the level at which the review is initiated, but are concerned that time no longer permits them to participate in “so many reviews”.

In addition to formal reviews, most law schools mentioned that they made greater efforts to consult students now than in the past. Deans and Heads of School spoke of regular meetings with student representatives, regular informal contact with former students, and almost all law schools administer formal student surveys for each subject. At some law schools, the surveys are undertaken at the behest of the university and this often means that the results have to be shared with the Dean/Head of School and less frequently, a central university unit. In these cases, poor results could lead to “management action”. Other law schools encourage teachers to survey students about their subjects, but there is no obligation on the individual law teacher to do this, or if done, no obligation to share the results with anyone else. Student surveys almost always utilise written, multiple-choice questionnaires, which are rarely designed by the law school. Instead, they are often designed by a central university unit, which, in some cases, analyses the results for the law school. A few teachers at some law schools also conduct other

types of student evaluations of subjects, which invite open-ended responses from students.

At some law schools, the university imposes significant constraints upon the law school's operation of its programs – including restricting elective programs, requiring compulsory general subjects to be taught within the LLB program (chapter 4), and determining student entry policies (chapters 2, 3 and 8).

Employers are also considered to form an essential part of the curriculum review process and most law schools reported that they kept in very close contact with the legal profession in one way or another (some regional law schools mentioned that there was an unspoken obligation on their part to have a close relationship with the profession). At least one law school has conducted a formal survey of employers of law graduates in order to ascertain weaknesses in its LLB curriculum; however, most law schools consult the profession via their advisory groups. Some Deans and Heads of School also regularly meet informally with law firms.

As far as the LLB program is concerned, the most notable features of curriculum development in the past fifteen years has been the inclusion (“the dominance really”) of the eleven Priestley “areas of knowledge” (chapter 1); and the inclusion of legal ethics/professional responsibility; legal theory and general and legal skills.

Priestley

The Priestley requirements for admission to legal practice focus on areas of substantive knowledge that must be covered by a student before s/he is allowed to be admitted to practice. The focus of the requirements on areas of knowledge, rather than on skills and capabilities, has been widely criticised (chapter 4), as has the configuration of the subject areas around what is seen to be outdated categories (chapter 4), and furthermore, the Priestley preoccupation with local law (chapter 7). Nevertheless, most law schools ensure that they cover all Priestley subject areas in their core, compulsory subjects. The most common pattern is that each area of knowledge is covered in one, perhaps two, dedicated subjects. Some law schools are more adventurous, and organise their compulsory subjects more thematically, but still ensure that all Priestley areas of knowledge are covered. A few schools do not cover all Priestley areas in the compulsory, core component of the LLB program, but instead, offer students the possibility of covering a few of the Priestley areas in the elective component.

Not all law schools limit their compulsory program to the Priestley areas; some law schools' compulsory program extends beyond the Priestley areas of knowledge and, for example, covers subjects like public or private international law, depending on the special focus of the school (chapter 4; chapter 7). Most law schools now require all students to do at least one compulsory subject in legal theory, and most require students to undertake “skills subjects” or skills components within subjects (chapter 5).

Nonetheless, despite the desire of some law schools to look beyond the Priestley requirements, and to maximising student subject choice, the Priestley compulsory component accounts for two thirds of most law schools' LLB program.

Electives

This is not to suggest that elective programs are neglected – quite a few law schools offer generous elective programs (chapter 4), that included subjects that the school believes will stimulate student interest, and that reflect the school's special focus and/or staff research interests.

Some law schools would like to offer more elective subjects than they currently do; however, since the mid-1990s, these law schools have been under increasing pressure to streamline their elective offerings. Most schools now require a minimum level of student enrolment for a subject to be offered, and have a rolling program of elective subjects, many of which are offered every two years. Many law schools offer students a free choice of electives. Some place parameters on student choice, or facilitate specialisation. The former expressed concern that most students, if given a choice, would favour certain subjects – by and large the commercial law type subjects – to the detriment of their legal studies. “Students need exposure to many different ways of thinking about, and interrogating, the law and, in part, this is achieved by taking a wide array of subjects.”

Legal theory

Most law schools now require students to do at least one subject in legal theory. Some go further, and require students to do further legal theory subjects in later years, and/or require, or at least encourage, staff to incorporate theoretical perspectives into both core and elective subjects. Not many schools, however, appear to have a rigorous process of ensuring that different threads of legal theory are integrated into the LLB curriculum, so that students can build upon their understanding of different areas of legal theory as they progress through the degree program. Some law schools mentioned that they try to co-ordinate the infusion of legal theory into substantive law subjects, and are met with resistance from staff with little interest in, or threatened by, legal theory. As a result, legal theory, feminist, cross-cultural and other perspectives, and “critique” remain marginalised in the teaching of law at some law schools. Furthermore, very few law schools have a clear strategy of training students in legal theory to prepare them for postgraduate study.

The role of professional experience

In the past, most law schools covered legal ethics issues in discrete *Professional Conduct* subjects, offered as part of their continuing education program. Skills taught in the LLB curriculum generally included legal analysis and reasoning, legal research, legal writing and mooting. These followed “quite properly from general university aims in educating students” and were to some extent a “by-product” of teaching in substantive law subjects (Pearce, Campbell and Harding, 1987: 25, para 1.61). Until the late 1980s, law schools did very little to teach

“practical legal skills” in the LLB program (that is, more practical skills required in legal practice, from negotiation and drafting skills, to learning how to function in a legal office environment), although there were notable exceptions in the form of clinical programs at some second wave law schools (see Giddings, 2002).

Much has changed in the past ten years and many law schools (although, some definitely much more than others) now have a strong commitment to covering the major areas of law relevant to practice; to teaching relevant legal principles; to showing LLB students how to respond to new developments in Law; to giving emphasis to clear and logical written and oral expression; to encouraging ethical legal practice; and to fostering student responsibility for their own development; and to a lesser extent, to teaching students how to provide legal advice for specific legal problems. Law schools, however, appear to be divided about the importance of practical legal skills, and the importance of developing “the ethos of the profession”.

All but two law schools now also teach legal ethics in the mainstream LLB program, and most (but not all) as part of the compulsory program. But there is no clear trend for how legal ethics is incorporated. Some law schools teach ethics in stand-alone subjects, and others as one component of a stand-alone subject. Most of these stand-alone subjects are compulsory subjects; but in a few schools, ethics is only available as part of an elective subject. Some schools ensure that ethics is dealt with at different points of the curriculum, and is revisited frequently; in other schools, this appears to be an aspiration, or an article of faith, but there are no formal arrangements to ensure a co-ordinated approach to the teaching of legal ethics (Chapter 5). Critics argue that most legal ethics teaching in Australian law schools needs a more coherent philosophical basis, and rather than an emphasis only on practical ethical problem solving, should be taught as a pervasive set of values that underpin the practice of law, and, furthermore, as an integral part of learning the law as a social phenomenon.

A third of law schools adopt only a low-key approach to the introduction of generic and legal skills into the curriculum (chapter 5). Most focus on the fundamental skills such as legal research and writing, case analysis, statutory interpretation, oral communication, and advocacy, and many include more specific legal skills such as alternative dispute resolution skills and negotiation. Most schools do not offer stand-alone skills subjects and two schools offer “live-client” clinical programs.

Some law schools have an integrated skills program in their LLB curricula. Such programs include substantial clinical teaching programs and/or placements and/or incremental and co-ordinated skills development. Two law schools offer (or at the very least, are developing) carefully planned incremental, integrated and co-ordinated skills programs spanning the LLB program.

Four law schools include fully-fledged professional legal training programs within LLB programs. Two law schools offer students the option of a Diploma of Legal Practice/LLB program, with reduced elective subjects; one offers students the possibility of entering the clinical legal training stream (one of two streams in the school’s LLB program); the fourth offers a professional legal training program

to law graduates or students currently enrolled in a law degree who have also completed the Priestley 11, so that students could complete a professional legal training program concurrently with their LLB program, without sacrificing any elective subjects.

A growing number of law schools also offer “post-graduate” professional legal training programs.

Some interviewees and focus group participants argued that, with the exception perhaps of the law schools that have developed an integrated and incrementalist approach to skills teaching, the skills-based curriculum in most Australian law schools is piecemeal and fragmented. Most law schools have arguably not devoted enough resources to working out how to approach skills teaching in the context of an academic law program, or to mapping and embedding skills teaching within the LLB curriculum so that students are exposed to skills teaching incrementally, and can develop their skills over time in increasingly complex situations (chapter 5).

Teaching and learning

The scholarship of teaching

The oft-mentioned Pearce review, the advent of the ALTA Law Teaching Workshop (chapter 17), and universities’ attention to teaching and learning have all been identified as catalysts for the invigoration of teaching and learning in law schools since the late 1980s. Fewer law teachers than before assume that teaching involves the transmission of subject content to students, and chapter 11 provides evidence of the ways in which some are conceptualising teaching as a non-hierarchical activity concerned with facilitating active student learning. The changes in thinking about teaching and learning in Australian law schools are illustrated by the many examples of thoughtful and theoretically-anchored teaching strategies that are peppered throughout the latter half of this report; research into teaching and learning; contributions to journals such as the *Legal Education Review*; a greater interest in teaching and learning (that have resulted in, and/or result from, monographs produced by Ramsden (1992), Le Brun and Johnstone (1994), and Biggs (1999)); the small but growing number of teachers who complete formal qualifications such as a Graduate Certificate in Higher Education; and, the offering of subjects in legal education by some law schools.

It would not be accurate, however, to claim that the scholarship of teaching is given importance by all law schools or by most teachers within some law schools. Developments in the scholarship of teaching in Law are far from uniform, even within individual law schools, “and there is a very strong traditionalist streak in this law schools”. Some law teachers reported that they were ignorant, if not disparaging, of educational theory, and others cited evidence in some schools (usually the interviewee’s own) of the “anti-intellectual” approach to teaching that Cownie (2000a and 2000c) has identified in British law schools.

Probably the two most significant changes to teaching and learning in Australian law schools since the late 1980s have been a greater concern with “student-

focused” teaching, and a strong trend towards “small class sizes”. “Student-focused” teaching also found expression in better pastoral care for students in some law schools, more “student-friendly” approaches to law school administration, longer student consultation hours, and small class sizes. “Small class sizes” became a catch-cry in all the first-wave law schools, in part a response to the Pearce Report, which heavily criticised these schools in this area [it must be added that, despite liberal reference to the ‘Pearce review’ in this overview chapter, many law schools do not view the Pearce review favourably, irrespective of whether they were criticised by this review; however, the nature and scope of this AUTC report precludes us from entering into a debate about the Pearce recommendations]. The majority of law schools have taken some measures to reduce class sizes, often only in the early years of the LLB program (given funding constraints), working under the assumption that smaller class sizes would allow for a variety of teaching methods to be adopted to promote active student learning (chapter 16). While in many law schools the term “small class size” is misleading – some law schools consider classes of 35-50 to be “small” (chapter 12) – nevertheless these initiatives strongly indicate that law schools are prepared to reallocate teaching resources to enable teachers to use activity-based teaching methods.

In keeping with other trends across the university system, law schools are also subject to increased casualisation of teaching staff, the semesterisation of undergraduate subjects, a greater emphasis on the use of information technology in teaching (although this does not always manifest itself in the sophisticated use of IT in teaching), and changing student demands and expectations (chapter 13). In addition, market pressures, includes student demands for greater flexibility in teaching arrangements and accelerated progress through the LLB program, have resulted in most schools adopting intensive modes of teaching. Law schools and law teachers embraced these trends to varying degrees, which some schools and teachers viewed positively. The use of IT in teaching, in particular, was seen as one way of promoting “communication with students about the subject matter and thereby enhancing their learning”. Other teachers, however, identified some or all of these trends as being inhibitors to effective teaching. Coupled with the lack of adequate resources for law schools (which, in turn, has led to a greater administrative burden for teachers, amongst other things), these teachers thought they were left with very little time to reflect on their teaching, subject design, assessment activities and preparation for classroom teaching.

Another factor that many teachers think inhibits student learning is the amount of paid work that a significant proportion of students are engaged in during semester. It was felt that this latter factor has dramatically changed students’ relationships with their law schools, resulting in poor class attendance or poor participation in, and preparation for, class. “How are we supposed to help them learn if they have such an attitude towards their law degree? Even full-time students see their degree as being a part-time enterprise.” These comments from one interviewee echoed the sentiments of many of the law teachers who participated in this project (Chapter 13).

University-led teaching and learning initiatives, however, have offset some of these perceived inhibitors to some extent and have ensured the improvement of

subject design (Chapter 17). Clearer learning objectives, stronger alignment of learning objectives with assessment tasks, more varied assessment and teaching methods, more feedback on assessment tasks, and increased use of teaching materials and methods to encourage active learning, is evidence of this (chapter 15; chapter 16).

Teaching and learning policies

Some law teachers expressed scepticism about the usefulness of teaching and learning policies and very few law schools have developed comprehensive teaching and learning policies. Nonetheless, most law schools, at the very least, take steps to implement university teaching and learning policies. Some have general outlines for their overall approaches to teaching and learning; others have detailed program aims for the LLB and/or postgraduate teaching programs; and others still have nothing more than mission statements (Chapter 14).

In most law schools with teaching and learning policies, the focus of these policies is more on administrative issues than on substantive issues in subject design. Some law schools, however, have also developed policies in relation to learning objectives for individual subjects (chapter 15), for assessment (chapter 15), although most schools give teachers great discretion in choice of assessment tasks (chapter 15) and teaching methods (chapter 16).

A majority of law schools have guidelines for the preparation of teaching materials, although these tend to specify minimum content, rather than provide a template for activity-based materials (chapter 16).

Objectives and assessment

In the traditional model of law teaching, law teachers were not accustomed to outlining learning objectives for their subjects, and assessment consisted predominantly of end of subject examinations. Now Australian law schools, largely as a result of mandates from their universities, have policies that require subject co-ordinators to articulate clear learning objectives for students. While no doubt there are some perfunctory responses to these requirements, many law teachers take great care in ensuring that not only are students aware of the learning objectives in their subjects, but that such objectives go beyond subject content objectives. They also cover values, skills, attitudes, competencies and general attributes.

Again, largely as a result of university-initiated policies, law schools generally also require subject co-ordinators to ensure an alignment of assessment tasks with the learning objectives for every LLB subject (mentioned earlier). Most law schools also have policies to ensure that there is more than one form of assessment for each subject. The result is that even though the end-of-subject examination is still the dominant assessment method in many law schools, in some law schools, there is an impressive array of assessment methods to gauge student performance. Furthermore, while group assessment tasks are rare, they have not been entirely neglected.

Another notable improvement in teaching, largely in response to university demands, has been greater attention to assessment criteria, and more feedback on student performance in assessments against these criteria. (However, teachers who participated in the project commented that there are significant variations among teachers and among law schools in the application of these assessment procedures.)

Methods and materials

Also in line with changing views about their role and purpose, law teachers are increasingly turning to discussion-based teaching methods, small group work, and occasionally teacherless groups, to supplement, and even replace, lecturing, in order to facilitate student learning. Lectures are still the norm at many law schools, especially given the increases to student enrolments across the board; however, those teaching small classes are increasingly adopting discussion- and activity-based teaching, with some able to use such approaches even in larger classes (Chapter 16).

Complementing these changes to classroom teaching methods has been a rethinking of the use and purpose of teaching materials. At some law schools, this has also been driven the need to cater for external students. Mere case lists and broad subject outlines have been replaced by law school-designed templates, which ensure that students receive all essential subject information, including learning objectives, details of assessment tasks, and the scheduling of topics. At many law schools, teachers are also required to put this on the web. The style of teaching materials themselves are also changing, and many teachers now include, in addition to key cases, introductory text, topic summaries, questions to guide reading and class discussion, and learning activities (e.g. hypothetical problems, simulations) to provide a context for student learning. While some teachers are using the problem method (see Le Brun and Johnstone, 1994: 303-304) and genuine Problem-based Learning methods, this is an area in which law teaching is lagging behind disciplines such as medicine.

Some (of the extensive array of) teaching materials currently in use across Australian law schools have been converted into published student texts. Such text are based on key principles of teaching and learning that attempt to facilitate student engagement with material (chapter 16). Paradoxically, this trend parallels another – the decision by many law publishers to produce an increasing number of “nutshell” and “tutorial” type texts, not all of which encourage a deep and contextualised engagement with the Law.

Management of, and support for, teaching

The management of, and support for, teaching in Law has also shifted in line with the new ways of conceptualising Law school teaching. One the one hand this has led to a considerable amount of assessment, evaluation and/or appraisal of law teaching (that are generally undertaken at the behest of the university): In addition to surveying law students about subjects and curricula (mentioned earlier), most law teachers are also required, or strongly encouraged, to have their teaching evaluated by students, also using written, multiple-choice questionnaires, that

more than frequently have been designed by a central university unit. Other forms of teaching evaluation (by peers or educational experts) is far less common, although many schools reported that peer evaluation takes place informally, as does mentoring, usually at the initiation of individual teachers.

The changes to support for teaching within law schools have also led to a growth in teaching interest groups and seminars on teaching within law schools, law schools support for attendance of the ALTA Law Teaching Workshop, and less frequently, mentoring schemes. Some staff are being encouraged to complete Graduate Certificate-level qualifications in education (mentioned above).

While this report cites many examples of support for teaching and teachers, nevertheless, very few law schools reported that they had in place systematised support for a scholarly approach to teaching, which would include measures to ensure that teachers individually, and schools as a whole, evaluate the effectiveness of teaching in terms of its impact upon student learning. Furthermore, law teachers are not all encouraged by their schools to immerse themselves in the literature on teaching and learning, and some law teachers are encouraged to introduce changes to their classroom teaching methods without being given the basis and frameworks for those changes, contributing to their scepticism about the efficacy of such methods, as mentioned earlier. Where teaching is focused on facilitating activity-based learning, some teachers reported that they focus on the good students in class, who engage with the material through activities, and whom they hope would then “play a role in bringing weaker students along”.

The impact of ‘globalisation’ and IT on teaching and learning

Globalisation

Comparative law and international law are not given much emphasis by many law schools; however, Deans and Heads of School mentioned that some attention is given to issues raised by ‘globalisation’ and internationalisation. “We try to ensure that our programs and subjects are not parochial”, but rather focus at least on national law, problem solving, looking at general principles rather than the detail of local law, and on requiring students to undertake some international-based subjects, such as international litigation, international law, trade law and similar subjects. Some law schools are also involved with teaching programs in Asia and North America. Some have exchange programs with overseas law schools, which enables their students to take credited courses at these overseas law schools. Others invite teachers from overseas jurisdictions to teach a semester in their undergraduate and/or postgraduate programs.

Despite these efforts, it would nonetheless appear that Australian law schools, like their United States counterparts, have not developed coherent and systematic strategies to address the demands that globalisation could impose on lawyers in the near future. This is largely because of the restrictions placed on LLB curricula by the Priestley requirements, which are seen to be antipathetic to the inclusion of ‘globalisation’ and the issues it generates for Law. The Priestley requirements necessarily require attention to be given solely to local, and at most, national

jurisdictions – the requirements do not include Public or Private International Law, or comparative law. Furthermore, the Priestley requirements, as mentioned earlier, make up a large part of the LLB program, thereby leaving very little space in the LLB curriculum to devote to issues posed by globalisation. What little space is available, law schools choose to use to accommodate ethics, theory and skills (mentioned above).

Of course, a few law schools do make comparative and international law their special focus and believe it is this aspect of their LLB program that has attracted some of their students to the school.

Information technology

IT Law is given even less emphasis than comparative and international law at many law schools.

