



International Legal Services Advisory Council

# **Internationalisation**

of the

# **Australian Law Degree**

*A report analysing the need to promote an internationalised legal education in Australia that prepares graduates for the provision of legal services in a global market*

International Legal Education and Training Committee

June 2004

## **Internationalisation of the Australian Law Degree**

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The *Internationalisation of the Australian Law Degree* study and report was one of the major outputs of ILSAC's International Legal Education and Training (ILET) Committee during ILSAC's fourth triennium from 2001 to 2003.

### **ILET Committee Members:**

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Professor Gillian Triggs

*Co-director, Institute for Comparative & International Law, Law School, University of Melbourne.*

#### **Members:**

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*Ex-officio member of Committee*

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*School of Law, University of New South Wales.*

Mr Adrian Van Leest

*Director, Business Management, Australian Education International (AEI).*

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### **ILSAC Secretariat Contact Details:**

ILSAC Secretariat

Robert Garran Offices

National Circuit

BARTON ACT 2600

Phone: 02 6250 6212

Fax: 02 6250 5952

ILSAC Homepage: <http://www.ag.gov.au/ilsac>

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# INTERNATIONALISATION OF THE AUSTRALIAN LAW DEGREE

*This Report was prepared for the Attorney General's International Legal Services Advisory Council (chaired by Sir Lawrence Street, AC KCMG QC) by the Legal Education Committee, chaired by Professor Gillian Triggs, University of Melbourne.<sup>1</sup> Australian Education International of the Department of Education, Science and Training provided part financial assistance. This research builds upon early work on achieving a national approach to legal education in Australia initiated by Sir Lawrence Street.*

## INTRODUCTION

This report, prepared by the Legal Education Committee of the Attorney General's International Legal Services Advisory Council (ILSAC), argues that the impact of globalisation on the delivery of legal services requires the development of a genuinely international legal education by Australian law schools. Over the last few years, law schools in North America, Europe and the Asian region have developed, or are developing, internationalised curricula and teaching methods, and are successfully attracting national and overseas students to their programs. Australian law schools now face the competitive challenge to provide a legal education that is better suited to the demands of the 21<sup>st</sup> century.

This report:

- considers the effect of globalisation on the delivery of legal services;
- suggests some criteria for 'internationalisation' of legal education;
- outlines some of the objectives of Australian legal education and explores the tensions between teaching substantive law and technical legal skills;
- surveys existing curricula and pedagogy of Australian law schools;
- considers overseas examples of internationalisation, including the New York University Hauser Global Law School Program and Columbia University; and
- recommends strategies for the development of international legal education in Australia.

## EXECUTIVE SUMMARY

This informal review of the extent to which Australian law schools prepare graduates to use legal skills in a global context confirms the views of earlier studies that:

- Most law schools do not consider internationalisation of the curriculum to be a priority.
- Typically, law schools see the introduction of public and private international law and comparative law options as sufficient for preparing graduates for contemporary legal practice.
- The 'Priestley 11' subjects, while an important initiative in establishing an agreed core curriculum for Australia, have tended to limit the capacity of law schools to include international and trans-national materials.
- Law schools have not adopted co-ordinated strategies to respond to the impact of globalisation on legal services.
- Some leading overseas law schools, particularly in the United States, have made significant efforts to transform legal education by integrating international and trans-national materials in core subjects and by establishing centres dedicated to global law.
- Australian law schools need to provide a genuinely internationalised legal education both to ensure law graduates can compete effectively in a global market and to attract overseas students to study law in this country.

This report recommends that:

***Strategies be adopted to promote the development of an internationalised legal education that prepares Australian and overseas graduates for the provision of legal services in a global market.***

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<sup>1</sup> The research upon which this paper is based was undertaken by Ms Emily Chew, Research Assistant and student in the Law Faculty, University of Melbourne.

