LEARNING OUTCOMES AND CURRICULUM DEVELOPMENT IN LAW

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

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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 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 of 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.