

Internationalising the Australian law curriculum for enhanced global legal education and practice

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The Domestic Context: Government Perspective

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I am delighted to represent the Australian Attorney-General's Department at this important event, and provide our thoughts on the internationalisation of the legal curriculum.

At the outset, I want to emphasise the importance of events like this, where public and private sectors work together to advance important discussion and initiatives – and to thank all those involved in the organisation of it. In a similar vein, could I also recognise and thank all those members of the International Legal Services Advisory Council – both past and present – for their contribution to that important ongoing public-private sector partnership in the law and justice sector.

I would also like to thank my colleagues Arjuna Nadaraja and Gary Fellows for the great contribution to the remarks I am about to make.

Introduction

Let me start by saying that Australia has a reputation for producing excellent law graduates: a testament to the superb quality of its law schools,

the high standards of its legal education system, and its outstanding teachers and academics.

We're here today to help ensure that Australia's legal education system remains at the cutting-edge. And that's important because given the rapid and unprecedented changes that are occurring in the globalisation of legal practice, we must remain vigilant - not only in maintaining high standards in legal education, but also ensuring that we keep producing law graduates who are ahead of the pack and have all the tools to thrive in this rapidly globalising professional and business environment.

Government legal practice

I would like to provide you with some comments on the internationalisation of legal practice from a government perspective.

As you know, government legal practice encompasses a vast range of legal issues. It can include involvement in the most important High Court and international matters, as well as – just as importantly - supporting the daily function of government.

Government legal practice of course constitutes a substantial element of the profession and is a significant destination for legal graduates.

The Commonwealth employs approximately 1,650 legal staff, as well as significant numbers of legally qualified employees in policy roles. In addition, 312 lawyers are employed by the Australian Government Solicitor, which acts for departments and agencies, and for entities in which the Australian Government has an interest, domestically and internationally.¹

¹ AGS Annual Report available at <http://www.ags.gov.au/whoweare/lawfirm/AGSAnReport1011.pdf>

Examples of internationalisation of government legal practice

In recent times government lawyers, as well as our counterparts in private sector firms, have been increasingly and directly experiencing the internationalisation of legal practice.

Essential to the modern government lawyer is knowledge that is not limited to their own jurisdiction, but includes the wider region and beyond.

To give some examples:

- a. Government lawyers undertake overseas contracting work such as in relation to Defence procurement.
- b. They are involved in complex dispute resolution matters on a global scale such as the Plain Packaging Tobacco case.
- c. Government lawyers directly support Australia's international legal assistance programs.

In a broader sense, the vast number of treaties into which the Australian Government has entered in a range of areas has an impact on domestic legislation and policy. This increases the need for Government lawyers to have an understanding of how international law, and the laws and legal systems of other countries may be relevant to their areas of work to ensure appropriate legal advice is sought and given.

There is also an increasing use of international dispute resolution mechanisms by both Government and private actors.

Furthermore, Australian courts consider Australia's international obligations, including human rights obligations, in interpreting domestic law. This has been enhanced by requirements such as the Statement of Compatibility process which requires government lawyers to clearly indicate

how Australia's international human rights obligations are being considered and met in the implementation of domestic law.

In recent years there has been an increase in the number of international human rights communications made involving Australia. This is yet another example where Australian government lawyers have to play a role in advising government on compliance with its human rights obligations at the international as well as domestic levels.

In a broader sense, a knowledge and appreciation of international issues and perspectives is of great value in the formation of legal policy, including a comparative legal perspective in developing legislation. As policy developers, we are looking more and more at how our domestic legislation operates and relates to the laws of other jurisdictions.

In this context then, I would like to make a few observations on how Australia might maintain its status as a world class provider of legal education and training.

Integration of international content in the curriculum

The Australian law degree, based on the Priestley core subjects, continues to provide a solid foundation for Australian graduates entering practice. There is an expectation that much of the specialisation comes afterwards principally through on the job training and specialist masters degrees. While this system has served us well, we must not be complacent.

There is a need to recognise that in certain areas of the law, barriers between jurisdictions are dissolving. Infusing the curriculum with comparative legal content can, I believe, keep Australian law degrees relevant to both domestic and international practice.

The integration of international and intercultural dimensions into legal education would better equip Australian legal graduates with the necessary international and intercultural competencies to work flexibly in a global legal context.