## 1. GLOBALISATION OF LEGAL SERVICES

The global nature of legal problem solving can no longer be ignored. Processes of 'global trade, foreign investment, the breakdown of authoritarian political structures, the emergence of new nations, and the presence of new international actors such as individuals, multinational corporations and non-governmental organizations'<sup>2</sup> are driving socio-economic change on a global scale. Stimulating global communications is the revolution in information technology and use of the internet. Such technical and social changes have been reflected in international legal practice; lawyers are both facilitating change and struggling to keep pace with it. Substantive national and international laws are now tied to global markets and capital flows. A corporations lawyer or an intellectual property lawyer needs to be able to understand how law applies in several jurisdictions and be familiar with, for example, international forums for commercial arbitration. The rapid growth in world trade and commerce means that many legal transactions are trans-national in character, raising many inter-disciplinary legal issues.<sup>3</sup>

Professor David Weisbrot, President of the Australian Law Reform Commission, has noted that Australian lawyers are increasingly organising their work on an international basis.<sup>4</sup> Similarly, Professor Ivan Shearer, of the University of Sydney, has observed that

*it is difficult now to find an area of legal practice that is not touched by international law. And to practice in ignorance of that law is dangerous indeed ... For there is no doubt that as enterprises globalise, the need to be able to source, research and understand international law is becoming a necessity for all lawyers.*<sup>5</sup>

Recent recognition of the internationalisation of legal practice was reflected in a recent survey of Australian members of the International Bar Association, which found that 71 per cent of respondents thought the legal profession would benefit from the 'convergence of law across borders'.<sup>6</sup>

Beyond the economic imperatives, there is a need for lawyers who are equipped to face 'the challenges of national sovereignty, the creation of a new concept of diversity, and the need to address new ethical and moral challenges in a global society.'<sup>7</sup> The flourishing body of public international law, finding practical expression through new institutions such as the World Trade Organisation, International Criminal Courts of Yugoslavia and Rwanda, the International Criminal Court and the International Tribunal for the Law of the Sea has been the inspiration for growing numbers of students to undertake international legal studies.

## 2. INTERNATIONALISATION OF LEGAL EDUCATION

A strategy to internationalise legal education conjures different images. For some, the implication is that courses will include more substantive materials on public and private international law and comparative law. For others, internationalisation requires a wider political, social and cultural context for understanding law. Some argue for the development of transportable legal and technical skills of critical analysis, dispute resolution, drafting and negotiation. Others consider that internationalisation should facilitate the recognition of degrees and qualifications to practice in more than one jurisdiction, thus endorsing the principle of free trade in the delivery of legal services, consistently with the *General Agreement on Trade in Services* ('GATS'). As globalisation has been stimulated by advances in technology, many see the ease of access to information on the internet as an opportunity to expand the delivery of legal services.

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<sup>2</sup> Louis Del Duca, 'Symposium on Emerging Worldwide Strategies in Internationalizing Legal Education: Introduction and Overview' (2000) 18 *Dickinson Journal of International Law* 411, 414. See also, J.F. Murphy and J. Atik "International Legal Education" (2003) 37 (2) *International Lawyer* 623.

<sup>3</sup> Australian Universities Teaching Committee (Richard Johnstone and Sumitra Vignaendra), *Learning Outcomes and Curriculum Development in Law* (2003) 197 ('AUTC Report').

<sup>4</sup> Prof David Weisbrot, 'What Lawyers Need To Know ... What Lawyers Need To Be Able To Do: An Australian Experience' (Paper presented at the Association of Legal Writing Directors Conference: Erasing Lines — Integrating the Law School Curriculum, Minneapolis, 27 July 2001) pt II <<http://www.alrc.gov.au/events/speeches/DW/20010727.htm>> at 30 September 2003.

<sup>5</sup> Prof Ivan Shearer, cited in David Hovenden, 'International law survey finds Australians not alert, alarmed' *Lawyers Weekly* (Sydney), 11 July 2003, 8.

<sup>6</sup> *Ibid.*

<sup>7</sup> Del Duca, above n 2, 414.