In terms of the teaching of information technology skills, and using IT to teach the LLB and postgraduate programs, however, the opposite pattern was found. Because legal scholarship and practice is heavily dependent on statutes and cases, as well as on the kinds of secondary sources that are important to many disciplines, developments in information technology have dramatically changed the nature of legal research and legal practice. Information retrieval is now a major skill that students need to master from the beginning of their law studies. Australian law schools have also been major players in the development of the Internet for information access and retrieval. AustLII (the Australian Legal Information Institute), for example, has been involved in the development of *World Law*, the largest multinational catalogue of law sites on the Internet.

Many law schools also reported that their universities strongly encourage them to utilise IT as much as possible, for example, in the distribution of teaching materials. Most, if not all, law schools place their subject guides on the Internet. Some law teachers also put together subjects that directly develop students' information technology skills and address some of the legal issues raised by information technology (chapter 7), although, as mentioned earlier, only a few law schools do the latter. Some law teachers utilised IT to encourage their students to engage with subject content, through chat rooms, on-line assessments, etc. By and large, law schools with the resources to do so, invest as much as they think is pedagogically useful, into IT.

Not all law schools, however, have the resources to utilise IT except in the most basic way.

Some teachers are not convinced that student learning is improved by a greater utilisation of IT. Some saw “the IT revolution in higher education” as a cynical exercise that their universities were engaging in to attract more students, and therefore, more funding. And even the most technology-active law schools preferred to use on-line teaching as a complement to, rather than a substitute for, face-to-face teaching.

Furthermore, uses of IT in teaching that have been carefully evaluated and found to be effective are still rare in Law (however, chapter 16 includes a few notable exceptions to this rule).

Some law schools offer combined degree programs that enable students to study IT as their non-law degree, but this has not been found to be one of the more popular law degree combinations (chapter 3).

Trends in Law school offerings

Changes to legal education have not just been limited to curricula and teaching. The last 15 years, and especially the last four, have also seen significant developments in relation to undergraduate and postgraduate law offerings.

Undergraduate offerings

The first combined Law degree program (i.e. LLB undertaken in combination with an undergraduate degree in another discipline) was offered in the 1970s. Thereafter, most first and second wave law schools began to offer a handful of combined degrees – Arts/Law, Economics or Commerce/Law, and, perhaps, Science/law. Law schools began to favour combined programs to avoid creating “narrowness” in law students (especially school-leavers); to “enliven” the study of law; to enhance law graduates’ attractiveness to a range of employers; and to ensure that law graduates (again, school leavers) emerged from their studies with greater maturity than if they had spent less time at university.

The late 1990s saw a dramatic proliferation of combined degree programs. The decision made by some partner schools – namely Arts, Science, Commerce, and Business – to split their general programs into more specific ones was one factor that contributed to this proliferation.

Across 27 of the 28 Australian law schools, there currently exists approximately 130 combined programs (Chapter 3). All law schools offer Arts/Law programs, and all but one offers Commerce/Law programs. Business/Law and Science/Law are the other common offerings. Only some law schools offer a dozen or more combined degree programs (one as many as 27), which means that some combined programs are offered by only one law school, at most, two.

Despite the growth in combined degree offerings, law schools generally think the development of a combined degree program is a demanding exercise, and that it takes “a lot of mutual adjustment [between the law school and the ‘other’ school] to create and operate a combined degree program”. Most combined degree programs, could be described as “bolt on” programs – there is little integration of the two degree programs, and law schools leave it to students “to integrate the programs if they choose to”. The logistical difficulty of integrating the two degrees (especially by law schools offering several degree combinations), coupled with poor resourcing, is the main impediment to integration. One law school, nonetheless, made a concerted effort, from its inception a decade ago, to integrate the two degrees in each combined program; however, a decision was recently

made to “stage a minor retreat back from integration” because of a shortage of resources (chapter 3).

The period that saw the proliferation of combined degree programs, also saw the emergence of the graduate LLB program. Such a program typically involves three years of full-time study in the LLB, to be undertaken by only by graduates from an undergraduate degree in another discipline.

And quite recently, four law schools included the JD program in their undergraduate offerings. This was done in part to raise revenue, but also to meet the demand for an accelerated and high quality graduate law degree. “It provides opportunities for people who have already graduated in another discipline and are working in profession”, and who furthermore, can afford the cost of undertaking a JD program. The programs has allowed these law schools to create a niche for themselves by tapping into a new market, adding a further point of differentiation between themselves and other schools in their respective states.

Against the trend of combined degree programs and graduate law programs, most law schools now also offer stand-alone LLB programs to school leavers. While previously all school-leavers at most law schools were required to undertake a combined degree, law schools have changed their entrance requirements to meet market pressure (chapter 3).

Despite the apparent diversity of undergraduate offerings among Australian law schools, however, many commentators argue that these developments mask an underlying homogeneity, a uniform response by law schools to market pressures from employers and students.

Postgraduate offerings

Arguably, postgraduate offerings have been subject to more dramatic developments than undergraduate offerings; however, most of the growth in postgraduate coursework programs has been enjoyed only by a moderately small number of law schools.

The larger, city-based law schools have been developing Masters and Graduate Diploma/Certificate programs since the late 1980s. While most of these programs have a strong orientation towards legal practice, some Masters and Graduate Diploma and Certificate programs target non-law graduates, a seemingly growing market. As such, these coursework programs do not so much build on the LLB, as assist with the continuing professional development of legal practitioners, or improve the legal knowledge of non-legal professionals seeking advancement in their non-law jobs. Overwhelmingly, therefore, these graduate and postgraduate coursework programs have been organised around specialist degree programs, with some law schools offering over a dozen such programs.

It is also unsurprising that postgraduate programs are dominated by part-time students, with many classes held intensively or in the evenings. The law schools with large coursework programs also target interstate students, many of who are permitted to enrol as external students.

Another notable trend, particularly at law schools offering the greater number of postgraduate offerings, is the enabling of progression from Graduate Certificate or Diploma programs, to Masters programs, and in some cases, subsequently to the SJD program.

There is little evidence, however, of any articulation of postgraduate programs with graduate programs – indeed some law schools have “double-badged” subjects as undergraduate elective subjects and graduate and postgraduate coursework subjects.

“Cross-pollination” of teaching is also a significant feature of some of the larger law schools’ postgraduate programs. These schools reported that their programs are taught not only by their own full-time staff, but also by local practitioners, academics from other Australian law schools and from other disciplines, and in the case of the large graduate coursework programs, by overseas law teachers. A few postgraduate coursework programs are offered in conjunction with programs at overseas law schools. In some law schools, postgraduate and graduate coursework programs have developed to such a degree that they rival LLB programs in importance.

But despite these developments, there are claims by some academics that postgraduate and graduate coursework programs are falling in quality, as a result of many law schools casting their net widely for potential students. This has also been the experience of some newer and/or regional law schools, which experience great difficulties in developing any form of graduate coursework program for other reasons as well – many have had to terminate programs once the local market was exhausted.

Conclusion

This project has attempted to map significant developments in legal education over the past 15 years – particularly in relation to curricula and teaching and learning. The enormity of this task, together with the limited time and resources available to conduct the project, has meant that we have barely scratched the surface of these developments. Nevertheless, we have at least captured a significant amount of change, the most notable being the infusion of ethics, legal theory and generic and legal skills teaching into LLB curricula, a more informed and “student-focused” approach to teaching, and greater rigour in subject design. We have also attempted to litter the report with many examples of each of these changes.

Furthermore, we are able to report with some certainty that, by all accounts, the development of curricula at both the undergraduate and graduate level, with a few notable exceptions, lacks the necessary systematic co-ordination, in part due to resource limitations. This is also, in part, due to competing demands, all of which law schools are now under some pressure to take into account in their development of curricula – from the university, from students, from employers and law societies, from admission boards, not all of whom share the same vision for legal education.

Many law teachers also reported that their law school still had some way to go in the promotion and support for scholarly approaches to teaching and learning. At most law schools, in both overall LLB curriculum development and in individual subject design, individualism has triumphed over integration and co-ordination of the different elements in the LLB curriculum (including ethics, legal theory, skills, international and comparative perspectives, progressive learning objectives, and teaching methods). That is not to suggest that academic freedom and individual initiative should be in any way restricted or inhibited – but rather that Australian legal education might benefit from a more systematic, incremental and integrated approach to curriculum development and subject design, and a more scholarly and collaborative approach to teaching.

We hope this ‘stocktake’ report will inform national debates about both curriculum development and approaches to teaching and learning in Law. This might take place at the level of the Council for Australian Law Deans (CALD), which may want to promote and endorse peer developed programs, which, in turn, would help Deans and Heads of School further enhance their leadership and management of teaching. Furthermore, conferences and workshops could be organised around some key themes identified in this report. This, in turn, could lead to the promotion of incremental and co-ordinated approaches to curriculum development, the better evaluation of the effectiveness of teaching strategies (particularly in relation to teaching and assessment methods), the sharing of “effective” teaching strategies, policies and practices, and most of all, the uniform promotion of scholarly approaches to teaching and curriculum development.

CHAPTER SEVENTEEN

THE MANAGEMENT OF TEACHING

In chapter 11 this report outlined the characteristics of effective teaching, and suggested that Australian law teachers were beginning to accept that teaching should be about the facilitation of student learning, rather than the transmission of information to students. In chapter 12, we mentioned that since the late 1980s, there had been major changes in Australian law teaching to accommodate this shift in thinking about the purpose of teaching – the most significant developments being a move in many schools to smaller group teaching, a trend to student-focused teaching, improved subject design, better support for teaching, and widespread evaluation of teaching.

This chapter is concerned with these latter two issues. It describes the approaches law schools have taken to manage and support teaching. It begins with a brief outline of how law schools allocate teaching responsibilities. It then describes the ways in which teaching is evaluated, assessed and appraised. After describing the approaches some law schools have taken to support teachers and teaching, it suggests a strategy for supporting and promoting effective teaching that might be adopted or adapted by law schools.

Allocation of teaching responsibilities

In most law faculties, the allocation of teaching responsibilities is delegated by the Dean to the Head of School or to a senior staff member, and in most law schools, the responsibility is delegated by the Head of School to a staff member who has overall responsibilities for teaching and learning. Practices vary considerably between law schools, although there is a trend towards law schools developing formulae to govern teaching allocations. But even within these formulae, there is considerable variation – the formulae themselves tend to vary according to whether they take into account matters such as preparation time for new subjects, whether the teacher is convening the subject or not, and labour intensive assessment.

Examples of how teaching is allocated in law schools are as follows:

- Teaching responsibilities are allocated equally to staff, irrespective of their seniority to ensure that the teaching load is not overburdening junior staff. Every member of staff needs to achieve certain teaching credits by automatic debit each semester – measured by the number of classes taken and the types of students in the class. “It constrains the allocation of teachers to classes, but gives a strong sense of buy in and fairness.”
- The Head of School allocates teaching responsibilities “in splendid isolation”, and each member of staff must accrue “a rigid number of points each year” according to a chart developed by the school. “It seems to me to be the easiest way through, and it limits the arguments and objectives that people might make.”

- The Deputy Head of Schools allocates teaching responsibilities, after consultation with staff. Teaching allocations are done “on a pragmatic, *ad hoc* basis within the parameters of the policy on teaching allocations, which was revised in 2001, and is publicly available on university server”.
- Staff have to gather a certain number of points to meet their load. The teaching workload model is under review at university level, because each faculty and discipline has a different model, and there is no consistency. Currently, staff tend to teach in their areas of expertise and research interest.
- Each staff member teaches eight hours a week each semester. This is generally made up of five hours in a core subject – usually a two hour lecture and three hours of tutorials. The remainder of core subject is taught by tutors, drawn from a good group of contract tutors, “who do not do any co-ordination”. The other three hours are taken up with electives – undergraduate or postgraduate. Each staff member teaches two of three semesters and the remainder of the semester is for research, curriculum development and designing new subjects.
- The Dean allocates teaching responsibilities, by drafting two documents – one showing who teaches each offered subject, and the other outlining the teaching responsibilities of each staff member. These are distributed to each staff member, “so that it is transparent and equitable”.
- The “Expectations of Teaching” [Policy] concentrates on responsibilities in the three main areas – teaching, research and service – and contains guidelines as to how teaching (in terms of both hours and FTSUs) is balanced against the other two areas.

[The school’s] also has got an expectation as to how many articles, refereed articles, you should publish and what percentage of time you need to spend on your administration.

Everybody knows exactly what is expected. And I send to the whole school, every year, the number of teaching hours for each staff member. I also send information on how many students each teacher has and wherever they are under or over the average, we make adjustments.

I personally think that this is quite a good way of managing the staff and whereas it was originally received with a little bit of scepticism, I think there’s a lot of satisfaction and also general agreement that our system of work allocation is quite fair in the school.

Part of [the Performance Planning and Review Process] with each individual staff member every year is to see whether they meet the standards in that document and if they don’t, we make sure that there are measures in place to make them do it the next year. But of course it’s very difficult at the end of the day. What can you do if a staff member does not perform and if the staff member is not interested in promotion, for instance?

- The Head of School allocates teaching responsibilities using a formula:

This is a formula that takes account of the number of lectures and tutorials staff are required to give, whether they're giving lectures or tutorials for the first time – they get an extra loading if they haven't taught the unit before – so for original lectures they get a bonus or a loading. And the formula also takes account of repeat lectures, if you're teaching torts and you've got two groups and you're giving lectures to both groups on a particular topic, you don't get as many points for the second group of lectures. They're repeat lectures. And it also takes account of the administrative responsibilities within the unit and the number of students enrolled in the unit. So all those things: face-to-face teaching; whether it's new lectures and tutorials or past; administrative responsibility; and the number of students enrolled.

- The Head of School delegates the timetabling and teaching allocation tasks to an experienced staff, who then feeds it back to him.

I overlook them to make sure that equity of a sort exists and then send it around to the staff for comment. [We try to ensure that] no-one is teaching more than two subjects at any particular point of time, that there's equity in the distribution as well, so on and so forth. It's also overlooked at the faculty level, by a joint management committee for the whole of the faculty, not just for the school, to ensure equity across the schools and keeping in place with the enterprise bargaining rules.

Obviously I try and use some sense in terms of people's expertise, ability to work with other people, in terms of fairness and equity, in terms of distribution of load. ... It's a fairly straight structure so it doesn't matter what you are, you tend to do the same load. You might be able to claim credits for a larger number of things that you're doing, like running centres or institutes or whatever else, as other responsibilities.

- A formula is used – that has been borrowed from two other law schools - that factors in class size, and whether the teacher has taught the subject before. The application of the teaching formula for each person is published so that all staff can see how it operates.
- A sophisticated formula was recently replaced by a simple policy of eight hours face-to-face teaching a week as the benchmark – “whether it is a repeat hour or a seminar or a lecture, we rate it the same. We used to have a really elaborate weighting system, which was totally unsatisfactory and as far as I could see all it did was engender anxiety and negative feelings in people.” The Dean discusses teaching responsibilities with each member of staff and publishes the allocations for the purposes of transparency.
- Some law schools have no fixed formula. At one law school, part of the annual staff appraisal involves the staff member providing a statement of their teaching preferences for the following year. These preferences are analysed “to develop a preliminary allocation of responsibilities” that is

circulated to all staff in August. Staff can then discuss this allocation with the Deputy Dean.

- Similarly, preliminary discussions at the end of each year with each member of staff to find out their teaching plans for the following year. The Dean then circulates a draft of teaching allocations, which is discussed by all staff, and then revises the draft in light of this discussion. “This law school has been very resistant to formulas for teaching workload.”
- A normal teaching load would entail seven to eight hours of classroom contact each week.

I think it’s more onerous here than elsewhere, simply because you have a smaller number of staff and the staff have to spread themselves more thinly. Your options in a small law school aren’t as great as they are elsewhere.

But the process here is an informal one of consultation with each member of staff. But at the planning stage for the next semester, we sit down with the staff. We have a performance management process here. So it tends to be a more informal process of sitting down with staff and asking them what they want to do and then putting it together and then the next stage is a compromise stage because people can’t always do what they want to do because we have a small number of staff.

Evaluating the impact of teaching

In chapter 11, it was suggested that law schools should develop a “scholarship of teaching”, which involves an informed, reflective and evidence-based approach to improving student learning. As has already been noted in other parts of this report, there are good examples of approaches to teaching that have been carefully evaluated (see Saenger et al, 1998; and McNamara, 2000b and 2001). It, however, appears that such approaches have not yet taken hold in many Australian law schools – many law schools were not able to point to ways in which they evaluated the effectiveness, from the point of view of student learning, of their approaches to subject design. As one Dean observed, “we have some indicators of quality, but none go directly to the question of the learning experience of students, and of assessing it. We have no systematic process whereby we do evaluate that, except as aggregation of individual experience”. This school, however, did take measures to evaluate individual subjects:

A good example is what we did for a new elective ... [It] was quite heavily web-dependent, and most was done on line, and only a fraction of the teaching involved face-to-face contact. How did we evaluate that? We gave students the standard teaching evaluation questionnaire, and talked about it with teacher who ran it – she shared her experiences and told us what she thought worked and what did not.

One Dean, during a discussion about the impact of change in the school to smaller group teaching, commented that “there’s so little literature on this, and we don’t have a system of peer review, or any system of moderation”.

Another remarked that the evaluation of the impact of teaching on student learning was

a matter really for the teachers in each subject. We have student evaluation of teaching on a semester basis and the teachers themselves in all of the compulsory subjects meet in groups and they're the ones who actually do the assessment of the teachers' work and decide whether or not a particular form of assessment or task had met the objectives that they had been designed for.

One interviewee suggested that her law school needed to appoint an "evaluations officer" to evaluate the effectiveness of teaching and learning initiatives in the school. But in the interim, the impact of teaching was evaluated by student evaluations of subjects and of teachers. "Some people have been feeding back to students on how their feedback has impacted on subject delivery. Now we are trying to regularise that, to make sure we all take a uniform approach."

This school also uses focus groups with first year students to find out about resources, how students use online material and how their skills development is progressing. "We're just about to embark on focus groups with second year students now to see how effective that program is. What did they think we were doing?" These types of focus groups were difficult to run, and the school found that it needed someone with special skills in evaluation to monitor the quality of teaching programs. The school is also trying to monitor what teachers were doing with their study guides and their assessment regimes. "We need to quality assure things. If we say we're doing 'this', are we doing 'this' and what's the checking mechanism?" Quality assurance is part of the responsibilities of the Assistant-Dean (Teaching) and the Teaching and Learning Committee at this law school.

Evaluation, Assessment and Appraisal of Teaching

Traditionally (see Ramsden and Dodds, 1989) educators have made the following distinctions in relation to monitoring their teaching:

- the evaluation of teaching (where teachers seek evidence of the effectiveness of their teaching from a variety of sources for diagnostic purposes, so that they can identify their strengths and weaknesses, and remedy their weaknesses);
- the appraisal of teaching (where management is involved in "the positive and constructive identification of a person's needs in the area of improving teaching, the provision of feedback on teaching performance, and assistance with improvement so that effectiveness is increased' (Ramsden, 1992: 224); and
- the assessment of teaching, where management makes judgments about teaching effectiveness for the purposes of recruitment, confirmation of appointment, promotion and/or satisfactory performance.

Not many Deans and Heads of School reported that their faculty/school distinguished clearly between these different purposes and approaches to the management of teaching.

It is now common for law students to be asked to complete questionnaires about their experience of a subject and the way it is taught. But the purpose of these surveys, and the processes adopted, vary considerably between law schools. Such surveys are also affected by provisions in enterprise agreements, which, in many cases, prevents management from viewing the results of student surveys.

At some law schools the evaluation is voluntary, others still distinguish between subject evaluation and evaluation of the teachers in the subject. At the latter set of schools, poor responses from students could lead to management action.

