

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

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Graduate Attributes – the Priestley areas of knowledge and the broader educational context

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What I am going to say is both very conservative but also controversial. The conservative part is that in terms of producing suitable law graduates, we may not have to change a lot of what we are doing, albeit we have to *demonstrate* what we are doing in a way that can be audited so as to satisfy the current complex regulatory environment. Having said that, I do not intend to suggest that the Australian law school curriculum is perfect, but law schools pay considerable attention to their curriculum and do continuously reflect on what is needed to produce graduates for the globalised environment. In this they are assisted by exercises such as the ALTC project recently undertaken by Professor Sally Kift and Professor Mark Israel, which identified important threshold learning outcomes for law graduates.ⁱ

The controversial (perhaps) take-home message is that current state-based admission boards are apparently out of touch with the national agenda and there is a risk that requirements for admission to legal practice are increasingly at odds with the requirements of working as a lawyer. However, the new National Legal Service Board may soon be

in a position where it can, at the national level, understand what is needed in terms of producing law graduates for the globalised context (and indeed the local context) and the opportunity to assist the Board in this understanding should be taken by law schools and the Council of Australian Law Deans.

Challenges ahead

‘First your job, then the world’: How much will lawyers be needed at all in the future? *The Sydney Morning Herald* Good Weekend Magazine (25 February 2012, pp 12 – 16) in an article entitled *The Net Worker* discusses the setting up of the website Freelancer which connects small businesses with freelance professionals, mainly from overseas, in a global outsourcing of services work. Freelancer is a website that matches knowledge workers with cheaper labour in developing countries, among them architects, accountants, computer programmers, accountants, web designers, engineers and...lawyers. ‘It’s not that we won’t need these people, just not as many...’the conceptual work will still be done in Australia...’ However ‘One thing is certain: there is going to be a lot of pain for those caught in the rip – people who studied for years and were paid well but who find their job no longer exists; not in Australia, at least.

It is fair to say that law schools and legal educators are aware of the needs of emerging globalisation and strive to incorporate the innovation and creativity that a good education requires. What we have to be aware of is increasing tension between those who guard the gateway to the legal profession and educationalists. We also need a way of creating an understanding what is needed in graduates, drawn from a diversity of sources. We have a great opportunity to remain at the forefront of skills and development and this is where we need to consider the broader educational context and how it impacts on legal education. As CJ French said in his introductory remarks this

morning, what is needed is a ‘mindset and culture and being prepared to look in different directions’.

Internal challenges in the national environment:

As with most professionals, law graduates are educated in a complex regulatory environment. There are a number of accreditation hoops which law schools must jump through, including the requirements of local law profession admitting authorities. At the same time there is much scrutiny of the quality of law degrees by professional educators and government regulators. Without coordination between various accrediting bodies and educators, attempts to improve the quality of legal education could increasingly be at odds with what the views of professional bodies.

It is useful to discuss Graduate Attributes and Work Readiness of Australian Law Graduates in the context of an emerging national profession. We now have a great opportunity to ensure the stars are aligned and that the work of reflection in our legal education and the incorporation of modern pedagogy is recognised.

Tensions can arise as national regulatory authorities and state-based admission boards pull in different directions at times. Quality auditing by government and insistence on demonstrable graduate attributes, ‘internationalisation’ of Australian law degrees, the highly prescribed content of the existing curriculum, the move towards a national profession and the increasing trend to offer law degrees to graduates in other disciplines (particularly through the JD degree) are all part of the changing landscape.

In *The Australian Higher Education* on 30 March 2011 the article ‘Business takes a dim view of academe’ referred to ‘suede patch tenured academics’ failing to work to produce graduates with the

sort of skills Australia needs. The article stated, among other things that there needs to be a broadening of curricula to produce people with essential attributes including good communication, ability to work in teams and other generic skills. It is these generic skills that the ALTC project specifically identified as being necessary in a quality legal education.

The context of change in higher education comes out of increased public sector accountability required on a national and international level. Increased accountability means more demand for data and greater value from the money spent on higher education. In the repositioning of higher education, students are becoming seen as consumers with the focus on choice and definable outcomes, not only for students but also for employers who are interested in future employee knowledge and skills. There is a danger that the desirable aspects of a modern education may be overlooked or disavowed by local admission authorities, where expertise in pedagogy, the needs of the modern workforce and work being done in law schools can be overlooked.