Professor Claudio Grossman, Dean of the American University College of Law, has identified two different ‘schools’ of thought with respect to reform of legal education to respond to the needs of globalisation.<sup>8</sup> First, there is the ‘translators’ approach by which globalisation merely requires the communication and translation of foreign law in jurisdictions where a transaction remains essentially domestic in character. If this is all that globalisation demands, any fundamental modification of legal education is unnecessary. Secondly, the ‘modernisers’ approach advocates that various additional programs should overlay traditional legal education by creating an international teaching faculty, international research centres and new international courses. Grossman observes that both approaches focus on quantitative implications of globalisation. Instead, he advocates a qualitative, process-orientated teaching based on:

- creating linkages between the study of domestic and international law;
- studying different legal systems;
- integrating social and cultural issues in the academic agenda; and
- promoting inter-disciplinary subjects and skills.

Each of these approaches to the internationalisation of legal education has value. Not only must the curriculum enable the integration of international law and comparative legal systems into Australian legal education, but teaching pedagogy also needs to emphasise core practical legal skills. Legal education should be informed by other disciplines, particularly to enable responses to contemporary international issues of the environment, trade and commerce, poverty, terrorism and governance.

For the purposes of this ILSAC report, a working definition of internationalisation is suggested:

*Internationalisation of Australian legal education means that:*

- *the curriculum and pedagogy should prepare students to apply legal skills in trans-national and international transactions;*
- *students should be able to understand and apply fundamental principles of law and legal reasoning in all international, regional and trans-national contexts. With these skills students can act as facilitators in international transactions, liaising between differing legal systems and practices;*
- *international materials should be integrated into the whole legal curriculum, fundamentally extending the reach of legal study and analysis (the aim of internationalisation is not necessarily met, for example, by adding new international or comparative subjects to the range of options); and*
- *students from other countries with different legal systems and cultures should be able to gain a law degree from an Australian University that is genuinely internationally focussed, rather than parochial or domestic in approach.*

### **3. INTERNATIONALISATION IN THE CONTEXT OF LEGAL EDUCATION IN AUSTRALIA**

A primary objective of this ILSAC report has been to assess whether current Australian legal education is providing the substantive and practical skills needed for legal work in a highly competitive globalised world. While recent reports by the Australian Law Reform Commission (*Managing Justice*, 2000)<sup>9</sup> and the Australian Universities Teaching Committee (*Learning Outcomes and Curriculum Development in Law*, 2003)<sup>10</sup> have considered the need for internationalisation of Australian legal education, a comprehensive survey of the extent to which law schools have adopted an integrated internationalised curriculum and pedagogy has not yet been undertaken. This report seeks only to assess, in an informal way, current strategies adopted by law schools to respond to the implications of the globalisation of legal services.

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<sup>8</sup> Ibid 414–5.

<sup>9</sup> Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System* (2000) Report No 89 <<http://www.austlii.edu.au/au/other/alrc/publications/reports/89/>> at 30 September 2003 (‘ALRC Report’).

<sup>10</sup> AUTC Report, above n 3.

### 3.1 Methodology

The methodology of this ILSAC report has been to collect data by examining course guides and websites and conducting interviews with legal academics and students at a number of Australian law schools. A detailed case study has also been conducted of the New York University Global Law program. The data was collected with the support of the Council of Australian Law Deans ('CALD'). Many academic members of law schools were particularly generous in giving their time to explain the internationalisation strategies of their institutions. Australian Education International (AEI) of the Department of Education, Science and Training (DEST) also provided financial support to enable research to be undertaken.

In compiling the data, collected in Appendices A and B, this report adopts the categorisation employed by the AUTC Report under which law schools are described as 'first wave' (established pre-1960s), 'second wave' (established from the 1960s–80s), or 'third wave' (established since the 1990s). The rationale for such a categorisation lies in the differing agendas of law schools established at different periods in the history of legal education in this country. The AUTC Report notes that 'third wave' law schools are, to a large extent, responding to the dominance of certain 'first' and 'second wave' schools in their curriculum focus and development. 'Third wave' schools often market themselves as being able to offer a degree that represents an alternative to that offered by older and more established schools.<sup>11</sup> Older law schools have been relatively protected by history and reputation from the need to compete in this way.