The following are examples of how law schools evaluate their teaching and what they then do with these evaluations:

- A range of evaluation processes are adopted, including recommendations by the university to evaluate subjects every third year through the Student Evaluation of Teaching and Learning (SETL). “We have in fact done it more often than that, and if there are particular reasons for evaluating a subject, the Head of School will suggest to the staff member concerned that that subject be evaluated.” SETLs can be utilised to either to evaluate individual teacher performance, or to evaluate the subject as a whole. If problems are uncovered, the teacher is made accountable to the school’s Teaching and Learning Committee and to the university’s committee. “Further, the Head of School will talk to the lecturer concerned and remedy whatever the problem is.”

In addition, each subject coordinator must give a report about the subject, and about how junior staff are teaching in the subject.

- Individuals evaluate their teaching practices through the various teaching evaluation instruments.

The results of these surveys are not generally available. They are only available to the teacher concerned, which means that if you are trying to build up some kind of evaluation at a departmental level, you are relying on two things. The first is anecdote, which is not satisfactory. It doesn’t provide me with any quality assurance as to how things are tracking. It’s a gap that we’ve identified and we’re working on.

The second is through performance management reviews which we conduct to identify, for each teacher, goals with respect of performance in teaching. Staff prepare a teaching portfolio [for confirmation and promotion, which includes details of teaching evaluation surveys]. But that’s still in the area of staff development as opposed to program development.

- There is a widespread practice that every teacher should have every subject evaluated using a university-wide student evaluation instrument. This is not compulsory, but if a staff member wants to be promoted, get an increment, or have their appointment confirmed, they will need to demonstrate a good and consistent record in effective teaching. This includes student opinion. All staff are subject to an academic review every

four years if they have not applied for a promotion or increment in the intervening period, and in this review, they are required to demonstrate that they have conducted a proper assessment of their teaching, and that their teaching is at least satisfactory. The university has yet to decide whether it should make this mandatory, although informally it has expressed a preference that it be a compulsory process.

The school has procedures in place to make it easy for teachers to implement student surveys. This includes putting the forms in staff pigeonholes, a process for smoothing the administration of the surveys, which adhere to the principles of student confidentiality (teachers do not look at the results before assessment tasks are completed). The survey used to be “qualitative in nature”, but the law school has since followed the university recommended “quantitative and qualitative” model. The school buys the forms from the central testing body (which come at a price of 8c each, due to the cost of processing the data) and students fill in the multiple choice survey with pencil. A “qualitative feedback component” is also included.

This process has been a voluntary one, which has ensured that staff “buy in” to the idea of evaluations “without alienating students too much. A problem with this approach is that I am not sure it has picked up those people who are not going for promotion – they are usually the ones [whose teaching] is most unsatisfactory.” The Head of School thought that the weakness of making the evaluations voluntary is that it prevents [the Head of School] from routinely scrutinising teaching evaluations – “voluntary means the results are kept confident”.

- “All staff are encouraged to completed evaluations. I won’t say its mandatory – they are all encouraged to do regular subject evaluations.” This requires obtaining feedback from students about teaching, and as in other law schools, the results of the survey go only to the teacher.

As the Head of School, I refuse to look at them. However, having said that, lots of people come and talk to me about their teaching evaluations so in my role as Head of School, staff talk to me about what was said, but it’s their choice to do that.

The university has just embarked on a process that other universities have had for some time I think – annual performance reviews – and undoubtedly people will be presenting me with evaluations there, I suspect, although I couldn’t vouch for that because we’ve only just started so I don’t know how that will work out.

At present teaching is only appraised on appointment and promotion. Student evaluation data constitutes “about 90 per cent” of the evidence teachers use to support promotion applications.

- Staff are encouraged to survey students using questionnaires prepared by the university’s Teaching and Learning Centre. Staff are encouraged to use the survey results to support promotion applications. In addition,

during annual performance reviews, staff are asked to discuss teaching issues.

- A subject co-ordinator could ask the university's Teaching and Learning Centre to administer a survey to students to seek their perceptions about teaching and about the subject.

It is a matter of choice for the co-ordinator, but staff applying for promotion within the university, and who did not supply information of that kind, would be greatly disadvantaged in their application.

- The university runs two types of surveys.

One is a survey of a subject, its content and structure and materials and things like that, and the other is a survey of the teaching in that subject. And the school has always encouraged staff to make use of both of those surveys to get feedback from the student's perspective. The subject surveys have been compulsory until this year and then as a result of financial constraints, this year there's a policy of alternating so that a subject will be surveyed every second year rather than every year, or every offering, and the teaching surveys have always been voluntary.

- All members of staff have annual staff performance reviews, in which staff are expected to produce evidence of their performance across the board, including in teaching. "The only evidence we have to go on is teaching evaluations. It is possible in that process to pick up signs of particularly good or bad teaching." In 2002, the school considered asking staff to also produce evidence that they are engaging in a process of reflection and considering improvement of their teaching and their subjects. Staff at the school also reported that the university's higher education support unit had helped staff develop their teaching:

The [support unit] developed a software program which enables you to tailor a course evaluation questionnaire to your particular interests, all sort of different questions, and I've always used that, and no one evaluation is the same. [In each term] I'm try to evaluate different things, in terms of new initiatives and how they've gone and so on. You also do a teaching evaluation just for yourself, it seems to me. I usually do the ones that don't have standard quantitative responses because I'm not really interested in the ones that apply the standard. I'm more interested in the qualitative responses... I think it's really, really important to get away from the standard model of evaluation, like some produced by the Teaching and Learning Support Unit. There are about 10 questions. I also find that valuable, particularly if you've been trying something new in the course. You really want to find out what students have to say about that. You ask them: "Did this work for you?" and "What would make it better?"

There's also always been, in addition to the student evaluations, a strong encouragement to utilise peer review, both of teaching materials and of presentation styles. And also self-reflective evaluation which here takes the form of a teaching portfolio. It is a document sent from the university, in which one is supposed to reflect at more or less greater

length, upon one's philosophy of teaching and how that manifested itself in terms of course design, in terms of the way objectives are structured, in terms of the choice of presentation techniques etc.

The content is fairly flexible and it shouldn't be too long, but it does mean you have to produce it when you're being reviewed, when your tenure is being reviewed and when you're being promoted, or every two years otherwise. I reckon that being required to think about those things is quite valuable, to articulate it. And if the university sees it as about recognising good teachers, then I think it's then a matter for the university to take those portfolios seriously.

And it's not supposed to remain static so you keep your portfolios and develop them.

- There are three levels of student surveys. The university requires all subjects to be evaluated by student survey every second year, by a centrally administered student questionnaire. The data is processed centrally by the university, and then sent to each school. This process provides teachers with evidence to support applications for promotion. "This is one of the most transparent methods for providing information about teaching." Also, within the school there is an annual survey sent to graduates upon the completion of their degree, to evaluate the program that the graduate has just completed. This data is used by the school to improve the degree programs. Thirdly, teachers may develop their own evaluation instruments to seek feedback from students at the end of the subject, with a view to using the feedback for improvement. This is voluntary, and the teacher can decide whether to use the feedback to improve the subject.
- The Dean scrutinises each subject evaluation and each teacher evaluation, by students. The subject evaluations are not confidential, but there is no procedure for distributing the results beyond the Dean's Office. The university, additionally, requires the school's Teaching and Learning committee to "conduct whole-sale reviews of subjects". The committee reviewed first year subjects in 2001. The review includes, amongst other things, a student evaluation and a survey of first year teachers (covering meetings between staff, changes to the subject in response to student evaluation data, the problems that have arisen in the subject, and so on). The results are written into a report.

The university also has a mandatory staff performance review, which is both summative and formative. "The tenure and promotion process tends to track quite closely the documentation people prepare for their staff performance, so that part of what they are doing in performance reviews is building up a profile which they can use for tenure and promotion applications." In the review process, the supervisor and staff member discuss the student evaluation of teaching data, the teacher's teaching philosophy, how they might develop and improved it, and what sorts of things they could do to obtain a different perspective.

The university has a good staff development unit that puts on seminars and workshops throughout the year. And the supervisor may recommend staff attend these. The supervisor and staff member agree on what should be done and in the following year, we check what has been done.

The university has been quite good [in relation to the student evaluation of teaching scores]. Even low scores are by no means fatal. The university is looking for your reaction to those scores. They're looking for what you get from them, what you have done to try to modify what you try to do to get them up. They take into account whether you are dealing with large classes or small classes, compulsory classes, elective classes etc. ... And people get promoted even though their scores are not superlative. ... They show that they have taken [student data] seriously, they respond to them and they try to do things differently.

- It is compulsory for teaching to be evaluated by students and for teachers to then share the results of the survey with the Head of School; however, staff may choose which of their classes will be evaluated.
- Some law schools poor results by student evaluation can lead to management action. The policy at one law school is as follows:

To assist in the enhancement and monitoring of teaching quality, all teaching staff are required to have a survey of their teaching completed at least once per year. All classes, both lectures and tutorials, in all first semester courses will be surveyed. In second semester, surveys will be conducted:

- in all classes taken by those members who were not surveyed in first semester;
- in classes where members choose to be surveyed again; and
- in classes nominated by the Head of School.

For this formal process of evaluation, the law school will utilize [a student evaluation of teaching instrument developed by the Faculty] rather than the [teaching evaluation instrument devised by the university's support unit]. Staff members who wish to undertake [the latter] survey may do so *in addition to* the use of [the former] by making their own arrangements with [the unit]. ...

When staff members have [Faculty administered survey instrument] results returned to them, they are to submit them to the Head of School for review. Any other Head of Department within the Faculty and the Executive Dean may request a copy. Compliance with this policy will be assessed as part of the review process for the allocation of the 5% teaching component of the Faculty budget.

Each semester, the chair of the Teaching and Learning Committee will complete a schedule for the conduct of the ... surveys by members of [student law society]. The procedure for the conduct of this survey is as follows:

- the survey will be conducted in a nominated period towards the end of the semester;

- survey forms and collection envelopes will be supplied to course co-ordinators in numbers sufficient for all lecture/seminar/tutorial surveys which are to be conducted;
 - course co-ordinators are to distribute survey forms and collection envelopes to those lecturers/tutors who are to be surveyed in their respective courses;
 - for lecture groups, the survey should include both a subject and a teaching evaluation, both of which are included on the survey form;
 - it is the responsibility of each staff member to ensure that sufficient copies of the survey form for each class are available at the commencement of the class;
 - surveys should be conducted at the beginning of a session rather than at the end thereof;
 - a member of the [student law society] survey team will attend the class and distribute the survey forms;
 - by way of explaining the nature and importance of the survey, the lecturer/tutor should give to the class the following information about the survey:
 - that you value student opinion and that you would like students to give you feedback on your teaching and/or your course (and, if the teacher so chooses, that the results may be used as evidence concerning teaching e.g. for tenure, promotion or employment);
 - that responses are anonymous; and
 - that the questionnaires will be returned to the teacher after the examination period so that you can read the comments.
 - the lecturer/tutor should then leave the room until the survey is completed;
 - after the forms have been completed, the law society representative will collect them, place them in the collection envelope which comes with the survey forms, seal the envelope before leaving the room (preferably in the presence of the lecturer/tutor) and then forward it to the faculty for processing.
- “The staff member leaves room, the students complete the survey, the surveys are placed in a sealed envelope, collated and processed centrally, and the results available in the next semester and published in the library. Staff can be dismissed if the surveys reveal a low level of student satisfaction with their teaching, although there are many steps, including remedial processes, before a dismissal can take place.”
 - During the annual Academic Performance Planning and Review Process, staff must address all teaching issues.

During this process, the Head of School agrees on an individual basis with individual staff members that they should participate in student evaluations, and they need to convince me every year that their teaching after the evaluation is considered to be satisfactory. If it's not satisfactory according to the student evaluation, we, on an individual basis, make arrangements for improvement.

We will for instance let them attend certain teaching seminars or send them on courses for PowerPoint training and try our very best wherever we identify difficulty to improve their teaching skills if it's considered not to be satisfactory.

- Student evaluation surveys are conducted using a university designed questionnaire.

The law school reviews the results ... subject by subject, stream by stream, semester by semester, as a standard routine, and ... looks at two things. ... Are there any indications of problems? They will be dealt with on a case by case basis. If there are any outstanding results, what sort of lessons might be transferable from those experiences?

In addition, a committee of the university's Academic Board reviews each faculty annually and the Vice-Chancellor's office conducts periodic reviews of each Faculty, which involves a "very detailed analysis" of teaching in the law school, looking at each type of student (HECS-funded, fee-paying etc). Each staff member has an annual appraisal, an element of which is an appraisal of teaching. The appraisal includes an examination of student evaluation data, "but it is not confined to that". The staff member also prepares a report that forms the basis of discussion, in which they can "set out any matters that they want to draw our attention to for inclusion in the appraisals, and also for them to express their views on any issues or problems".

In the graduate program, the Associate Dean (Graduate Studies) examines the data from each subject evaluation, "and writes to each teacher congratulating the teacher or suggesting areas of improvement".

- The compulsory student evaluation of process is administered by a central university body. The data goes to the individual teacher, and "the numbers" go to the Head of School, but not "the comments".

If there is a problem, the Head of School can discuss it with the staff member and find out: was there a problem with this? Our students seem to be moderately satisfied. Where they raise particular issues about particular things, I'll talk to the staff member concerned, we'll have a chat about it and once again it remains reasonably informal and because the staff by and large are responsive to concerns that are raised and are generally keen to try to make sure that everybody's happy. So if the students are upset about something the response I've had from staff where that has occurred has always been constructive. If it was destructive, I imagine I'd have to start initiating formal memos indicating to that person you should be doing X, Y and Z, but I haven't had to do that.

The evaluations are "made available to promotions committees and tenure confirmation committees. Appraisal is optional for tenured staff, and compulsory for staff on probation.

We set out a plan, and the plan will be in the order of five or six pages long, essentially identifying areas in terms of research and teaching that the individual is working on, career goals and the like. What things they need to realise those career goals. What expectations the university has from them. All of that is put into a document and discussed at some

length then I sign it, they sign it, and it goes off to Human Resources and is stored.

And so then 12 months later we have another discussion, we go through all the things that were said, what's happened to that person in the preceding 12 months, if they've done all the things that they were planning to do, everybody is happy and there's ticks in the boxes when it comes to promotion and the like.

- Some law schools admitted that, as far as the evaluation, assessment and appraisal of teaching is concerned, “we are very weak in that area”. One such law schools has a requirement that “quality assurance” student surveys be administered at least once every two years, “but whether it's done I am not quite sure. There are no other formal processes of evaluation, although the school had been on a retreat the previous year, where teaching had been discussed.”

The changes in the assessment and evaluation of teaching have not escaped criticism. One interviewee observed that there was an essential “paradox” between the twin requirements of having to teach greater numbers of students, and having greater levels of accountability for the quality of teaching:

Because of the effects of ‘massification’, it means that we have these huge numbers and we can't offer quality, which is the one-to-one and the small group, with essays and continuous assessment. But we have to spend all our time, for accountability, filling out endless forms and saying how wonderful we are and how much quality is in our teaching. We now have this new agency set up to vet the quality and already something's going around. People are having to subject themselves to various processes to demonstrate that it's the highest quality.

Again that's motivated by competition because you've got to show that you're excellent and doing all these things because if you're not your competitor's going to be doing it ... But I am a little bit cynical about the whole exercise and the way that we only hear about all this emphasis on quality, at the time that we are creating the conditions whereby it's impossible to offer a high-quality educational program because of these dramatically increasing numbers.

Some interviewees thought that students should not be surveyed in every subject. “They get fed up with it, and react against it. I think it can be usefully done every few semesters, and not every subject all the time.”

Other interviewees and focus group participants commented that the requirement to use data from teaching evaluations ensures that student demands are given importance to the extent that staff cannot afford to alienate their students in any way. It was thought that this could inhibit innovation and teachers who want to challenge students more (this is also discussed in chapter 13).

Furthermore, it was felt that given most teaching evaluation questions are pre-set, teachers cannot ask questions that are important to them. “Standardised forms are great for management/DETYA who want to look at statistics etc, but not very effective for what we do, and not a benchmark of quality.”

A further identified difficulty was the emphasis that it was felt most staff placed on the overall ‘satisfaction with teaching’ item:

Students differ in terms of what they think is good teacher, and some students just think it is the person who gives highest mark. People learn to manipulate the system – staff get students to fill in [evaluation questionnaires] before the assignments are back, and students judge teachers based on the marks [the students] got [from the teacher].

Other interviewees were concerned that assessment of teaching quality is primarily determined by students:

I think it’s quite interesting that we’ve been quite resistant to having our peers assess our teaching quality and often academics are resentful of having any quality, especially one who’s in a more senior position coming to their class. It’s like the old inspector idea in the schools. So it tends to be done now by the consumers, our students, who are now our consumers. They are the ones who judge, and sometimes of course they can judge, but there are some things I think maybe they’re not always such good judges of. I say that in a slightly paternalistic way there, but you can see because who is defining the knowledge?. They’re not really in a position to be able to gauge that, especially the students who are just out of school.

One Head of School thought that most of the input that teachers are given in their teaching appraisals are fairly “static”.

Because most of them are around student evaluations, which I think are reasonably unreliable. People also rely on (sometimes more reliable but subject to envy, tensions between staff, whatever) a peer evaluation of people’s teaching. You know, mixtures of a couple of different things. I occasionally go and sit in on someone’s class just to see how things are going. And sometimes the open-ended questions on student appraisals, well sometimes they’re the most useless part but sometimes they’re the most useful part, because I think the students are exhausted - they’ve got to fill in so many questionnaires.

Peer Assessment

Very few (if any) law schools required peer assessment of teaching, although some commented that it occurred informally “at the level that the colleague may ask a more senior colleague to visit one of the classes and to give feedback, usually because they would want someone to give them a teaching reference”. Interviewees at another law school also mentioned that at their law school “there is little peer evaluation of teaching, although it is done informally by teachers asking others to look at their teaching”. Other law schools also mentioned having “informal” peer reviews and that “reports by peers – not necessarily senior members – are often included in applications for promotion”.

Another law school mentioned that peer review is conducted “on a needs basis” with new members of staff:

As part of their induction process, the opportunity for peer review will be provided. If there are problems identified through student evaluations with teaching, depending

on the nature of the problems, peer review will often be used as one way of dealing with those problems. And most important of all, in all the compulsory subjects, teachers meet and work as a group so it's not a Faculty imposed peer review but it's more a question of co-operation amongst the teachers themselves. ... It is a quite informal peer feedback mechanism when appropriate.

Others also reported that when working in subject teams, this created "natural peer review":

In all core subjects where you've got a group of teachers working together, there's usually three or four teachers in each subject, there is a course coordinator and part of the function of the course coordinator is this function of supporting other staff and of providing opportunities for staff to engage in support and peer review is part of the support, I think. So it does exist on that level. Difficulties and problems that arise are things that I'll usually be aware of and deal with in essentially I suppose as I see fit, which usually means discussion with the staff member.

Another law school also highlighted the advantages of team teaching:

The effect of teaching in teams, which can be two, three, four people with different levels of experience, is not just in terms of benefiting the pedagogy. It is also to provide some mentoring and overview but not in a threatening kind of managerial sort of way. In other words to provide a sort of spread of experience and the creativity and enthusiasm of young staff with the experience of the older staff, but in a way that they can mutually benefit. So it's not a formal appraisal mechanism but a self-reflective mechanism built into it I guess.

At law schools, the smallness of the school meant that peer review was more easily fostered:

Because it's a small law school, you tend to get lecturers going in and sitting in on each other's lectures, so you get the informal feedback that way from your colleagues. It's done out of a matter of interest. It varies. Sometimes it's done out of a matter of interest. For example I know one of the lecturers said he's got to go today and sit in on another's lecturer's lectures because he's just interested in what his teaching style is. Sometimes what will happen is a lecturer, particularly a newer one, will come and say, "Look would you mind coming in and watching me? I'd like some feedback". And sometimes they just go in because they might be interested in some topic that's being lectured. So there's all sorts of reasons why it happens.