This might include a knowledge and understanding of areas encompassing, for example, the laws of the United Kingdom and United States of America, especially those aspects that have become the laws of choice for transnational business matters; as well as the legal systems and institutions of our key Asian trading partners, such as China and Japan.

Private international law as a compulsory element

In addition, it may be useful to include private international law as a compulsory element in the curriculum.

As you know, private international law provides the interface between the domestic legal system and laws of other jurisdictions.

Given the pivotal role of matters such as identifying the applicable laws, jurisdiction and enforcement, private international law is a vital ingredient in an internationalised legal education.

Skills of graduates

I would stress that a focus on legal skills is also essential in ensuring the continued success of legal education in Australia.

I would like to recognise the innovative teaching and research methods, advances in degree structure, post-graduate coursework and higher degrees by research are some of the options Australian law schools are developing to meet the growing needs of preparing lawyers for international practise.

In addition to this, we believe there is a strong argument in favour of law schools focusing on skills in problem-solving, fact finding, negotiation and facilitation as well as the discrete skills, functions and ethics associated with decision making.

In the context of an internationalised curriculum, this could include skills such as:

- a. firstly, problem solving skills that take account of international complexities and cultural differences;
- b. second, a comparative approach to legal issues; and
- c. third, negotiation, mediation and arbitration involving international dimensions.

Other matters could include the importance of developing language and communication skills, both English and other languages.

Dispute resolution

We would also like to suggest that the internationalisation of the Australian law degree should take account of the Government's interest – and the international trend – in moving towards an alternative dispute resolution culture.

The *Strategic Framework for Access to Justice*, adopted by the Australian Government in 2009, takes a broad view of the justice system as comprising:

- a. firstly, formal justice services, such as courts and tribunals;
- b. second, informal justice services, such as alternative dispute resolution (ADR) and legal assistance and support services; and
- c. third, everyday justice services, which aim to build resilience in the community and empower people to resolve their own disputes.

The legal profession, including law graduates, legal practitioners and the judiciary have a central role in assisting members of the public to resolve disputes.

At a practical level, lawyers need to be able to look at a dispute and identify the most appropriate way to resolve it. This means our law graduates need to be:

- a. familiar with a range of alternative dispute resolution processes, such as negotiation and mediation;
- b. able to appreciate the benefits of alternative and non-adversarial approaches, as well as formal adversarial approaches, and
- c. able to use that appreciation to generate tailored responses to resolving disputes.

Lawyers are no longer simply 'litigators', but will become 'dispute managers' and collaborative problem solvers.

This is particularly relevant in the global context. The trend has been and is continuing to be a significant increase in the ADR process throughout the civil court system.

These increasing trend toward ADR as a primary means of resolution is altering the litigation process, not only in Australia but internationally.

This is also reinforced by the findings of a survey of over 530 corporations in America, which showed that ADR is widely used among US corporations and that respondents indicated that ADR is a more satisfactory process than litigation when it comes to resolving disputes. ²

² Article in the Cornell Chronicle by Darryl Geddes available at http://www.news.cornell.edu/chronicle/97/6.19.97/dispute_resolution.html

Broader role of legal education

Legal education is not only about equipping our future lawyers with the legal skills to advise clients, to draft contracts, and to represent clients in courts, but it is also about preparing graduates to play a special role in society in protecting and upholding the rule of law.

This is of particular importance for Government lawyers.

A strong legal system is quintessential to a secure and stable society, and a prosperous economy.

The strength of our legal system and legal profession relies on quality in legal education. A high quality, continuously evolving and innovative legal education system is an essential pillar of a strong legal system that keeps pace with advances across all areas of our lives.

By producing graduates who are internationally aware, legal education can play a crucial role in fostering links with international partners, and assist the legal profession to keep pace with international developments.

Conclusion

In conclusion, I would like to emphasise that:

- a. obviously, the strength of our legal system relies heavily on quality legal education; and
- b. that the internationalisation of legal practice and legal education presents challenges as well as opportunities.

It is of immense importance that the Australian law degree keeps pace with international developments. It makes sense to seriously consider internationalising the law curriculum by:

- a. firstly, the integration of international content, such as English and US laws concerning international business transactions;
- b. second, providing graduates with a better appreciation of other legal systems and how they work;
- c. third, the incorporation of private international law as a compulsory subject;
- d. fourth, an increased focus on skills such as legal problem solving in a multi-jurisdictional context; and
- e. fifth and finally, an emphasis on dispute resolution as an alternative to litigation, with an understanding of dispute resolution systems across the world.