Australian legal education is in pretty good shape

As a result of reflection on and review of law school curricula, content extending beyond the prescribed compulsory core has been identified as essential in equipping law graduates for an internationalised world.

Curriculum reviews done by law schools repeatedly show that the Priestley 11 serves well. I am not arguing that it is perfect, nor that it does not need revision, but what law schools are concerned about is piecemeal fiddling based, sometimes on individual views, as to what should be in the law curriculum. However, the Priestley 11 addresses only one 'threshold learning outcome': knowledge of the law.

In a concerted effort from the Australian legal community, a set of Threshold Learning Outcomes (TLOs) including these and other attributes were developed during 2010 for the LLB degree by Professors Sally Kift and Mark Israel under an Australian Learning and Teaching Council grant. <http://www.altc.edu.au/standards> The learning outcomes are part of the standards required for the Australian Qualifications Framework (AQF) Expectations for the outcomes and attributes of graduates is set out under the AQF which 'is a policy framework bringing all of Australia's education and training qualifications into one comprehensive framework which underpins the Australian qualification system'. <http://www.aqf.edu.au/> The AQF will not allow law schools just to maintain content; a law degree is more than knowledge – it must include cognitive, creative & communication skills.

Also at the government level university law schools face scrutiny from the newly formed Tertiary Education Quality and Standards Agency (TEQSA) which is Australia's regulatory and quality agency for higher education. Part of TEQSA's brief is ensuring compliance with AQF Standards: "TEQSA's primary aim is to ensure that students receive a high quality education at any Australian higher education provider" and this is done through setting standards and auditing quality. <http://www.teqsa.gov.au/> One of the challenges for law schools is to incorporate these (audited) graduate outcomes into law degrees where highly prescribed content is required by admitting authorities which have less sympathy for graduate attributes other than 'knowledge of the law'. It would be useful to have an authoritative national body to be able to develop the ideal law degree leading to admission to legal practice of lawyers who are well on the way to dealing with a globalised environment.

In the context of discussion about quality issues in legal education, the Council of Australian Law Deans (CALD) adopted a set of standards for Australian law schools in November 2009. A Standards Committee has been established to oversee the accreditation of law schools against the Standards. The work of the Standards Committee will enable assertions of quality to be made objectively and credibly against agreed criteria for measuring performance and it is hoped, will assist in building a bridge between the professional admission authorities and the government regulators. This is particularly relevant in the context of a national profession.

In late 2011 it was announced that NSW will be the home for the new National Legal Services Board (the Board) and the National Legal Services Commissioner. New South Wales, Queensland, Victoria and the Northern Territory are participating in this national initiative covering 85% of practicing lawyers. The Board is responsible for the efficient, targeted and effective national regulation of the legal profession and the maintenance of professional standards. This includes approving academic and practical legal training courses. State-based admitting authorities will continue to have a role in the administration of admission rules and regulations under the national system. The precise form of working interaction between the Board and interested parties has yet to emerge. CALD hopes to ensure that its Standards as determined by the Standards Committee play a major role in the national approval of law schools' courses. At this stage the standards are input-based and do not grapple with content or graduate attributes; these elements still need to be brought together with standards relating to quality.

Regulation of Australian higher education

Despite the number of law graduates emerging from various law schools, the demand for legal services has grown at about the same

rate as the increasing number of lawyers. In addition, despite the general downturn in the world economy, the demand for Australian legal services internationally has continued to grow. The International Legal Service Advisory Council (ILSAC) points to the continued expansion of Australia's legal and related services market internationally and the fact that legal services are one of Australia's biggest exports. Australia's legal exports and international activity in the 2008-09 financial year was \$709.1 million, an increase of \$34 million or 5% since the last biennial survey in 2006-07. The survey is available on: www.ilsac.gov.au/thirdsurvey.

Australian law graduates contribute to export income in the form of supplying services to overseas enterprises. Cross-border supply was the most favoured mode of service for all types of work except for energy and resources work which favoured commercial presence and arbitration work which favoured fly-in fly-out mode of service. "More mature markets seem to be able to tolerate a low level of commercial presence so work is done from Australia" according to the ILSAC survey.