While many law schools saw the benefit of peer review, not all thought that it worked effectively in practice. For example, one Head of School commented,

I've been asked to peer review a colleague, but I think we haven't really got right into the best form of peer review. I'd like there to be a bit more. From a formative point of view I don't think we're judgmental enough.

I think peer review will probably develop as we get more and more of this formal accountability, and people will see the value in accumulating evidence and perhaps of just formalising the benefits of team teaching. Most of us team teach and it wouldn't be difficult to fit peer review into that relationship for mutual benefit, and an awful lot – I mean team teaching does have that great advantage in that there's a lot of collaboration and a lot of informal assistance and counselling in the broadest sense

that happens. But of course nothing ever gets recorded because of lack of time and this is essential.

Another law school that has tried to actively foster peer review reported,

We discussed at the beginning of this year a system under which more experienced staff members can attend, on invitation, the lectures of some of our junior staff members and then give them some feedback on their teaching. They are also welcome, the junior staff members, to attend the sessions of the more experienced teachers and we combine this arrangement with a system called the mentoring system.

Every new academic staff member has got an academic mentor. In fact they've got two mentors, a mentoring group, and they meet on a regular basis every six months and report to me, and give advice to the junior academic staff members about how to improve their teaching skills, research skills, how to participate in administrative activities and then this is also a condition for them becoming or getting a continuing position.

So after I receive a report from the mentoring group, after the first three years of probation I then report to the Dean, based on the reports that I receive from the mentoring group, as to whether the staff member, as to whether the position should become a continuing one.

Informal Feedback

Smaller law schools in particular mentioned that staff received a lot of feedback about teaching through informal contact with students.

With a small law school we get a lot of informal feedback from students and there's always been a good relationship between staff and students here. Students just wander in and out of the law school and knock on doors and come in all the time. Students who come from other universities always comment on how much more informal it is here than elsewhere. So we do get that.

Other interviewees mentioned that their law schools did try to encourage teachers to seek information about their teaching from a number of sources, for the purposes of improvement.

Lecturers who want feedback on specific issues can use questionnaires that are available on the web that were developed by our Centre for Teaching and Learning and in addition to that, sometimes people get specific feedback about aspects of the course that they particularly want to know, how it has been received, how it has worked and what the students think about it. So we get feedback from students constantly, both in a centralised and in an individual way.

In terms of getting feedback from colleagues, people who want that feedback basically know that they can always request a staff member to go along to classes and provide them with feedback – and that's fairly common. It's particularly used by more junior members of staff and perhaps when they're seeking promotion and they have to demonstrate teaching excellence. They'll then start to think about how that's going to work for them and they'll use people who are faculty people who are known to be really interested in teaching or have a reputation for good teaching, to provide

them with that feedback. But it's not formalised. It's not compulsory. So it's basically a combination of student review and peer review.

“Of course, a lot of evaluation is done by word of mouth, from students to lecturers about other lecturers.” Another interviewee further elaborated:

Because of the teaching spaces being close to offices [in our law school], we teach in public in this law school. As a consequence, we get pretty good feedback, and [the Head of School] gets wind very quickly whether someone is not performing. We also get quick feedback, and have a close relationship with, the student law society. Again this is borne of small group teaching mode. There is not a lot of distance as are in other law schools.

At some law schools, students produce a “Student Alternative Handbook”, “where students give their own evaluations” in the form of informal comments about subjects, their usefulness, and the teachers in the subjects. At another law school, the Law Students Society initiated its own survey of students in response to student complaints about the introduction of a teaching initiative that students were unhappy with.

In summary, reflecting broader university policies, themselves responses to government calls for more accountability from universities, most law schools now have policies for the student evaluation of teaching and of subjects. In some law schools, this is a voluntary process, with management only becoming aware of evaluation data when teachers apply for confirmation of appointment or a promotion. In other schools, management is informed of poor performers, and will then take action to improve the teacher's performance. Increasingly law schools are making it compulsory for teaching, and subjects, to be evaluated by students, with evaluation data going immediately to management.

As noted also in chapter 13, there is some scepticism within law schools as to whether (a) it is appropriate for teachers to be so heavily scrutinised in an era of increasing class sizes and diminishing resources; and (b) whether compulsory student evaluation processes do anything to promote innovative approaches to teaching and subject design.

Law schools also report that there is very little peer evaluation of teaching, although it does occur informally in some law schools.

Encouraging, supporting and promoting good teaching

At this law school there has always been a commitment to teaching, caring about students, doing innovative things We have a commitment to caring about teaching so that we have changed what we do. We develop our program, we sit down and talk about it, we have had teaching interest groups, which have certain life spans, but we care about this stuff, we talk to each other, learn from each other, we share experiences, we share materials. It's a collegial atmosphere, and it is an atmosphere in which we all want to teach well. That helps.

As mentioned in chapter 12, since 1987, there has been a greater awareness of the importance of support programs for teaching. A variety of factors might explain this development.

Also mentioned in a previous chapter, in 1987, the first Law Teaching Workshop was held in Mount Broughton, New South Wales. Initially run by two Canadian academics, from 1988 the workshop was run by Australian law teachers for their colleagues. Workshops were held annually until 1997, attracting between 13 to 25 law teachers for each five-day workshop. After a lapse of some years, the workshop was reinstated in 2002, with a shorter program.

There is no doubt that the workshop has had a notable impact on the development of teaching and learning in law in Australia. Many Australian law teachers mentioned that the workshop represented their only significant exposure to a fairly systematic framework for teaching and learning. The “hands on” nature of the workshop has furthermore enabled teachers to experiment with new approaches to teaching, and to see good teachers in action.

A number of interviewees indicated that their law schools were committed to sending staff to this workshop.

In my view the best resource for improving teaching is the ALTA Law Teachers Workshops and we finance a couple of people to go to that every year. It's excellent. It's a week-long residential course and that's what I advise all new [teachers] to go to. And it's that sort of thing that you need that actually introduces you to effective methods of teaching and learning. Also it just keeps you in contact with what other people are doing. You continually get new ideas about what other people are doing.

Another law school's strategic plan in the late 1990s specified that every member of staff should be required to attend a teaching workshop within the following five years, the ALTA workshop main one the school had in mind.

The ALTA workshop spawned an interest in law teaching, and, after completing the workshop, more than a few teachers founded groups within their own law schools to support and improve teaching. One law school's teaching interest group meets monthly, and the co-ordinator secures credit for the work of organising the group. Another law school's teaching interest group

convenes from time to time, discusses issues in teaching and learning and identifies training needs. A few years ago it identified that people needed to learn to use powerpoint, so everyone was trained in that. The group discusses things like how you use small groups in big lectures, how would you run tutorials? It also facilitates informal peer review.

From the early 1990s, law schools began to create appointments for Directors of Teaching within the school (sometimes referred to as the Associate Deans for Teaching and Learning or something similar). Although the job descriptions of those occupying this positions does vary, the creation of such positions signalled an awareness by Deans and Heads of School that law teaching was about more than about curriculum development, and that the law school itself had to develop

mechanisms to help staff develop their understanding of, and skills in, teaching and learning.

Furthermore, the late 1980s saw the beginnings of what was to become a standard fixture at many law schools – seminars on teaching and learning. One law school reported that “from time to time we have a teaching interest group, and this has recently been reconceptualised and revitalised and it is now called a teaching and learning seminar”. This is a monthly event.

[The seminars] provide a continuous and active focus for discussion about teaching and learning, about the philosophy of teaching, so it’s important that it’s conceived of as a rank-and-file activity. It’s not handed out from on high. It is a meeting of teachers who talk about learning and talk about teaching methods, who talk about the philosophy of teaching and share ideas about addressing problems.

This school has furthermore appointed a Director of Teaching and Learning,

to ensure that the teaching and learning seminar is not handed-down-from-on-high. It’s a collegial activity so the Director of Teaching and Learning has got to really have a deft touch to make sure that this atmosphere is maintained. In fact, this person doesn’t organise the seminar, somebody else does. But this person will also be the focus for interacting with the university when we’ve got these rules and policies coming out of discussion and so on. There’s a review of undergraduate education taking place at the moment, the Director of Teaching and Learning plays a part in generating discussion here so that we can respond to that review.

At other law schools, the Assistant Dean (Teaching and Learning) is given a nominal budget for teaching and learning, and some of that money is used to encourage staff to seek further funding “to develop teaching tools”.

One law school that organises teaching seminars for its own staff, invites knowledgeable law teachers from other law schools (for example, a seminar was given by a recent National Teaching Award winner) and from other parts of the university (for example, a workshop on assessment was given by the university’s Learning and Development Unit). Furthermore, this law school attempts to ensure that members of staff are informed on advances in technology and aids to teaching, and tries to distribute as much information from the university as possible on teaching and learning. (These activities were previously organised by the school’s Teaching and Learning Committee but this has now been disbanded as a result of the school merger into a larger Faculty.)

Another law school that has a Teaching and Learning Committee mentioned that the purpose of such a committee is primarily to encourage and stimulate good teaching by the staff.

So it does things like holding seminars where issues are discussed and ideas are thrown up to improve teaching. Sometimes we invite people in to help, give presentations, and an example of that is recently inviting the university’s Teaching and Learning Centre staff to lead a discussion on supervising student research.

Also that committee has helped to write a guide for teachers. It’s a bit out of date and we’re just revising it again this year. [It] is intended to help teachers

understand the requirements of teaching a subject, particularly in coordinating the subject. In other words being in control of the subject and it includes a lot of technical detail about what should be done and when, but also some other ideas.

Law schools did also report that teaching support could either take place at the school/faculty level or the university level:

At faculty level we would put on probably one or two teaching workshops a year, which would have a different focus, depending upon what we felt we needed at that particular time. And they would sometimes be in-house things and sometimes we would pull in a teaching expert from outside. And then at university level the Centre for Teaching and Learning has a whole series of different courses that we encourage people to go on. Everyone has access to a staff development fund of \$3000 per annum and that can be used to support research or teaching, so that people who want to go on courses where there are fees involved, they can use that resource.

Similarly, at another law school:

We've worked very closely with our teaching and learning centre ever since there has been a teaching and learning centre. We have also appointed a Director of Teaching, we have regular teaching seminars, and every year we have a two-day teaching workshop. So that's evidence that we value the concept of teaching very, very highly. We usually have at least one teaching seminar a year, which is usually a two day affair and then we have a four or five smaller seminars on teaching. And both the university and law school give this emphasis.

At a third law school:

All new staff are required to engage in a semester-long university teaching course which can be done on a face-to-face basis or on-line. We've got some new appointments at the moment and they're doing it about half and half because it depends on whether they are available to go to the face-to-face course. And all of them have actually reported that it has been really valuable, to such an extent that I must say as Dean I've thought to myself that it would be a good thing in fact if everyone did it (and I include myself in this) every five or six years. The course is offered by the teaching and learning unit within the university, and I think that's pretty highly thought of.

I've also been looking into trying to set up some sort of post-graduate diploma course – not so much set up but construct one, with one of the teaching units in one of the other universities, like a DipEd I suppose, but structured for law teaching. I've got material together for that and we'd be pretty keen to get that in place and get people to engage in that.

And also I've offered school support. Anyone who wants to can go on the ALTA law teaching workshop and again I hope to do that myself. And also I've done these university teaching courses too, but I did them a long time ago when I started teaching. There's a lot of new things to learn. There are a lot of new things to learn about teaching theory and learning theory, as well as learning and teaching technology, which most of us just learn on the run and presumably don't learn very well. It's not a good way to learn.

As this school is moving to a smaller group teaching model, it makes greater efforts to promote discussion about teaching between staff members.

We do it quite often because the methodology in terms of the small-group teaching and seminar teaching is still pretty new and is still something that people do wish to discuss and it becomes relevant each year in terms of assessment and so in fact I would say there'd be at least one School Board meeting a year where these sorts of things are discussed quite extensively. And when we were setting up the new system we had staff meetings and development meetings and retreats, lengthy meetings and retreats to discuss these sorts of things and for the specific purpose of discussing teaching methodology.

Even where teaching interest groups have ceased to operate formally at law schools, many schools reported that there was a very strong informal network of teachers, and/or a formal network operating through the Director of Teaching, which involved informal discussions and seminars about teaching.

Within the staff seminar program – and we try to have a few every semester – there is a facilitated interchange of ideas between staff. Staff describe new approaches to teaching and curriculum design, outline the difficulties they faced, and the areas in which the approach was successful. “Here’s what we did. What do you think? Here are things to try. If you want to do this, here are things to avoid.”

At some law schools, teaching staff may present discussion papers on teaching and curriculum issues during the staff seminar.

At a few law schools, in addition to formal or informal meetings about teaching, one teacher would be charged with the task of assisting her/his colleagues with teaching on a one-to-one basis. At one such law school, the staff member who was recently awarded a Vice-Chancellor’s Teaching award has “received a lighter teaching load this year ... and for the rest of the time he goes around to staff and gives them one-to-one assistance on improving their teaching”.

Interviewees and focus group participants also mentioned that both formal and informal mentoring at their law school was not uncommon. At one law school, senior colleagues would encourage others to attend teaching development sessions held by the University’s educational support unit “and it’s useful to get this type of encouragement. You may not do these things otherwise”. Another law school ensures new teaching staff work with experienced subject co-ordinators. “We would never be putting a young staff member out on their own.” A third law school established a mentoring scheme, which unfortunately, in recent years, has slowly dissolved:

We were to have more senior members be our mentors. And it was not to pick us up on anything, it was very confidential, it wasn’t to be used for promotions or anything unless we wanted the appraisal to be used in that way. It was an opportunity for us just to sit down and [the mentor] to say: “Well what are you doing?” and “Where are you going?” and “What about with research?” and not to tell me off or anything like that but just to say, “How could you be assisted to do more?” and that kind of thing. Personally I thought it was quite a wonderful process.

On a more formal level, some law schools have encouraged, and supported, staff to undertake graduate certificates in higher education. It is clear that in some,

though not many, cases, the targeted staff members have completed the certificate “and come back with an excellent understanding of the theory and practice of teaching and learning, and have made substantial academic contributions to the literature in teaching and learning”. One law school reported that one of its staff members had taught a postgraduate legal education subject within the school, which had been completed by some of the school’s junior staff.

Other schools have induction programs for new teachers “that has worked very successfully with the younger teachers in early stages”. At other law schools, formal induction programs that also cover teaching are open to other staff as well, and not just new recruits.

While all the examples thus far in this sub-section indicate that the move towards re-conceptualising teaching has led to teaching committees at some law schools, staff appointed to specifically oversee teaching and learning at other law schools (or even the same law schools), the organisation of teaching seminars, encouragement to attend the ALTA workshop or university-based teaching workshops, informal and formal mentoring, and induction programs for new recruits, interviewees and focus group participants nonetheless thought that structured programs to support teaching and learning was still absent at most law schools. Furthermore, they reported that a lot of the initiatives mentioned above are dependent on the energy of committed individuals. In addition, despite the seminars, mentoring, et cetera, often the difficult teaching and learning issues are left to the subject co-ordinators to resolve, who themselves are inadequately supported by the law school.

Teaching awards were looked upon favourably by some law teachers, who thought that they not only generated some of the support that law teachers wanted and needed, but also brought some law teachers some much needed recognition. Most universities have an annual round of teaching awards and often teachers could either self-nominate or be nominated by students. The Dean or Head of School occasionally encourages particular teachers to apply and some law schools have set up formal processes for identifying potential applicants. As the application process is time-consuming at most, if not all, universities, potential applicants are identified by the law school well in advance of the application date, and at some law schools, applicants are given administrative assistance. Award winners earn for the law school recognition in teaching (which many schools consider important for the added benefits this leads to) and sometimes, other added benefits. Award winners usually make presentations about their teaching in university-organised formal seminar that are attended by teachers from both within the law school or elsewhere in the university. Very few law schools, however, ask awardees to make presentations within law school.

Recipients of the university teaching awards are often seen to be well placed to earn a National Teaching Award.

While one law Dean commented,

These awards re-inforce each time that good teaching involves more just a charismatic or popular classroom performance – we look for good materials, whether someone has published a casebook, or influenced the national curriculum.

other interviewees expressed caution about the usefulness of teaching awards in promoting teaching.

The awards for teaching in the university usually go to people who use technology well, or who use new forms of assessment, but not really to very good teachers in everyday practice. They reward people who experiment and who students like.

One Head of School advocated less formal forms of encouragement:

I don't necessarily give people flowers and lots of chocolates, bottles of wine (although I think it's good) but I try to reward them through the acknowledgement of good teaching practice in school newsletters, through e-mail distribution lists, or just basically at school meetings, identifying what I think has been quite a constructive engagement of teaching issues in a difficult time in the evolution of the school.

Other interviewees also argued that true recognition of good teaching is not always “tangible”.

It is culturally supported in the sense that at end of day, teaching is seen as an important activity – and if you are not a good teacher you don't earn the respect of your peers. Certainly you won't get promoted. You are faced with the great pain of the small classroom with a group of students who are highly vocal and with high levels of expectation as to quality teaching. There is not much social distance in that situation, and most students talk. ... Most importantly, you have to be a good teacher to get promoted. Teaching is important here, and we attract people who place a value on teaching. We get extra money from the university because we have good teachers, attract good students, and punch above our weight, and give kudos to university. And that reinforcement of teaching flows back in.

Such comments further re-inforce the need for structured mechanisms for support of teaching within law schools.

There needs to be much more candour in the way issues of pedagogy are discussed. And that seems to me to be in itself quite a difficult matter because people feel threatened. Some people are very good small-group teachers, some people aren't. No doubt those who aren't can be improved, just as some people who don't like lecturing are very ordinary at it, can find that with certain techniques they become better at it. But they'll never be very good at it. And it's the same I think with smaller-group teaching.

The way to go forward [on this issue] may be to have subject orientated discussions. So the Tort teachers when they get together (from within the institution) might well talk more openly and more meaningfully about teaching, than would otherwise happen if we're simply bringing people together from different subject. I don't know. But to my mind there is no question that there has to be a lot more general discussion of pedagogical problems than there currently is, and proper mechanisms in place within which to do this.

Teaching and Learning Strategies

Many law schools reported that committees within the law school that are responsible for teaching and learning concentrate principally on curriculum development, with only marginal attention given to the development of policies and processes aimed at staff's approaches to teaching.

Other law schools reported that their teaching and learning committees did, in fact, develop teaching policies.

These policies take two forms - (i) the formalisation of what we already do, and broadening it to cover the wider evaluation of teaching on an ongoing basis, so that we don't just use teaching evaluations, and have a wider basis for evaluation (for example, a process which evaluates objectives, materials [and the other elements of subject design]); (ii) a more structured ongoing staff development and training program in different techniques. For example, we have identified areas of technology where even the most computer illiterate have been given classes to help them use powerpoint and websites. We need to formalise that more.

Some law schools reported that they did have an overall teaching and learning strategy, but that this was essentially led by their university. Nevertheless, some universities require the all schools, including the law school, to reflect on teaching and learning, and to plan initiatives. At one university, each faculty has to produce a faculty teaching and learning plan, which has to be linked to the university's plan. The university then provides support in the form of teaching and learning grants, which are aimed at projects that seek to improve teaching and learning in a particular way. Applicants have to ensure that their applications are linked in some way to the school's teaching and learning management plan, "the priorities and indicators in our faculty-based plan".

A strategy to improve teaching

Essentially, academic leaders need to create a school environment in which all members of the school work towards improving their teaching on an ongoing basis, base their teaching strategies on a reading of the educational literature, and constantly seek evidence of the impact of their teaching on student learning.

This will involve academic leaders developing a vision of how teaching should be carried out within the school, pioneering new approaches to teaching, encouraging risk taking, providing models, promoting teamwork and collaboration, removing obstacles to good teaching, and encouraging and rewarding good teaching practices, including evidence-based evaluation of teaching for the purposes of self-improvement.

Most teachers "can benefit from reflection on how they teach as a beginning step in becoming better teachers", and that this involves "an increased understanding of how learning takes place." (Lucas, 1994: 102) Ann Lucas (1994: 102) asserts that it is the head of the law school's job to "initiate this awareness".

Paul Ramsden (1998: 170) provides the following advice to academic leaders:

In no other area of academic leadership is personal commitment to the goal of high quality and productivity ('modelling') more important. Simply stated, you must believe that good teaching matters. You must act in ways consistent with your belief. We need first to address our own preconceptions about effective teaching and learning, and if we are not already aware of the substantial literature and research on the topic of effective learning and teaching in higher education, we might spend some time becoming familiar with its basic ideas and associated implications for curriculum structures, teaching methods and student assessment. ... It is important to escape from some common myths about teaching in higher education if we are to help our staff teach effectively.¹

Drawing on the work of Prosser and Trigwell (1999) we can identify different levels of influence on student learning within law schools.² These are:

- the *university and Law School context* – university and Law School policies and procedures which affect teaching and learning;
- *teacher thinking* about student learning;
- *teacher planning* (otherwise known as *subject design*) – establishing course aims and objectives, and then determining subject aims and objectives, assessment tasks and criteria, the sequence of topics, learning activities, and materials;
- *classroom teaching strategies* – selection of classroom teaching methods and media.

Prosser and Trigwell provide examples of strategies that can be adopted by law schools to ensure that teachers are provided with the means and incentives to learn about each element, to address each element, and to take a reflective approach to teaching in which self-evaluation, based on qualitative information drawn from a range of sources is central.

The components of such strategies might include (Ramsden, 1998: 169-82; Lucas, 1994: chs 4 and 5; Martin, 1999; Ramsden, 2003: chapter 12):

- (i) initiating a debate about what constitutes good teaching within the school, and establishing a set of shared aims, educational values and strategies which outline how good teaching will be achieved within the school;
- (ii) appointing good teachers to the school;
- (iii) supporting teachers in their efforts to improve their knowledge and understanding of each of the elements of teaching and learning (through the development of a teaching and learning library within the school, encouraging teachers to undertake formal education in teaching and learning, and supporting attendance at teaching conferences and workshops);
- (iv) promoting a "scholarship of teaching" and greater discussion and collaboration in teaching by organising regular discussions, workshops and seminars about teaching issues, and by emphasising the importance teamwork in teaching (especially in large subjects with more than one teacher);
- (v) encouraging teachers to evaluate their teaching, drawing on appropriate sources of information as possible in order to develop and implement, with financial support from the School, a teaching plan;

¹ These "myths" are outlined and addressed in Lucas, 1994: 102-104; Ramsden, 1992: 87-88, Weimer, 1997; and Ramsden, 1998 170-171.

² Many of the ideas in this final section were inspired by a paper by Professor Shirley Alexander (1999).

- (vi) establishing the goal for each staff member of ongoing professional development in teaching, and emphasising that becoming a more effective teacher is a life-long process. This emphasis on the long-term also takes pressure of junior staff, who can set a series of staggered goals for their teaching, rather than feeling that they have to master everything at once;
- (vii) encouraging teachers to document their approach to teacher thinking, subject design and classroom teaching strategies in teaching portfolios which support their applications for appointment, conformation of appointment, and promotion;
- (viii) encouraging teachers to research issues to do with teaching, and to publish articles on teaching in refereed journals;
- (ix) promoting teamwork and exemplary and reflective teaching practices by carrying out, each year, a research project on an aspect of teaching identified by the retrospective survey of teaching within the school and by a survey of developments in teaching and learning;
- (x) promoting a coherent curriculum, with subjects (particularly assessment tasks) building on previous student learning and assessment, and an appropriate mix of legal doctrine, legal theory and practical instruction spread through the subjects on offer;
- (xi) promoting a rigorous approach to subject design (clear subject objectives, a variety of assessment tasks targeted at the objectives, concise and accurate assessment criteria, activity-based teaching materials, and detailed and helpful feedback to students on their performance in learning and assessment activities) (Biggs (1999) refers to this as “aligned” teaching”);
- (xii) supporting innovation in subject design, particularly in large subjects, by providing funds to research aspects of teaching and learning, by giving staff relief from other duties to develop teaching initiatives, or by seconding educational experts to the school to help staff review their subjects;
- (xiii) disseminating throughout the school examples of good teaching practices, so that innovative teachers receive recognition for their efforts, and their good practices can be adopted by their colleagues;
- (xiv) creating a teaching support committee, responsible for organising activities to help teachers explore teaching issues, read the literature on teaching and learning, share information on teaching, and so on;
- (xv) developing a mentoring system, so that inexperienced teachers can meet regularly with experienced teachers to discuss issues of concern to them;
- (xvi) conducting an audit of factors that teachers consider to be impediments to good teaching, and then developing a strategy to remove those barriers; and
- (xvii) liaising with the student body to identify and resolve teaching and learning issues as soon as practicable.

Academic leaders within the school need to “show the way”, by asking others to visit their classes to provide peer feedback on their teaching, by openly seeking advice on teaching issues from colleagues, by discussing teaching initiatives they are undertaking, and reporting back on their success, by admitting their mistakes, and by actively participating at all meetings to discuss aspects of teaching. It is only by talking about their own teaching, and creating a climate of openness about teaching, and trust and support, that academic leaders can find out what other colleagues are doing with their teaching.

Implementation of the strategy

The following checklist provides some ideas for a teaching strategy that aims to stimulate improvement to each element of law school teaching:

1. *Teacher thinking* (about student learning) might be improved by:

- Making available key works on student learning in the school's teaching and learning library;
- Encouraging staff to participate in a reading group within the school, where key books on student learning will be discussed;
- Encouraging and funding teaching staff to attend conferences and workshops on student learning;
- Encouraging (and subsidising) teaching staff to undertake courses on teaching and learning;
- Initiating and funding research project on student learning within the school;
- Instituting a policy of a show of evidence of an understanding of theories of student learning, to be included in teaching portfolios prepared in support of applications for appointment, confirmation and promotion.

2. *Teacher planning* (subject design) would be improved by:

- Making available key works on subject design in the school's teaching and learning library;
- Building up a collection of material exemplifying good subject design (e.g. examples of clear objectives, assessment criteria, feedback mechanisms, activity-based materials) in the school's teaching and learning library;
- Organising workshops on subject design for teachers (particularly new teachers);
- Establishing a peer mentoring system for new teachers;
- Inviting experts in tertiary education to give seminars in which they outline recent developments in educational theory and practice, and likely future developments in teaching and learning;
- Organising working groups on specific aspects of subject design in which groups of teachers can work together to plan and structure their subjects;
- Initiating and funding research projects on aspects of subject design (selected from issues raised by the retrospective course survey, or prompted by changes in university teaching and learning policies), resulting in exemplary teaching practices that can be used by all teachers within the school;
- Organising seminars, conferences and workshops exploring aspects of subject design, or show-casing exemplary subject design practices;
- Encouraging teaching staff to evaluate the design of their subjects by drawing on appropriate sources of information (including student and peer evaluation), and providing bursaries to staff to implement a plan for improvement arising out of the evaluation;
- Asking staff to reflect upon subject design, and provide examples of their subject design practices, in teaching portfolios;
- Assessing the performance of teaching staff in subject design in all confirmation and promotion decisions;
- Providing staff who have engaged in informed and reflective work in subject design with credit for that work in the allocation of teaching responsibilities.

3. *Classroom teaching strategies* would be improved by:

- Making available key works on classroom teaching methods and media in the school's teaching and learning library;
- Organising workshops for staff (particularly new teaching staff) on approaches to the selection of teaching methods and media;
- Organising seminars and workshops on specific teaching methods and media, and to showcase exemplary methods;
- Ensuring the availability of required teaching media in classrooms used by school teachers;
- (independently of the assessment of teaching processes required by the university) encouraging teaching staff to seek *qualitative* information (from students, peers, and the university's teaching and learning development unit, etc) with which to evaluate their classroom teaching performance, and to develop a plan for improvement;
- Encouraging and financially supporting staff to attend courses and workshops on teaching methods.

4. *Evaluation* would be promoted by:

- Making available key works on evaluation in the school's teaching and learning library;
- Organising workshops on evaluation for staff (particularly new teaching staff);
- Liaising with the university's teaching and learning development unit to ensure that there is strong support for staff wishing to evaluate their own teaching;
- Ensuring that a retrospective course evaluation is conducted annually;
- Providing bursaries to teachers implementing a teaching improvement plan;
- Awarding prizes for demonstrated exemplary informed and reflective teaching practices, to be judged by an expert panel based on submitted teaching portfolios.
- Requiring all applications for confirmation and promotion to be supported by evidence, in a teaching portfolio, of (a) regular self-evaluation of teaching, and (b) the development and implementation of teaching improvement plans;
- Assisting teaching staff to prepare teaching portfolios to support their applications for confirmation and promotion.

5. *Relationships with students* in relation to teaching and learning would be improved by:

- Encouraging students to elect representatives in each subject who could regularly meet with teachers to discuss progress in the subject, to raise issues of concern for students, and to suggest solutions to problems;
- Establishing a complaints procedure for students who are unhappy with the teaching of their subjects, and who have raised issues with their teacher without successful resolution;

- Establishing a student liaison forum, comprising staff and students, to meet bi-monthly to discuss teaching and learning issues.
6. *The Teaching Strategy itself should be evaluated* by an appropriate outside body (for example the university's teaching and learning development unit) to ensure that it is in line with contemporary thinking about the promotion of teaching and learning, and that it justifies the school's resources (money, staff time etc) expended.

Summary

This chapter describes the way in which teaching is managed and supported in law schools. As with most of the other issues examined in this report, there has been considerable progress in this aspect of law school life began in the mid-1980s.

In most law schools, teachers are either required, or strongly encouraged, to have their teaching and their subjects evaluated by students, usually by asking students to complete a written questionnaire. There are other forms of student evaluation, but these are not utilised by all law schools. Peer review, for example, was less commonly utilised than student evaluations, although many schools reported that peer evaluation took place informally, and usually at the initiative of individual teachers.

Support for teaching within law schools has taken the form principally of teaching interest groups, seminars on teaching, law school encouragement of ALTA Law Teaching Workshop attendance, and occasional mentoring schemes. A few teaching staff have also successfully completed graduate certificate-level qualifications in education.

Many interviewees and focus group participants reported that a more systematised support for a scholarly approach to teaching is required at most law schools, which would include measures to ensure that teachers individually, and the school as a whole, evaluate the effectiveness of teaching in terms of its impact upon student learning.

CHAPTER EIGHTEEN

REPORT OVERVIEW

In accordance with the AUTC project brief, this report attempts to provide a detailed ‘stocktake’ of curricula and teaching and learning in Australian law schools. Specifically, it documents approaches adopted by Australian law schools in relation to:

- undergraduate law curricula, principally for the LLB program;
- graduate and postgraduate law curricula;
- the processes and procedures adopted by law schools to oversee undergraduate, graduate and postgraduate programs; and
- teaching and learning in law schools.

Most of the data collected for the report was gathered during visits to 27 law schools (there are 28 law schools in total in Australia at the time of writing), to interview key law school staff (as identified by each law school) and conduct focus groups with law teachers. Interviews and focus groups were also conducted with (primarily) penultimate and final year students and separately, employers of law graduates. The breadth of the project brief, coupled with the limited time and resources available to conduct this project, led us to choosing a project design that invited teachers, students and employers to self-select their participation in the project, to speak in their own words about a range of topics within the parameters set by the project brief, and to provide their understanding of, and opinions on, these topics, as opposed to representative findings. For this reason, in our reporting of the data collected, we have relied heavily on the use of quotations from interviewees and focus group participants.

The data collected from interviews and focus groups was supplemented by numeric data – statistics and factual details that law schools provided about student enrolments, undergraduate and postgraduate programs, etc; and results from a written survey of penultimate year law students (the design for which, contrary to what was required for interviews and focus groups, required that the data be representative).

Chapter 1 provides a more detailed description of the project design.

The recent history of legal education in Australia

Since the late 1980s, there have been significant developments in legal education in Australia (see Goldring, Sampford and Simmonds, 1998). Law schools, for a some decades until this time, aimed their LLB programs at school-leavers, taught the LLB as a stand-alone program, and then offered few combination possibilities with Law (usually Arts/Law, Economics or Commerce/Law and/or Science/Law). Furthermore, the aim of teaching at most law schools was to impart the content of legal rules to undergraduate law students, with very little attention given to the teaching of legal ethics, legal theory, or generic or legal skills in the LLB program. The lecture method was, at most law schools, the unrivalled teaching method, and most students were assessed by end-of-year examinations.

Postgraduate coursework programs were few in number, and confined to a handful of law schools.

Since 1987, the number of law schools has more than doubled, and there have been dramatic changes to the funding environment within which law schools operate. There have furthermore been notable changes in the thinking, focus and substance of legal education: Law schools continue to move away from their traditional “trade school” approach, “towards the classic, liberal model of university education” (Chesterman and Weisbrot, 1987: 718) and give greater attention to general and legal skills teaching. In addition, as a result of a differential system of student contribution to the cost of their education, law programs are now assigned to the highest charge band; however, they are allocated the lowest level of funding. As such, law students are charged on a full cost recovery basis while law schools operate in a system in which they are starved of resources. This has been the situation for some years (Chapter 1) and, for this reason, the issue of resource allocation is a recurrent theme in this report.

A review of legal education in 1987, widely referred to as “The Pearce Report”, recommended significant changes to legal education, some of which have had long reaching effects. McInnis and Marginson (1994: 243-244) remarked that “a major effect of the Pearce review was to generate a new culture of evaluation, review and improvement” in law schools. The ‘Pearce Review’ even preceded the changes brought about by the ‘Dawkins Reforms’ of 1987-1989, and “prepared law schools for the changes in advance. Even before the Committee’s work was complete, law schools were already out of the ‘comfort zone’, and this was well before the Dawkins hurricane hit.”

The changes to legal education over the last 15 years, therefore, have been widespread and significant. In the words of one observer of legal education in Australia (Le Brun, 2000a: iii)

Legal education in Australia is markedly different today from what it was, say, a decade ago. Changes in curriculum, teaching approaches, and assessment strategies have occurred that could not have been easily predicted in the late 1980s. The introduction of generic and lawyering skills into the undergraduate law curricula, the situating of legal knowledge in the context of its use, and the creation and adoption of more creative and wide-ranging assessment tools, to name three innovations, have changed the way many, if not the majority, of students learn law, learn about law, and learn about legal practice in Australia.

Law schools, over the last ten years, have also been making choices to actively emphasise their distinctiveness, and to differentiate themselves, particularly in relation to their local competitors. Most first and second wave Australian law schools mentioned that they ‘reinvented’ themselves, partly in response to the recommendations and suggestions in the Pearce Report, and partly in response to the emergence of more law schools. The third wave law schools were, in the main, set up to offer a different, and what was seen by some of them to be a better, model of legal education than what they thought was offered by the “traditional” model. Chapter 2 outlines what each law school thinks distinguishes it from, principally, its local competitors. Perceived points of distinction are many

and cover class size, city/regional/international focus, and emphases on skills training, clinical programs, international exchanges and postgraduate programs.

Nonetheless, despite these claims of distinctiveness, some uniform trends have emerged, particularly in relation to the LLB program. For example, at most law schools, there has been a significant trend towards teaching legal skills, and at a growing number of law schools, there has been either a formal or informal infiltration of professional legal training. Most law schools now give greater weight to legal theory and ethics teaching and a growing number of law schools have a strong commercial law focus, and increasingly “an international focus”. Many law schools also express a greater commitment to reducing class sizes; however, funding constraints have frustrated some law schools’ efforts in this area (chapter 11).

Law schools that are able to attract postgraduate students have been increasingly “beefing up” their graduate and postgraduate offerings and/or upgrading their higher degree research programs. This, in no small part, has been a response to the funding situation that has, over time, forced many law schools to use their postgraduate programs to cross-subsidise their undergraduate programs.

For some law schools, the past 15 years has been a period of great stability and not of flux, and these law schools have been affected only by issues such as the introduction of the Priestley requirements (Chapter 1), or the semesterisation of subjects. This is particularly true of the third wave law schools, which introduced into their curricula, upon inception, many of the (seemingly radical) changes that first and second wave law schools have had to make to theirs. And the period since their establishment has largely been a process of refining curricula at third wave law schools. Admittedly, some third wave schools that began with ambitious programs have had to wind back what they saw to be important initiatives (again, in the face of inadequate resources to support their educational vision) but only a few of these law schools – possibly none of them – have ever professed to have made radical changes to either their curricula or to their approaches to teaching and learning.

Overseeing curriculum development

According to McInnis and Marginson (1994: 243), the Pearce Report instilled a “culture of continuous improvement” in law schools and this was seen to be necessary because,

In recent years, Australian higher education generally, and the legal education sector particularly, have been under sustained pressure to adapt to the demands of a changing, discriminating and competitive higher education marketplace. Tertiary legal education has been subjected to intense scrutiny by government, employers, University management, professional bodies, the judiciary, law reform agencies and, not least of all, an extremely diverse student cohort. All stakeholders demand that law faculties should be accountable at every level for the quality and efficacy of the professional education they offer. The result has been that the fundamental orientations of legal curricula have had to be reconsidered (Kift, 2002a: 1).

Almost all law schools reported that their curricula are subject to regular review

(Chapter 8). Most law schools now have committees overseeing the development of their LLB programs and membership of these committees usually includes students, and occasionally members of the profession. The functions of these committees vary from school to school, but in the main they are charged with the responsibility of ensuring that the Priestley requirements are met, that new elective subjects are vetted, and that the overall direction of particularly the LLB curriculum is monitored. In a few of the newer and/or smaller law schools, these matters are dealt with in full staff meetings. In addition to the overseeing committees at most law schools, increasingly many of them have also established external advisory committees, which include students and members of different arms of the legal profession, who advise on curricula in light of their knowledge of legal practice and/or consumer needs.

While all law schools with graduate and postgraduate programs do have committees to oversee the curriculum, in many law schools this is done by Directors of Studies and Advisory Boards, rather than by a more formal law school committee.

Reviews and consultations about curricula

Most first and second wave law schools have been subjected to many reviews in recent years (chapter 2; chapter 8), and many of the reforms to curricula were the result of law school-initiated reviews. Third wave law schools also reported that they either have been recently reviewed, were in the process of being reviewed, or were about to be reviewed; however, as mentioned above, the reviews have rarely produced as many radical changes to curricula as experienced by some first and second wave law schools in recent times.

At all law schools, reviews of curricula could be initiated by the school, by the larger faculty (for those law schools that are part of larger faculties) or by the university. At a few law schools, university-initiated reviews could be “quite formal, and sometimes more sinister” than law school-initiated reviews and a few law schools are wary of them. Other law schools are able to see the benefit of reviews, irrespective of the level at which the review is initiated, but are concerned that time no longer permits them to participate in “so many reviews”.

In addition to formal reviews, most law schools mentioned that they made greater efforts to consult students now than in the past. Deans and Heads of School spoke of regular meetings with student representatives, regular informal contact with former students, and almost all law schools administer formal student surveys for each subject. At some law schools, the surveys are undertaken at the behest of the university and this often means that the results have to be shared with the Dean/Head of School and less frequently, a central university unit. In these cases, poor results could lead to “management action”. Other law schools encourage teachers to survey students about their subjects, but there is no obligation on the individual law teacher to do this, or if done, no obligation to share the results with anyone else. Student surveys almost always utilise written, multiple-choice questionnaires, which are rarely designed by the law school. Instead, they are often designed by a central university unit, which, in some cases, analyses the results for the law school. A few teachers at some law schools also conduct other

types of student evaluations of subjects, which invite open-ended responses from students.