Employers look for graduates able to operate in the globalised environment and there is increasing evidence that the generic skills elaborated in the six law threshold learning outcomes are what is required for such lawyers. However, these generic skills are not necessarily what local admitting authorities consider to be important and there is increasingly evident a divide between admission bodies fearing a loss of 'black letter law' and content knowledge as compared with the development of generic skills, which are seen as optional but unnecessary.

Until the formation of a possible national admission board, the body for developing uniform national admission criteria is the Law Admissions Consultative Committee (LACC). LACC formulated the

minimum academic study requirements for legal practice in 1982. The 'Priestley 11' compulsory core (named after the Chair of LACC at the time) has served well and there is no serious attempt to dislodge this content. Rather, it is incorporating skills, attitudes and attributes alongside the content which is the focus of recent developments. Recently LACC has attempted to reflect on some developments in theories of legal education, recognising that the discipline-specific TLOs for law could have profound consequences for universities and law schools and has attempted to advise admitting authorities on exploring ways in which any discipline-specific TLOs for law might be integrated with, or complement, the existing 11 academic requirements for admission. It would be regrettable if admission to practice was at odds with having acquired a legal education.

Another recent and significant development in Australian legal education over the last 10 years has been the adoption of the "*juris doctor*" (JD) degree, a graduate entry professional law degree leading to practice in the style of the US graduate degree from which it is derived. Half of all Australian law schools now offer this popular program and it is a significant pathway for graduates into the legal profession. The Universities of Melbourne and from 2013, Western Australia, will only offer the JD degree and therefore all their law students will already be university graduates. Increasingly, other law schools are finding that young professionals are returning to law school to study a JD. The legal profession generally welcomes the entry of JD graduates as being more prepared for work and with better overall skills and maturity. Students typically include those experienced in financial services, compliance, management consulting, broadcasting, the digital economy and come from other backgrounds which demonstrate understanding of 'the business of law'. In other words, they are likely to be ideal 'globalised employees'. Law schools must provide postgraduate outcomes for JD graduates as under the AQF the JD is an 'advanced masters level degree leading to

professional practice’ and JD graduates will have to demonstrate ‘advanced and integrated’ outcomes including ‘contemporary developments in law and professional practice’.

Law schools constantly reflect on the question “What should legal education look like?” prompted by internal course accreditation processes, external regulatory forces such as TEQSA, the AQF and the development of the TLOs over the past two years. This reflection takes place in the context of the requirements of our society for law graduates who can serve Australian social, economic and trade imperatives and the expectations of employers of law graduates. The emerging national legal profession will be a critical aspect of the evolving conversation around the constitution of an Australian legal education.

i **The Threshold Learning Outcomes for the Bachelor of Laws are as follows:**

TLO 1: Knowledge

Graduates of the Bachelor of Laws will demonstrate an understanding of a coherent body of knowledge that includes:

- (a) the fundamental areas of legal knowledge, the Australian legal system, and underlying principles and concepts, including international and comparative contexts,
- (b) the broader contexts within which legal issues arise, and
- (c) the principles and values of justice and of ethical practice in lawyers’ roles.

TLO 2: Ethics and professional responsibility

Graduates of the Bachelor of Laws will demonstrate:

- (a) an understanding of approaches to ethical decision-making,
- (b) an ability to recognise and reflect upon, and a developing ability to respond to, ethical issues likely to arise in professional contexts,
- (c) an ability to recognise and reflect upon the professional responsibilities of lawyers in promoting justice and in service to the community, and
- (d) a developing ability to exercise professional judgement.

TLO 3: Thinking skills

Graduates of the Bachelor of Laws will be able to:

- (a) identify and articulate legal issues,
- (b) apply legal reasoning and research to generate appropriate responses to legal issues,
- (c) engage in critical analysis and make a reasoned choice amongst alternatives, and
- (d) think creatively in approaching legal issues and generating appropriate responses.

TLO 4: Research skills

Graduates of the Bachelor of Laws will demonstrate the intellectual and practical skills needed to identify, research, evaluate and synthesise relevant factual, legal and policy issues.

TLO 5: Communication and collaboration

Graduates of the Bachelor of Laws will be able to:

- (a) communicate in ways that are effective, appropriate and persuasive for legal and non-legal audiences, and
- (b) collaborate effectively.

TLO 6: Self-management

Graduates of the Bachelor of Laws will be able to:

- (a) learn and work independently, and
- (b) reflect on and assess their own capabilities and performance, and make use of feedback as appropriate, to support personal and professional development.