At some law schools, the university imposes significant constraints upon the law school's operation of its programs – including restricting elective programs, requiring compulsory general subjects to be taught within the LLB program (chapter 4), and determining student entry policies (chapters 2, 3 and 8).

Employers are also considered to form an essential part of the curriculum review process and most law schools reported that they kept in very close contact with the legal profession in one way or another (some regional law schools mentioned that there was an unspoken obligation on their part to have a close relationship with the profession). At least one law school has conducted a formal survey of employers of law graduates in order to ascertain weaknesses in its LLB curriculum; however, most law schools consult the profession via their advisory groups. Some Deans and Heads of School also regularly meet informally with law firms.

As far as the LLB program is concerned, the most notable features of curriculum development in the past fifteen years has been the inclusion (“the dominance really”) of the eleven Priestley “areas of knowledge” (chapter 1); and the inclusion of legal ethics/professional responsibility; legal theory and general and legal skills.

Priestley

The Priestley requirements for admission to legal practice focus on areas of substantive knowledge that must be covered by a student before s/he is allowed to be admitted to practice. The focus of the requirements on areas of knowledge, rather than on skills and capabilities, has been widely criticised (chapter 4), as has the configuration of the subject areas around what is seen to be outdated categories (chapter 4), and furthermore, the Priestley preoccupation with local law (chapter 7). Nevertheless, most law schools ensure that they cover all Priestley subject areas in their core, compulsory subjects. The most common pattern is that each area of knowledge is covered in one, perhaps two, dedicated subjects. Some law schools are more adventurous, and organise their compulsory subjects more thematically, but still ensure that all Priestley areas of knowledge are covered. A few schools do not cover all Priestley areas in the compulsory, core component of the LLB program, but instead, offer students the possibility of covering a few of the Priestley areas in the elective component.

Not all law schools limit their compulsory program to the Priestley areas; some law schools' compulsory program extends beyond the Priestley areas of knowledge and, for example, covers subjects like public or private international law, depending on the special focus of the school (chapter 4; chapter 7). Most law schools now require all students to do at least one compulsory subject in legal theory, and most require students to undertake “skills subjects” or skills components within subjects (chapter 5).

Nonetheless, despite the desire of some law schools to look beyond the Priestley requirements, and to maximising student subject choice, the Priestley compulsory component accounts for two thirds of most law schools' LLB program.

Electives

This is not to suggest that elective programs are neglected – quite a few law schools offer generous elective programs (chapter 4), that included subjects that the school believes will stimulate student interest, and that reflect the school's special focus and/or staff research interests.

Some law schools would like to offer more elective subjects than they currently do; however, since the mid-1990s, these law schools have been under increasing pressure to streamline their elective offerings. Most schools now require a minimum level of student enrolment for a subject to be offered, and have a rolling program of elective subjects, many of which are offered every two years. Many law schools offer students a free choice of electives. Some place parameters on student choice, or facilitate specialisation. The former expressed concern that most students, if given a choice, would favour certain subjects – by and large the commercial law type subjects – to the detriment of their legal studies. “Students need exposure to many different ways of thinking about, and interrogating, the law and, in part, this is achieved by taking a wide array of subjects.”

Legal theory

Most law schools now require students to do at least one subject in legal theory. Some go further, and require students to do further legal theory subjects in later years, and/or require, or at least encourage, staff to incorporate theoretical perspectives into both core and elective subjects. Not many schools, however, appear to have a rigorous process of ensuring that different threads of legal theory are integrated into the LLB curriculum, so that students can build upon their understanding of different areas of legal theory as they progress through the degree program. Some law schools mentioned that they try to co-ordinate the infusion of legal theory into substantive law subjects, and are met with resistance from staff with little interest in, or threatened by, legal theory. As a result, legal theory, feminist, cross-cultural and other perspectives, and “critique” remain marginalised in the teaching of law at some law schools. Furthermore, very few law schools have a clear strategy of training students in legal theory to prepare them for postgraduate study.

The role of professional experience

In the past, most law schools covered legal ethics issues in discrete *Professional Conduct* subjects, offered as part of their continuing education program. Skills taught in the LLB curriculum generally included legal analysis and reasoning, legal research, legal writing and mooting. These followed “quite properly from general university aims in educating students” and were to some extent a “by-product” of teaching in substantive law subjects (Pearce, Campbell and Harding, 1987: 25, para 1.61). Until the late 1980s, law schools did very little to teach

“practical legal skills” in the LLB program (that is, more practical skills required in legal practice, from negotiation and drafting skills, to learning how to function in a legal office environment), although there were notable exceptions in the form of clinical programs at some second wave law schools (see Giddings, 2002).

Much has changed in the past ten years and many law schools (although, some definitely much more than others) now have a strong commitment to covering the major areas of law relevant to practice; to teaching relevant legal principles; to showing LLB students how to respond to new developments in Law; to giving emphasis to clear and logical written and oral expression; to encouraging ethical legal practice; and to fostering student responsibility for their own development; and to a lesser extent, to teaching students how to provide legal advice for specific legal problems. Law schools, however, appear to be divided about the importance of practical legal skills, and the importance of developing “the ethos of the profession”.

All but two law schools now also teach legal ethics in the mainstream LLB program, and most (but not all) as part of the compulsory program. But there is no clear trend for how legal ethics is incorporated. Some law schools teach ethics in stand-alone subjects, and others as one component of a stand-alone subject. Most of these stand-alone subjects are compulsory subjects; but in a few schools, ethics is only available as part of an elective subject. Some schools ensure that ethics is dealt with at different points of the curriculum, and is revisited frequently; in other schools, this appears to be an aspiration, or an article of faith, but there are no formal arrangements to ensure a co-ordinated approach to the teaching of legal ethics (Chapter 5). Critics argue that most legal ethics teaching in Australian law schools needs a more coherent philosophical basis, and rather than an emphasis only on practical ethical problem solving, should be taught as a pervasive set of values that underpin the practice of law, and, furthermore, as an integral part of learning the law as a social phenomenon.

A third of law schools adopt only a low-key approach to the introduction of generic and legal skills into the curriculum (chapter 5). Most focus on the fundamental skills such as legal research and writing, case analysis, statutory interpretation, oral communication, and advocacy, and many include more specific legal skills such as alternative dispute resolution skills and negotiation. Most schools do not offer stand-alone skills subjects and two schools offer “live-client” clinical programs.

Some law schools have an integrated skills program in their LLB curricula. Such programs include substantial clinical teaching programs and/or placements and/or incremental and co-ordinated skills development. Two law schools offer (or at the very least, are developing) carefully planned incremental, integrated and co-ordinated skills programs spanning the LLB program.

Four law schools include fully-fledged professional legal training programs within LLB programs. Two law schools offer students the option of a Diploma of Legal Practice/LLB program, with reduced elective subjects; one offers students the possibility of entering the clinical legal training stream (one of two streams in the school’s LLB program); the fourth offers a professional legal training program

to law graduates or students currently enrolled in a law degree who have also completed the Priestley 11, so that students could complete a professional legal training program concurrently with their LLB program, without sacrificing any elective subjects.

A growing number of law schools also offer “post-graduate” professional legal training programs.

Some interviewees and focus group participants argued that, with the exception perhaps of the law schools that have developed an integrated and incrementalist approach to skills teaching, the skills-based curriculum in most Australian law schools is piecemeal and fragmented. Most law schools have arguably not devoted enough resources to working out how to approach skills teaching in the context of an academic law program, or to mapping and embedding skills teaching within the LLB curriculum so that students are exposed to skills teaching incrementally, and can develop their skills over time in increasingly complex situations (chapter 5).

Teaching and learning

The scholarship of teaching

The oft-mentioned Pearce review, the advent of the ALTA Law Teaching Workshop (chapter 17), and universities’ attention to teaching and learning have all been identified as catalysts for the invigoration of teaching and learning in law schools since the late 1980s. Fewer law teachers than before assume that teaching involves the transmission of subject content to students, and chapter 11 provides evidence of the ways in which some are conceptualising teaching as a non-hierarchical activity concerned with facilitating active student learning. The changes in thinking about teaching and learning in Australian law schools are illustrated by the many examples of thoughtful and theoretically-anchored teaching strategies that are peppered throughout the latter half of this report; research into teaching and learning; contributions to journals such as the *Legal Education Review*; a greater interest in teaching and learning (that have resulted in, and/or result from, monographs produced by Ramsden (1992), Le Brun and Johnstone (1994), and Biggs (1999)); the small but growing number of teachers who complete formal qualifications such as a Graduate Certificate in Higher Education; and, the offering of subjects in legal education by some law schools.

It would not be accurate, however, to claim that the scholarship of teaching is given importance by all law schools or by most teachers within some law schools. Developments in the scholarship of teaching in Law are far from uniform, even within individual law schools, “and there is a very strong traditionalist streak in this law schools”. Some law teachers reported that they were ignorant, if not disparaging, of educational theory, and others cited evidence in some schools (usually the interviewee’s own) of the “anti-intellectual” approach to teaching that Cownie (2000a and 2000c) has identified in British law schools.

Probably the two most significant changes to teaching and learning in Australian law schools since the late 1980s have been a greater concern with “student-

focused” teaching, and a strong trend towards “small class sizes”. “Student-focused” teaching also found expression in better pastoral care for students in some law schools, more “student-friendly” approaches to law school administration, longer student consultation hours, and small class sizes. “Small class sizes” became a catch-cry in all the first-wave law schools, in part a response to the Pearce Report, which heavily criticised these schools in this area [it must be added that, despite liberal reference to the ‘Pearce review’ in this overview chapter, many law schools do not view the Pearce review favourably, irrespective of whether they were criticised by this review; however, the nature and scope of this AUTC report precludes us from entering into a debate about the Pearce recommendations]. The majority of law schools have taken some measures to reduce class sizes, often only in the early years of the LLB program (given funding constraints), working under the assumption that smaller class sizes would allow for a variety of teaching methods to be adopted to promote active student learning (chapter 16). While in many law schools the term “small class size” is misleading – some law schools consider classes of 35-50 to be “small” (chapter 12) – nevertheless these initiatives strongly indicate that law schools are prepared to reallocate teaching resources to enable teachers to use activity-based teaching methods.

In keeping with other trends across the university system, law schools are also subject to increased casualisation of teaching staff, the semesterisation of undergraduate subjects, a greater emphasis on the use of information technology in teaching (although this does not always manifest itself in the sophisticated use of IT in teaching), and changing student demands and expectations (chapter 13). In addition, market pressures, includes student demands for greater flexibility in teaching arrangements and accelerated progress through the LLB program, have resulted in most schools adopting intensive modes of teaching. Law schools and law teachers embraced these trends to varying degrees, which some schools and teachers viewed positively. The use of IT in teaching, in particular, was seen as one way of promoting “communication with students about the subject matter and thereby enhancing their learning”. Other teachers, however, identified some or all of these trends as being inhibitors to effective teaching. Coupled with the lack of adequate resources for law schools (which, in turn, has led to a greater administrative burden for teachers, amongst other things), these teachers thought they were left with very little time to reflect on their teaching, subject design, assessment activities and preparation for classroom teaching.

Another factor that many teachers think inhibits student learning is the amount of paid work that a significant proportion of students are engaged in during semester. It was felt that this latter factor has dramatically changed students’ relationships with their law schools, resulting in poor class attendance or poor participation in, and preparation for, class. “How are we supposed to help them learn if they have such an attitude towards their law degree? Even full-time students see their degree as being a part-time enterprise.” These comments from one interviewee echoed the sentiments of many of the law teachers who participated in this project (Chapter 13).

University-led teaching and learning initiatives, however, have offset some of these perceived inhibitors to some extent and have ensured the improvement of

subject design (Chapter 17). Clearer learning objectives, stronger alignment of learning objectives with assessment tasks, more varied assessment and teaching methods, more feedback on assessment tasks, and increased use of teaching materials and methods to encourage active learning, is evidence of this (chapter 15; chapter 16).

Teaching and learning policies

Some law teachers expressed scepticism about the usefulness of teaching and learning policies and very few law schools have developed comprehensive teaching and learning policies. Nonetheless, most law schools, at the very least, take steps to implement university teaching and learning policies. Some have general outlines for their overall approaches to teaching and learning; others have detailed program aims for the LLB and/or postgraduate teaching programs; and others still have nothing more than mission statements (Chapter 14).

In most law schools with teaching and learning policies, the focus of these policies is more on administrative issues than on substantive issues in subject design. Some law schools, however, have also developed policies in relation to learning objectives for individual subjects (chapter 15), for assessment (chapter 15), although most schools give teachers great discretion in choice of assessment tasks (chapter 15) and teaching methods (chapter 16).

A majority of law schools have guidelines for the preparation of teaching materials, although these tend to specify minimum content, rather than provide a template for activity-based materials (chapter 16).

Objectives and assessment

In the traditional model of law teaching, law teachers were not accustomed to outlining learning objectives for their subjects, and assessment consisted predominantly of end of subject examinations. Now Australian law schools, largely as a result of mandates from their universities, have policies that require subject co-ordinators to articulate clear learning objectives for students. While no doubt there are some perfunctory responses to these requirements, many law teachers take great care in ensuring that not only are students aware of the learning objectives in their subjects, but that such objectives go beyond subject content objectives. They also cover values, skills, attitudes, competencies and general attributes.

Again, largely as a result of university-initiated policies, law schools generally also require subject co-ordinators to ensure an alignment of assessment tasks with the learning objectives for every LLB subject (mentioned earlier). Most law schools also have policies to ensure that there is more than one form of assessment for each subject. The result is that even though the end-of-subject examination is still the dominant assessment method in many law schools, in some law schools, there is an impressive array of assessment methods to gauge student performance. Furthermore, while group assessment tasks are rare, they have not been entirely neglected.

Another notable improvement in teaching, largely in response to university demands, has been greater attention to assessment criteria, and more feedback on student performance in assessments against these criteria. (However, teachers who participated in the project commented that there are significant variations among teachers and among law schools in the application of these assessment procedures.)

Methods and materials

Also in line with changing views about their role and purpose, law teachers are increasingly turning to discussion-based teaching methods, small group work, and occasionally teacherless groups, to supplement, and even replace, lecturing, in order to facilitate student learning. Lectures are still the norm at many law schools, especially given the increases to student enrolments across the board; however, those teaching small classes are increasingly adopting discussion- and activity-based teaching, with some able to use such approaches even in larger classes (Chapter 16).

Complementing these changes to classroom teaching methods has been a rethinking of the use and purpose of teaching materials. At some law schools, this has also been driven the need to cater for external students. Mere case lists and broad subject outlines have been replaced by law school-designed templates, which ensure that students receive all essential subject information, including learning objectives, details of assessment tasks, and the scheduling of topics. At many law schools, teachers are also required to put this on the web. The style of teaching materials themselves are also changing, and many teachers now include, in addition to key cases, introductory text, topic summaries, questions to guide reading and class discussion, and learning activities (e.g. hypothetical problems, simulations) to provide a context for student learning. While some teachers are using the problem method (see Le Brun and Johnstone, 1994: 303-304) and genuine Problem-based Learning methods, this is an area in which law teaching is lagging behind disciplines such as medicine.

Some (of the extensive array of) teaching materials currently in use across Australian law schools have been converted into published student texts. Such text are based on key principles of teaching and learning that attempt to facilitate student engagement with material (chapter 16). Paradoxically, this trend parallels another – the decision by many law publishers to produce an increasing number of “nutshell” and “tutorial” type texts, not all of which encourage a deep and contextualised engagement with the Law.

Management of, and support for, teaching

The management of, and support for, teaching in Law has also shifted in line with the new ways of conceptualising Law school teaching. One the one hand this has led to a considerable amount of assessment, evaluation and/or appraisal of law teaching (that are generally undertaken at the behest of the university): In addition to surveying law students about subjects and curricula (mentioned earlier), most law teachers are also required, or strongly encouraged, to have their teaching evaluated by students, also using written, multiple-choice questionnaires, that

more than frequently have been designed by a central university unit. Other forms of teaching evaluation (by peers or educational experts) is far less common, although many schools reported that peer evaluation takes place informally, as does mentoring, usually at the initiation of individual teachers.

The changes to support for teaching within law schools have also led to a growth in teaching interest groups and seminars on teaching within law schools, law schools support for attendance of the ALTA Law Teaching Workshop, and less frequently, mentoring schemes. Some staff are being encouraged to complete Graduate Certificate-level qualifications in education (mentioned above).

While this report cites many examples of support for teaching and teachers, nevertheless, very few law schools reported that they had in place systematised support for a scholarly approach to teaching, which would include measures to ensure that teachers individually, and schools as a whole, evaluate the effectiveness of teaching in terms of its impact upon student learning. Furthermore, law teachers are not all encouraged by their schools to immerse themselves in the literature on teaching and learning, and some law teachers are encouraged to introduce changes to their classroom teaching methods without being given the basis and frameworks for those changes, contributing to their scepticism about the efficacy of such methods, as mentioned earlier. Where teaching is focused on facilitating activity-based learning, some teachers reported that they focus on the good students in class, who engage with the material through activities, and whom they hope would then “play a role in bringing weaker students along”.

The impact of ‘globalisation’ and IT on teaching and learning

Globalisation

Comparative law and international law are not given much emphasis by many law schools; however, Deans and Heads of School mentioned that some attention is given to issues raised by ‘globalisation’ and internationalisation. “We try to ensure that our programs and subjects are not parochial”, but rather focus at least on national law, problem solving, looking at general principles rather than the detail of local law, and on requiring students to undertake some international-based subjects, such as international litigation, international law, trade law and similar subjects. Some law schools are also involved with teaching programs in Asia and North America. Some have exchange programs with overseas law schools, which enables their students to take credited courses at these overseas law schools. Others invite teachers from overseas jurisdictions to teach a semester in their undergraduate and/or postgraduate programs.

Despite these efforts, it would nonetheless appear that Australian law schools, like their United States counterparts, have not developed coherent and systematic strategies to address the demands that globalisation could impose on lawyers in the near future. This is largely because of the restrictions placed on LLB curricula by the Priestley requirements, which are seen to be antipathetic to the inclusion of ‘globalisation’ and the issues it generates for Law. The Priestley requirements necessarily require attention to be given solely to local, and at most, national

jurisdictions – the requirements do not include Public or Private International Law, or comparative law. Furthermore, the Priestley requirements, as mentioned earlier, make up a large part of the LLB program, thereby leaving very little space in the LLB curriculum to devote to issues posed by globalisation. What little space is available, law schools choose to use to accommodate ethics, theory and skills (mentioned above).

Of course, a few law schools do make comparative and international law their special focus and believe it is this aspect of their LLB program that has attracted some of their students to the school.

Information technology

IT Law is given even less emphasis than comparative and international law at many law schools.

In terms of the teaching of information technology skills, and using IT to teach the LLB and postgraduate programs, however, the opposite pattern was found. Because legal scholarship and practice is heavily dependent on statutes and cases, as well as on the kinds of secondary sources that are important to many disciplines, developments in information technology have dramatically changed the nature of legal research and legal practice. Information retrieval is now a major skill that students need to master from the beginning of their law studies. Australian law schools have also been major players in the development of the Internet for information access and retrieval. AustLII (the Australian Legal Information Institute), for example, has been involved in the development of *World Law*, the largest multinational catalogue of law sites on the Internet.

Many law schools also reported that their universities strongly encourage them to utilise IT as much as possible, for example, in the distribution of teaching materials. Most, if not all, law schools place their subject guides on the Internet. Some law teachers also put together subjects that directly develop students' information technology skills and address some of the legal issues raised by information technology (chapter 7), although, as mentioned earlier, only a few law schools do the latter. Some law teachers utilised IT to encourage their students to engage with subject content, through chat rooms, on-line assessments, etc. By and large, law schools with the resources to do so, invest as much as they think is pedagogically useful, into IT.

Not all law schools, however, have the resources to utilise IT except in the most basic way.

Some teachers are not convinced that student learning is improved by a greater utilisation of IT. Some saw “the IT revolution in higher education” as a cynical exercise that their universities were engaging in to attract more students, and therefore, more funding. And even the most technology-active law schools preferred to use on-line teaching as a complement to, rather than a substitute for, face-to-face teaching.

Furthermore, uses of IT in teaching that have been carefully evaluated and found to be effective are still rare in Law (however, chapter 16 includes a few notable exceptions to this rule).

Some law schools offer combined degree programs that enable students to study IT as their non-law degree, but this has not been found to be one of the more popular law degree combinations (chapter 3).

Trends in Law school offerings

Changes to legal education have not just been limited to curricula and teaching. The last 15 years, and especially the last four, have also seen significant developments in relation to undergraduate and postgraduate law offerings.

Undergraduate offerings

The first combined Law degree program (i.e. LLB undertaken in combination with an undergraduate degree in another discipline) was offered in the 1970s. Thereafter, most first and second wave law schools began to offer a handful of combined degrees – Arts/Law, Economics or Commerce/Law, and, perhaps, Science/law. Law schools began to favour combined programs to avoid creating “narrowness” in law students (especially school-leavers); to “enliven” the study of law; to enhance law graduates’ attractiveness to a range of employers; and to ensure that law graduates (again, school leavers) emerged from their studies with greater maturity than if they had spent less time at university.

The late 1990s saw a dramatic proliferation of combined degree programs. The decision made by some partner schools – namely Arts, Science, Commerce, and Business – to split their general programs into more specific ones was one factor that contributed to this proliferation.

Across 27 of the 28 Australian law schools, there currently exists approximately 130 combined programs (Chapter 3). All law schools offer Arts/Law programs, and all but one offers Commerce/Law programs. Business/Law and Science/Law are the other common offerings. Only some law schools offer a dozen or more combined degree programs (one as many as 27), which means that some combined programs are offered by only one law school, at most, two.

Despite the growth in combined degree offerings, law schools generally think the development of a combined degree program is a demanding exercise, and that it takes “a lot of mutual adjustment [between the law school and the ‘other’ school] to create and operate a combined degree program”. Most combined degree programs, could be described as “bolt on” programs – there is little integration of the two degree programs, and law schools leave it to students “to integrate the programs if they choose to”. The logistical difficulty of integrating the two degrees (especially by law schools offering several degree combinations), coupled with poor resourcing, is the main impediment to integration. One law school, nonetheless, made a concerted effort, from its inception a decade ago, to integrate the two degrees in each combined program; however, a decision was recently

made to “stage a minor retreat back from integration” because of a shortage of resources (chapter 3).

The period that saw the proliferation of combined degree programs, also saw the emergence of the graduate LLB program. Such a program typically involves three years of full-time study in the LLB, to be undertaken by only by graduates from an undergraduate degree in another discipline.

And quite recently, four law schools included the JD program in their undergraduate offerings. This was done in part to raise revenue, but also to meet the demand for an accelerated and high quality graduate law degree. “It provides opportunities for people who have already graduated in another discipline and are working in profession”, and who furthermore, can afford the cost of undertaking a JD program. The programs has allowed these law schools to create a niche for themselves by tapping into a new market, adding a further point of differentiation between themselves and other schools in their respective states.

Against the trend of combined degree programs and graduate law programs, most law schools now also offer stand-alone LLB programs to school leavers. While previously all school-leavers at most law schools were required to undertake a combined degree, law schools have changed their entrance requirements to meet market pressure (chapter 3).

Despite the apparent diversity of undergraduate offerings among Australian law schools, however, many commentators argue that these developments mask an underlying homogeneity, a uniform response by law schools to market pressures from employers and students.

Postgraduate offerings

Arguably, postgraduate offerings have been subject to more dramatic developments than undergraduate offerings; however, most of the growth in postgraduate coursework programs has been enjoyed only by a moderately small number of law schools.

The larger, city-based law schools have been developing Masters and Graduate Diploma/Certificate programs since the late 1980s. While most of these programs have a strong orientation towards legal practice, some Masters and Graduate Diploma and Certificate programs target non-law graduates, a seemingly growing market. As such, these coursework programs do not so much build on the LLB, as assist with the continuing professional development of legal practitioners, or improve the legal knowledge of non-legal professionals seeking advancement in their non-law jobs. Overwhelmingly, therefore, these graduate and postgraduate coursework programs have been organised around specialist degree programs, with some law schools offering over a dozen such programs.

It is also unsurprising that postgraduate programs are dominated by part-time students, with many classes held intensively or in the evenings. The law schools with large coursework programs also target interstate students, many of who are permitted to enrol as external students.

Another notable trend, particularly at law schools offering the greater number of postgraduate offerings, is the enabling of progression from Graduate Certificate or Diploma programs, to Masters programs, and in some cases, subsequently to the SJD program.

There is little evidence, however, of any articulation of postgraduate programs with graduate programs – indeed some law schools have “double-badged” subjects as undergraduate elective subjects and graduate and postgraduate coursework subjects.

“Cross-pollination” of teaching is also a significant feature of some of the larger law schools’ postgraduate programs. These schools reported that their programs are taught not only by their own full-time staff, but also by local practitioners, academics from other Australian law schools and from other disciplines, and in the case of the large graduate coursework programs, by overseas law teachers. A few postgraduate coursework programs are offered in conjunction with programs at overseas law schools. In some law schools, postgraduate and graduate coursework programs have developed to such a degree that they rival LLB programs in importance.

But despite these developments, there are claims by some academics that postgraduate and graduate coursework programs are falling in quality, as a result of many law schools casting their net widely for potential students. This has also been the experience of some newer and/or regional law schools, which experience great difficulties in developing any form of graduate coursework program for other reasons as well – many have had to terminate programs once the local market was exhausted.

Conclusion

This project has attempted to map significant developments in legal education over the past 15 years – particularly in relation to curricula and teaching and learning. The enormity of this task, together with the limited time and resources available to conduct the project, has meant that we have barely scratched the surface of these developments. Nevertheless, we have at least captured a significant amount of change, the most notable being the infusion of ethics, legal theory and generic and legal skills teaching into LLB curricula, a more informed and “student-focused” approach to teaching, and greater rigour in subject design. We have also attempted to litter the report with many examples of each of these changes.

Furthermore, we are able to report with some certainty that, by all accounts, the development of curricula at both the undergraduate and graduate level, with a few notable exceptions, lacks the necessary systematic co-ordination, in part due to resource limitations. This is also, in part, due to competing demands, all of which law schools are now under some pressure to take into account in their development of curricula – from the university, from students, from employers and law societies, from admission boards, not all of whom share the same vision for legal education.

Many law teachers also reported that their law school still had some way to go in the promotion and support for scholarly approaches to teaching and learning. At most law schools, in both overall LLB curriculum development and in individual subject design, individualism has triumphed over integration and co-ordination of the different elements in the LLB curriculum (including ethics, legal theory, skills, international and comparative perspectives, progressive learning objectives, and teaching methods). That is not to suggest that academic freedom and individual initiative should be in any way restricted or inhibited – but rather that Australian legal education might benefit from a more systematic, incremental and integrated approach to curriculum development and subject design, and a more scholarly and collaborative approach to teaching.

We hope this ‘stocktake’ report will inform national debates about both curriculum development and approaches to teaching and learning in Law. This might take place at the level of the Council for Australian Law Deans (CALD), which may want to promote and endorse peer developed programs, which, in turn, would help Deans and Heads of School further enhance their leadership and management of teaching. Furthermore, conferences and workshops could be organised around some key themes identified in this report. This, in turn, could lead to the promotion of incremental and co-ordinated approaches to curriculum development, the better evaluation of the effectiveness of teaching strategies (particularly in relation to teaching and assessment methods), the sharing of “effective” teaching strategies, policies and practices, and most of all, the uniform promotion of scholarly approaches to teaching and curriculum development.

APPENDIX 1

INTERVIEW SCHEDULE FOR LAW SCHOOL VISITS

Part A: Undergraduate curriculum design

1. **What have been the most important developments in your undergraduate LLB program since 1987/formation of your law school?**
 - Why have these developments taken place (i.e. in response to what)?
 - Which development would you single out as being the most significant?

2. **How has your law school positioned itself in order to distinguish your LLB program from those offered by other law schools (particularly those in the same city)?**
 - Does your LLB program have a special focus (e.g. international, commercial law, legal practice, critical and theoretical perspectives)? If so, please explain the focus, and its advantages; and how is this focus implemented in the LLB program?
 - Are there any other distinctive qualities of your LLB program (including offering LLB remotely/as distance education)? If yes, please elaborate

3. **How many combined degree LLB programs does your school offer?**
 - When, how and why have these programs been developed?
 - Does your law school take any special measures actively to work with co-operating schools to integrate law and the other discipline in any or all of your combined degree programs? If so, please briefly explain the measures taken and give your assessment of the effectiveness of this measure.

4. **Some law schools have introduced JDs and other fee-paying courses, including the graduate LLB program. What are your school's views on such courses?**

5. **Have the characteristics of students in your LLB program changed over the past ten years/since inception of your school in terms of (i) students' demographic profiles and attributes (e.g. gender, ethnicity, class, etc) and/or (ii) students' aspirations, expectations, demands, entry level scores, etc?**
 - Do you collect any data on in-coming students
 - What are the school's student selection policies?

6. Does your school have policies requiring it to take measures to support particular groups of students?

e.g. Aboriginal and Torres Strait Islander students; other minority ethnic students; students from non-English speaking backgrounds; religious minority students; financially underprivileged students; gay and lesbian students; women; disabled students; part-time students; mature-aged students; parents/students with dependents; special entry students

7. Which subjects are compulsory subjects within your LLB programs contribute to your law school's special focus, if any?

- Have the compulsory subjects changed over time? If so, why?
- Do these compulsory subjects cover the Priestley requirements? Please discuss.
- Do these include any legal theory subjects or components of subjects, legal skills, legal ethics?

8. Are your LLB subjects semesterised?

- If yes, how was this done? What have the consequences been?

9. (a) What is the aim of the elective program?

(b) How many electives does your school offer in your LLB program in terms of (i) what is shown in your website, etc and (ii) what has actually been offered in 2001/2?

- Are there any restrictions on the electives offered (e.g. there are only available every second year)?
- Can students take electives which involve study of activities outside your law school (e.g. exchange programs at other universities)?

(c) How many electives are students required to do?

(d) How does current position in terms of (i) electives offered and (ii) electives students are required to be complete compare with previous years?

- If approach to electives have changed over years, why?

10. How is legal ethics incorporated into your LLB programs?

- What is incorporated and how?
- Has this approach changed from previous years? Why?

11. How is legal theory incorporated into your LLB programs?

e.g. legal theory includes legal philosophy, “jurisprudence”, feminist legal theory, sociology of law, law and economics, law and literature, legal history etc – may need to ask whether school has an accepted definition of “legal theory”

- What is incorporated and how?
- Has this approach changed from previous years? Why?
- Does your school have any procedures (including the appointment of co-ordinators, overseeing committees etc) to co-ordinate legal theory offerings within the LLB program?

12. How are broader theoretical perspectives incorporated into your LLB programs?

e.g. indigenous, cross-cultural, gender, comparative law and international law perspectives

- What is incorporated and how?
- Has this approach changed from previous years? Why?
- Does your school have any procedures (including the appointment of co-ordinators, overseeing committees etc) to co-ordinate these broader legal theory offerings within the LLB program

13. How are legal skills (including Priestley 12) incorporated into your LLB programs?

Priestley 12 include legal skills include oral expression, legal research, legal writing, legal drafting, client interviewing and counselling, witness examination, trial advocacy, appellate advocacy, alternative dispute resolution, clinical legal education (in house clinics, or placements)

- What is incorporated and how?
- Has this approach changed from previous years? Why?
- Does your school have any procedures (including the appointment of co-ordinators, overseeing committees etc) to co-ordinate these within the LLB program

14. What mechanisms has the law school used to oversee the development of the LLB curriculum? (A crucial question for objective 1)

- How has the undergraduate curriculum development and review process in your school changed over the past 15 years? Why? In response to what factors?
- Does your school have a procedure for ongoing monitoring of the undergraduate curriculum?
- Within the last 15 years, has the committee or the School reviewed the entire undergraduate curriculum? (if yes, when, and what outcomes)
- Does your school have any procedures to monitor student workloads?
- Has the school established an advisory board to advise on the LLB program?

Part B: Practical legal training

15. Does your school offer a program of practical legal education entitling students to be admitted to practice?

- Discuss the selection criteria
- Can subjects taken at the PLT stage be used for credit towards an LLM?

Part C: Post-graduate program

16. In your view, what have been the major developments in your school's postgraduate program since 1987/the formation of your school (including both coursework and research degrees)?

- Why have these changes come about? In response to what?

17. How do you believe your postgraduate program differs from those offered by other law schools, and particularly those in your city/state etc?

e.g. in terms of subjects offered, student profile, teaching staff, arrangements with other institutions (local and/or overseas), distance education

18 How is your postgraduate curriculum developed and monitored?

- How has the process of developing and reviewing the postgraduate curriculum changed in the past 15 years in your school? Why?
- Does your school have a procedure for ongoing monitoring of the postgraduate curriculum?
- Within the last 15 years, has the committee or the School reviewed the entire postgraduate curriculum? When were they completed; and what developments/outcomes
- Has the school established any advisory boards to advise on postgraduate programs? If yes, details

Part D: Influences on the curriculum (undergraduate and graduate)

19. Does the school follow any processes to ascertain the views and perceptions of employers in the development of the undergraduate program?
- If yes, how does law school take up suggestions?
 - Has the law school consulted any other persons about curriculum development (other faculties, education consultants etc)?
20. The project brief requires an investigation into the impact of “globalisation” on teaching and learning. Has globalisation had an impact on curriculum design in your school?
- How so/why not?
 - Has your school taken steps to “internationalise” the curriculum? (i.e. overseas exchanges, subjects with comparative or international components etc)
21. Has information technology had an impact on the development of the curriculum in your school
- e.g. new subjects or programs on information technology and the law, information technology issues covered in particular subjects*
22. Have any other factors influenced the school’s undergraduate and/or postgraduate programs?

Part E: Teaching and learning

23. Does your law school have an overall philosophy or approach to teaching? What is your law school trying to do when it teaches students?
24. Please provide a brief overview of the major changes in your school’s approach to teaching and learning issues since 1987/the formation of your law school
- e.g. developing teachers’ understanding of teaching and learning issues, aims and objectives of programs and subjects, assessment, classroom teaching methods, teaching materials, use of IT in teaching, support and encouragement for teachers, resources available to teachers, allocation of teaching responsibilities, the way teaching is evaluated and assessed*
25. Does your school have overall objectives for:
- a. the undergraduate teaching program?
 - b. postgraduate teaching programs?

26. Assuming a typical five-year combined degree program, please describe the basic teaching arrangements (i.e. one big class, or a number of smaller classes) for law subjects in your LLB programs

- How have teaching arrangements changed since 1987/the formation of your law school? Why?
- What is your current staff-student ratio?
- Imagine starting from scratch in building up your LLB program. What would your ideal class size be? Why?
- Are the teaching spaces/classrooms for undergraduate teaching adequate?
- How does the law school use casual teachers, if at all?
- What is your policy on teaching load for each academic staff member? How is it determined?

27. Does your law school (or university) require teachers to specify teaching or learning objectives for each subject in the undergraduate and postgraduate program?

- If yes, what is the policy, and when and why was it introduced?
- How does the school monitor the implementation of this policy?
- Does your school have any policy requiring the co-ordination of subject objectives throughout the undergraduate curriculum?
- Does your school have a policy requiring teachers to give students opportunities to contribute to the development of teaching or learning objectives in specific subjects within the degree programs?

28. Has your school made substantial changes to its policies concerning assessment methods since 1987/the formation of your law school?

e.g. permit or prohibit group assessment, require more than one form of assessment in each subject, require criterion referenced assessment, require feedback to be given to students etc?

- If yes, describe changes, when they took place, and motivations for changes
- Does your law school currently have policies in relation to assessment?
- Are teachers required by your law school or university policy to specify the criteria for each item of assessment upon which students will be assessed?

Policies on more than one form of assessment in each subject, giving students choices of assessment tasks group work in assessment tasks, student self-assessment, peer assessment, teaching staff required to provide students with feedback on their performance in assessment tasks, restrictions on the use of certain types of assessment (e.g. class participation), co-ordinating assessment tasks through the curriculum

29. Has your school's approach/policy to teaching methods changed since 1987/ the formation of your law school?
- Please indicate briefly the main developments in your school's approach to teaching methods, and why these came about
 - What is your school's policy in relation to teaching methods (*e.g. no policy; leave it to teacher to decide; require a mix of methods*)
30. Have your school's policies (formal or tacit) in relation to teaching materials changed since 1987/ the formation of your law school?
- What is the school's current policy to teaching materials? (*e.g. no policy; teachers free to decide for themselves; have a template*)
 - If programs are offered externally, please describe policies with teaching materials, and other teaching arrangements
31. Does the School have a policy on the use of the Internet in teaching?
- How has this policy developed, and in response to what factors?
 - What sort of technical support does the school provide for teachers who wish to utilise the Internet for their teaching? (*e.g. for maintaining teaching sources on the web; updating websites; training in web-based teaching materials*)
 - What sort of technical support does the school provide for students to use the Internet? (*e.g. research training using the web*)

Part F: Support for and management of teaching

32. Does your school have any processes to evaluate the effectiveness of the teaching practices within the school? (*i.e. assess the impact of particular approaches to teaching on the quality of student learning*)
33. Please briefly describe how teaching responsibilities (*staffing of subjects, subject convenors, development of teaching materials etc*) are planned and allocated in your law school.
34. Please briefly describe how teaching is appraised by your school for the purposes of appointment, promotion and/or assessment of satisfactory performance (*e.g. what is school policy, who conducts the appraisal, are teaching portfolios required, how is evidence of teaching competence gathered*)

35. How does the school encourage and promote good teaching?

- Does the school have any policies encouraging teachers to evaluate their own teaching performance, for the purpose of self-improvement?
- Does the school have a policy for identifying and rewarding committed and enthusiastic teachers?
- What other support does the school provide for teaching (*e.g. teacher training, administrative support, support from higher education support units, teaching workshops, time for curriculum development, grants for teaching development etc*)?

Part G: Factors influencing good curriculum design and teaching

36. Can you identify any factors (*at the school, university, government policy or any other level*) that affect, impede or promote effective curriculum design and teaching?

APPENDIX 2

Learning Outcomes and Curriculum Development in Law

An AUTC commissioned project

STATISTICS AND FACTUAL DATA

Name of Law School _____

Part A – Student Data

1 (a) **Graduates:** What was the total number of graduates from each of the following programs in each of the following years?

	1996	1998	2000	2001
Undergraduate entry LLB (<u>non</u> fee-paying) i.e. both straight and combined degree undergraduate students				
Graduate entry LLB (<u>non</u> fee paying)				
LLB (fee paying)				
Juris Doctor (JD)				
Graduate certificate and/or diploma				
Masters by course work				
Masters by research				
Doctoral course work (e.g. SJ D)				
PhD (thesis)				
PhD by publication				
Other (please specify) _____				

1 (b) **Postgraduate and graduate enrolments:** What was the total number of enrolments in each of the following programs in 2000 and 2002?

	2000	2002
Juris Doctor (JD)		
LLM		
MPhils (by coursework)		
Graduate Certificate		
Graduate Diploma		
SJD		
PhD		

LEARNING OUTCOMES AND CURRICULUM DEVELOPMENT IN LAW

1 (c) **LLB enrolments and graduates:** How many students were enrolled in each of the LLB degree programs in 2000 and 2001, and how many students graduated in each of the LLB degree programs in 1996, 1998, 2000 and 2001? **Please add to this list if you offer more programs than listed**

Degree program	Year course first offered	Total no. of students <u>enrolled</u> in 2002	Total no. EFTSUs <u>enrolled</u> in 2002	Total no. students <u>graduating</u> in 1996	Total no. students <u>graduating</u> in 1998	Total no. students <u>graduating</u> in 2000	Total no. students <u>graduating</u> in 2001
Straight LLB (undergraduate entry)							
Straight LLB (graduate entry)							
BA/LLB							
BEd/LLB							
BCom/LLB							
BBus/LLB							
BSc/LLB							

2. **LLB student entrants:** How many LLB students in each of the following categories were part of your actual intake in 2000 and 2002?

	2000	2002
School leavers		
Students from a partially completed program of tertiary study		
Graduate entry students		
Fee-paying students		
International students		
Aboriginal and Torres Strait Islander students		
Female students		
Male students		
Students entering under Mature Age Special Entry provisions		
Students entering after fulfilling assessment administered by the Law School		
Students with a disability		
Others (please specify)		
Others (please specify)		

Part B - Staff

3. **Staff:Student ratio:** In 2002, what is the approximate average staff:student ratio for:

(a) LLB program _____ staff: _____ students

(b) Postgraduate program _____ staff: _____ students

4. **Academic staff:** Of the academic staff employed by the law school, please specify the number of teaching staff in July 2002 in each of the following categories

	2002											
	Full-time staff				(non-casual) Part-time staff				Casuals			
	No. of staff		Staff as EFTS		No. of staff		Staff as EFTS		No. of staff		Staff as EFTS	
	M	F	M	F	M	F	M	F	M	F	M	F
Level A												
Level B												
Level C												
Level D												
Level E												
Other teaching staff												

Part C –The LLB Program

5. **Aims of legal education:** With reference to your LLB program, what importance does your law school attach to the following aims?

Please circle one number only for each item, where:

- 1 = Extremely important**
2 = Very important
3 = Important
4 = Only moderately important
5 = Not at all important

- (a) Students should learn the basic principles covering the major areas of law required in legal practice
- 1 2 3 4 5
- (b) Students should learn when, how and where to look for principles of law relevant to the issues they will be called upon to resolve in legal practice
- 1 2 3 4 5
- (c) Students should learn to express themselves logically, clearly and coherently in their written work
- 1 2 3 4 5
- (d) Students should learn to express themselves logically, clearly and coherently in oral presentations
- 1 2 3 4 5
- (e) Students should learn to be able to respond to new developments in law
- 1 2 3 4 5
- (f) Students should be taught to perform practitioner skills such as interviewing, drafting, advocacy and witness examination.
- 1 2 3 4 5
- (g) Students should be taught to provide legally accurate and practical advice in relation to quite complex legal problems
- 1 2 3 4 5
- (h) Students should learn fundamental skills in information technology that are necessary for legal practice
- 1 2 3 4 5
- (i) Students should learn about and be able to research foreign legal systems
- 1 2 3 4 5

LEARNING OUTCOMES AND CURRICULUM DEVELOPMENT IN LAW

- 1 = Extremely important**
- 2 = Very important**
- 3 = Important**
- 4 = Only moderately important**
- 5 = Not at all important**

- (j) Students should learn about the legal dimensions of e-commerce, cyberlaw and related fields
- 1 2 3 4 5
- (k) Students should be prepared for international commercial legal practice
- 1 2 3 4 5
- (l) Students should be prepared for international public legal practice
- 1 2 3 4 5
- (m) Students should have a good grounding in legal theory (or jurisprudence)
- 1 2 3 4 5
- (n) Students should learn critically to evaluate the way in which a certain law or proposed law might operate
- 1 2 3 4 5
- (o) Students should learn how to conduct an ethical legal practice
- 1 2 3 4 5
- (p) Students should learn to take responsibility for their own legal education, including their further education once they leave university
- 1 2 3 4 5
- (q) Students should develop an awareness of the ethos of the profession, its way of thinking, and its role in the society in which it operates
- 1 2 3 4 5
- (r) Students should learn to conduct empirical research on the way in which a particular area of law operates in practice
- 1 2 3 4 5
- (s) Students should learn to develop sound law reform proposals
- 1 2 3 4 5
- (t) Students should learn to use the principles and techniques of the legal system to pursue social justice goals
- 1 2 3 4 5

6. **Semesterisation:** Which of the statements below best describes how the school has semesterised the LLB program? **Please tick as many boxes as apply**

The school offers some year-long compulsory LLB subjects	<input type="checkbox"/>
The school offers some year-long LLB elective subjects	<input type="checkbox"/>
LLB subjects that were previously year-long were split into two subjects without any revision of content (e.g. <i>Contracts A and Contracts B</i>)	<input type="checkbox"/>
LLB subjects that were previously year-long were revised then split into two subjects	<input type="checkbox"/>
Some LLB subjects were completely restructured into new semester long subjects	<input type="checkbox"/>
All LLB subjects were completely restructured into new semester long subjects	<input type="checkbox"/>
Other (please specify) _____	<input type="checkbox"/>

7. **Compulsory subjects:** Please list all the compulsory law-related subjects within your LLB program. **Please indicate in parenthesis the year in which a student would normally take the subject in a combined degree program**

_____ ()	_____ ()
_____ ()	_____ ()
_____ ()	_____ ()
_____ ()	_____ ()
_____ ()	_____ ()
_____ ()	_____ ()
_____ ()	_____ ()
_____ ()	_____ ()
_____ ()	_____ ()
_____ ()	_____ ()

8. **Basic teaching arrangements:** Assuming a 5-year combined degree programme, please describe the basic teaching arrangements for each year (e.g. one two hour weekly seminar class with four seminar groups, with approx X no. of students in each seminar; three one hour lectures per week with three lecture groups, with approx Y no. students in each lecture group, etc)

Year 1 _____

Year 2 _____

Year 3 _____

Year 4 _____

Year 5 _____

Part D – Practical legal education program

- 9 (a) **PLT enrolments and graduates:** If you offer practical legal training, how many students were enrolled, and successfully completed, the program in 2000 and 2001?

	Number of enrolled students			No. successfully completed program
	Female	Male	Total	
2000				
2001				

- (b) **Teaching staff:** How many teaching staff were involved in the PLT program in 2000 and 2002?

	Admin staff (EFTS)		Teaching staff (EFTS)		Visiting instructors (EFTS)	
	M	F	M	F	M	F
2000						
2002						

Part E – Staffing of the Postgraduate Program

10. **Postgraduate staff:** If you offer course-work postgraduate programs, approximately what % of subjects in your 2002 postgraduate programme are taught by:

- (a) full-time law school academic staff _____ %
- (b) casual law school academic staff who are not practitioners _____ %
- (c) members of the profession _____ %
- TOTAL** **100%**

Part F – Teaching and Learning

11. **Flexible teaching arrangements:** Does your law school offer undergraduate and postgraduate students any of the following arrangements? **Please tick the relevant boxes**

Undergraduate	Postgraduate (coursework LLM)
Intensive subjects	Intensive subjects
Summer semester teaching	Summer semester teaching
International exchange programs	International exchange programs
Student placements with law firms or other employers	Student placements with law firms or other employers
Subjects taught exclusively on-line	Subjects taught exclusively on-line
External programs	External programs
Other flexible modes in the LLB program (please specify) _____	Other flexible modes in the postgraduate program (please specify) _____

If you would like to comment on your flexible teaching arrangements, please do so below

Thank you for completing this questionnaire

Please return your completed for to:

Sumitra Vignaendra
Senior Research Officer
AUTC Project
Faculty of Law
University of New South Wales
Sydney NSW 2052

by Monday, 30 September

**APPENDIX 3 – QUESTIONNAIRE FOR TEACHERS WHO ATTENDED
FOCUS GROUP DISCUSSIONS**

Learning Outcomes and Curriculum Development in Law
An AUTC commissioned project

Teaching Methods, Materials and Assessment Questionnaire

1. Assessment methods

How regularly did you use the following assessment methods in a) the undergraduate subjects and b) the post-graduate subjects that you taught in 2000/2001?

Assessment method	Undergraduate					Post-graduate				
	Very regularly				Not at all	Very regularly				Not at all
Supervised closed book examination	1	2	3	4	5	1	2	3	4	5
Supervised open-book examination	1	2	3	4	5	1	2	3	4	5
Take home examination	1	2	3	4	5	1	2	3	4	5
Problem-based assignment	1	2	3	4	5	1	2	3	4	5
Research essay	1	2	3	4	5	1	2	3	4	5
Reflective journal	1	2	3	4	5	1	2	3	4	5
Mooting (part of assessment for subject)	1	2	3	4	5	1	2	3	4	5
Other oral presentations	1	2	3	4	5	1	2	3	4	5
Class participation	1	2	3	4	5	1	2	3	4	5
Self-assessment	1	2	3	4	5	1	2	3	4	5
Peer-assessment	1	2	3	4	5	1	2	3	4	5
Group work	1	2	3	4	5	1	2	3	4	5
Other please specify	1	2	3	4	5	1	2	3	4	5

2. Teaching methods

How regularly did you adopt the following teaching methods in a) the undergraduate subjects and b) the postgraduate subjects that you taught in 2000/2001?

Teaching method	Undergraduate					Post-graduate				
	Very regularly				Not at all	Very regularly				Not at all
Lecture without class discussion or questions	1	2	3	4	5	1	2	3	4	5
Lecture, but with some questions and contributions from students	1	2	3	4	5	1	2	3	4	5
Teacher-led class discussion	1	2	3	4	5	1	2	3	4	5
Socratic dialogue	1	2	3	4	5	1	2	3	4	5
Student-led discussion	1	2	3	4	5	1	2	3	4	5
Small group (6 or fewer) discussion	1	2	3	4	5	1	2	3	4	5
Mooting	1	2	3	4	5	1	2	3	4	5
Other role-play or simulations	1	2	3	4	5	1	2	3	4	5
Problem-based learning	1	2	3	4	5	1	2	3	4	5
Student private study of material on CD Rom	1	2	3	4	5	1	2	3	4	5
Other please specify	1	2	3	4	5	1	2	3	4	5

3. Teaching materials

How regularly did you provide the following teaching materials in a) the undergraduate subjects and b) the postgraduate subjects that you taught in 2000/2001?

Style of materials	Undergraduate					Post-graduate				
	Very regularly		Not at all			Very regularly		Not at all		
Basic course information	1	2	3	4	5	1	2	3	4	5
Lists of readings	1	2	3	4	5	1	2	3	4	5
Readings	1	2	3	4	5	1	2	3	4	5
Summary notes of points covered in classes	1	2	3	4	5	1	2	3	4	5
Detailed notes	1	2	3	4	5	1	2	3	4	5
Questions for students' independent learning	1	2	3	4	5	1	2	3	4	5
Questions to be discussed in class	1	2	3	4	5	1	2	3	4	5
Problems to be attempted before class	1	2	3	4	5	1	2	3	4	5
Problems to be discussed in class	1	2	3	4	5	1	2	3	4	5
Other learning activities	1	2	3	4	5	1	2	3	4	5
Other please describe	1	2	3	4	5	1	2	3	4	5

4. Uses of the Internet in teaching

How regularly did you do the following in a) the undergraduate subjects and b) the postgraduate subjects that you taught in 2000/2001?

Use of Internet in Teaching	Undergraduate					Post-graduate				
	Very regularly		Not at all			Very regularly		Not at all		
Place basic course information on the web	1	2	3	4	5	1	2	3	4	5
Place other teaching materials on the web	1	2	3	4	5	1	2	3	4	5
Use web as a notice board to communicate with students	1	2	3	4	5	1	2	3	4	5
Receive and answer subject-related questions from students	1	2	3	4	5	1	2	3	4	5
Encourage on-line discussions between you and your students	1	2	3	4	5	1	2	3	4	5
Encourage students to engage in on-line discussions with each other	1	2	3	4	5	1	2	3	4	5
Enable students to engage in on-line learning at their own pace	1	2	3	4	5	1	2	3	4	5
Other please specify	1	2	3	4	5	1	2	3	4	5

5. Exemplary or innovative teaching practices

Please nominate colleagues (at your law school or at another law school) who you believe have taken innovative and/or exemplary approaches to law teaching – for example, in the way they promote activity-based learning, the way they motivate students to learn, the way they have developed their teaching materials, the types of teaching methods they use, the assessment methods they use, the way they provide criteria and feedback on assessment to students, their use of the information technology in teaching, the way they integrate skills and/or legal theory into their subjects, or the way in which they promote and support good teaching in your law school etc.

Name of nominee	Brief description of innovative or exemplary teaching practices	Contact details <i>if available</i>

LEARNING OUTCOMES AND CURRICULUM DEVELOPMENT IN LAW

An AUTC commissioned project

LAW STUDENTS' EXPERIENCE QUESTIONNAIRE

This questionnaire forms part of an Australian Universities' Teaching Committee (AUTC) commissioned project on *Learning Outcomes and Curriculum Development in Law*. Students at all law schools around Australia who are in the penultimate year of their law degree have been invited to complete this questionnaire. You are not obliged to complete the questionnaire but we encourage you to do so as your answers will usefully contribute to enhancing teaching and learning in Law.

There are four pages. Please answer all the questions.

Your answers will be treated with absolute confidence; they will not be used to identify you or your university. **Please do NOT write your name on this questionnaire.**

If you have any queries about this questionnaire, or about the project generally, please feel free to contact Joanna Davidson, Research Assistant for the *Learning Outcomes and Curriculum Development in Law* project on (02) 9385 1538.

Thank you for your time and co-operation.

PART A YOUR PROFILE

1 Are you...?

female

male

2 What is your date of birth (dd/mm/yyyy):

--	--	--	--	--	--	--	--

3 What is your ethnicity/heritage?

(e.g. Aboriginal, Chinese, Anglo-Celtic)

--

4 Are you an overseas student?

yes

no

5 What is the highest level of education completed by your parents? **please tick one box for each parent**

	Mother	Father
Primary school	<input type="checkbox"/>	<input type="checkbox"/>
Secondary school	<input type="checkbox"/>	<input type="checkbox"/>
Diploma	<input type="checkbox"/>	<input type="checkbox"/>
Undergraduate degree	<input type="checkbox"/>	<input type="checkbox"/>
Postgraduate degree	<input type="checkbox"/>	<input type="checkbox"/>
Do not know	<input type="checkbox"/>	<input type="checkbox"/>

6 For the last year of your secondary schooling, what type of school did you attend? **please tick one box only**

A government school (non-selective)

A selective government school

A Catholic school

An private/independent school

A college

An overseas secondary school

Other (please specify)

7 On average, how many hours of paid work a week do you do, if at all?

--

 hours/week

PART B YOUR LAW DEGREE

8 Are you doing your law degree...?
please tick one box only

- on a full-time basis on campus
- on a part-time basis on campus
- externally

9 Which of the following law degree programs are you undertaking? **please tick one box only**

- Straight LLB (including "graduate" LLB)
- BCom/LLB, BEc/LLB or BBus/LLB
- BA/LLB
- BSc/LLB
- LLB in combination with some other degree (please specify)...

10 Were you a graduate from a degree other than Law when you enrolled in your LLB program?

- Yes
(please specify)...

- No

11 What year of your degree are you in?
please tick one box only

- 1st yr of my combined Law degree
- 2nd yr of my combined Law degree
- 3rd yr of my combined Law degree
- 4th yr of my combined Law degree
- 5th yr of my combined Law degree
- 6th yr of my combined Law degree
- 1st yr of my straight LLB
- 2nd yr of my straight LLB
- 3rd yr of my straight LLB
- 4th yr of my straight LLB

12 Consider the marks that you received last year, which category best represents your overall mark?
please tick one box only

- Less than 50%
- 50–60%
- 61–70%
- 71–80%
- 81–100%

PART C

The purpose of this and the subsequent two sections is to collect students' perceptions of their Law degree courses. Please respond to the following items in relation to your Law degree course only. Please tick one box only for each question

SA = strongly agree
SD = strongly disagree

- | | |
|--|--|
| <p>13 It is always easy to know the standard of work expected SA <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> SD <input type="checkbox"/></p> <p>14 The degree course developed my problem-solving skills <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/></p> <p>15 The teaching staff in this course motivate me to do my best work <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/></p> <p>16 The work-load is too heavy <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/></p> <p>17 The degree course sharpened my analytical skills <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/></p> <p>18 I usually have a clear idea of where I am going and what is expected of me in this course <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/></p> <p>19 The staff put a lot of time into commenting on my work <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/></p> <p>20 To do well in this course all you really need is a good memory <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/></p> | <p>21 The degree course has helped me develop my ability to work as a team member SA <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> SD <input type="checkbox"/></p> <p>22 As a result of my degree course, I feel confident about tackling unfamiliar problems <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/></p> <p>23 The degree course has improved my skills in written communication <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/></p> <p>24 The staff seem more interested in testing what I have memorized than what I have understood <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/></p> <p>25 It is often hard to discover what is expected of me in this degree course <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/></p> <p>26 The staff made a real effort to understand difficulties I might be having with my work <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/></p> <p>27 I am generally given enough time to understand the things I have to learn <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/></p> |
|--|--|

PART E

Please respond to the following items in relation to your Law degree course only. Please tick one box only for each question

SA = strongly agree
SD = strongly disagree

- | | | | |
|---|----|--|----|
| <p>71 I chose to undertake Law because I wanted to practise Law</p> | SA | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | SD |
| <p>72 I chose to undertake Law because of an interest in the subject matter of Law</p> | | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | |
| <p>73 I chose to undertake Law to contribute to the community</p> | | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | |
| <p>74 I chose to undertake Law because it would prepare me for a wide range of careers</p> | | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | |
| <p>75 The degree course is equipping me well for a career in the Law</p> | | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | |
| <p>76 The degree course is developing my understanding of the important legal principles in the major areas of law required for legal practice</p> | | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | |
| <p>77 The degree course is developing my skills in analysing legal principles from cases and statutes</p> | | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | |
| <p>78 The degree course is developing my skills in bringing together legal principles from cases and statutes</p> | | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | |
| <p>79 The degree course is developing my legal research skills (i.e. identifying and clearly formulating issues which need researching, identifying and retrieving up-to-date legal information)</p> | | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | |
| <p>80 The degree course is developing my ability to apply legal knowledge to provide accurate legal advice to resolve legal problems</p> | | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | |
| <p>81 The degree course is enabling me to develop an appreciation of the law's social context</p> | | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | |
| <p>82 The degree course is providing me with the means to understand other legal systems</p> | | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | |
| <p>83 The degree course is developing my skills in legal interviewing</p> | SA | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | SD |
| <p>84 The degree course is developing my skills in client counselling</p> | | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | |
| <p>85 The degree course is developing my skills in negotiation and dispute resolution</p> | | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | |
| <p>86 The degree course is developing my skills in legal drafting</p> | | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | |
| <p>87 The degree course is enabling me to develop an ethical approach to legal practice</p> | | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | |
| <p>88 The degree course is fostering in me a commitment to justice and fairness</p> | | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | |
| <p>89 The degree is developing my ability to undertake self-directed learning</p> | | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | |
| <p>90 The degree is developing my skills in monitoring and improving my own work</p> | | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | |
| <p>91 The degree course is developing my ability to make critical judgments of the merits of particular arguments</p> | | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | |
| <p>92 The degree course is developing my ability to present an argument orally</p> | | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | |
| <p>93 The degree course is preparing me for a wide range of careers</p> | | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | |
| <p>94 I would like to work in the private legal profession as a solicitor or barrister</p> | | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | |
| <p>95 I would like to do legal work in the public sector</p> | | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | |
| <p>96 I would like to do legal work in private industry, commerce or finance</p> | | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | |
| <p>97 I would like to do non-legal work in private industry, commerce or finance</p> | | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> | |

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