### 3.2 General observations on internationalised legal education

The following are some observations based upon the data collected and interviews conducted:

#### 3.2.1 Competing aims of legal education

Law schools are not immune to the tensions presented by the competing aims of Australian legal education.<sup>12</sup> The need to fulfil academic and educational ideals, to compete with other institutions for research funding, to attract top intellectual talent from the global market and to build a sound reputation based on academic integrity, often dictate what law schools offer students. However, law schools are also prone to suffer, like many institutional structures, from inflexibility and resistance to change. From a curriculum point of view this tendency has been strengthened by the formulaic Priestley 11 requirements.<sup>13</sup> These requirements shape students' perceptions of the law and 'lawyering',<sup>14</sup> and can restrict the extent to which a critical perspective of the legal system can permeate a law course. In the AUTC Report survey of student attitudes towards the LLB, there was, for example, a comparatively poor response to the question, 'the degree course is providing me with the means to understand other legal systems.'<sup>15</sup>

#### 3.2.2 Tokenism

Many Australian (and overseas) law schools give only a nodding response to the need for an international approach to legal education. Websites are replete with words such as 'global' and 'international'. On closer examination of course materials and curriculum, the commitment to an integrated and genuinely international approach is found to be superficial and misleading. AUTC reports that Australian law schools indicated that 'they have not developed coherent strategies to address the demands that globalisation will impose on lawyers in the twenty-first century'.<sup>16</sup> The AUTC Report concludes that

*there is little sense of a systematic and co-ordinated strategy to prepare students for the challenges posed by globalisation. One major constraint ... 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.*<sup>17</sup>

The findings of this ILSAC Report confirm these earlier findings.

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<sup>11</sup> Ibid 30.

<sup>12</sup> Ibid 25.

<sup>13</sup> The Priestley Committee also recommended 12 skills, the 'Priestley 12', that should be covered during the period of practical legal training: see *ibid* 5.

<sup>14</sup> *Ibid* 90–1.

<sup>15</sup> *Ibid* 251 (fig 10.3).

<sup>16</sup> *Ibid* 206.

<sup>17</sup> *Ibid*.

Linked to the problem of tokenism is a tendency in law schools to argue that so long as international and comparative law options are available in addition to the core subjects, the objective of internationalisation has been satisfied. Such an approach to curriculum development fosters the belief that no further efforts are necessary systematically to integrate an international or trans-national perspective throughout the program.

### **3.2.3 Impact of the Priestley 11 on internationalisation of legal curricula**

In 1992, the Consultative Committee of State and Territory Law Admitting Authorities, chaired by Mr Justice Priestley, prescribed 11 'areas of knowledge' students must study before admission to practice. These have since become known as the 'Priestley 11'. These subjects are contract, tort, real and personal property, equity (including trusts), criminal law and procedure, civil procedure, evidence, professional conduct (including trust accounting), administrative law, federal and state constitutional law and company law. The Law Council of Australia recommends more specific content for each area, and the AUTC Report notes that these recommendations 'are widely used as a guide as to whether a program has satisfied the requirements.'<sup>18</sup>

While the Priestley 11 made a significant contribution to Australian legal education by providing a national core curriculum for all law students, they are now subject to the criticism that they are outmoded and inflexible to change, preventing dynamic innovations in course methodology and content.<sup>19</sup> Similar concerns were reiterated in the AUTC Report when it asserted that a curriculum based on 19<sup>th</sup> and 20<sup>th</sup> century subject areas is becoming increasingly difficult to maintain, as these subjects no longer represent water-tight categories of law.<sup>20</sup> One participant in the earlier ALRC Report argued that '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 or international materials are] all at the edges.'<sup>21</sup> Another participant in the ILSAC Report survey observed that

*the LLB has become dysfunctional through too much being packed into it — both in number of subjects and in the size of each subject ... This seems to happen because the legal profession still demands generalist graduates, even though most students want to get into the big end of legal practice which isn't like that at all.*<sup>22</sup>

The Priestley 11 subjects do not inherently impede the adoption of international, trans-national and comparative materials. They do, however, have a chilling effect on the adoption of a wider vision of the 11 subject areas, partly reflecting a perception that the LLB curriculum is already overburdened with priorities to teach basic Australian law. Internationalisation of the existing curriculum therefore requires a fundamental review of materials and legal skills and teaching methodologies, rather than a series of patchwork additions.

Compounding the problem of a narrow interpretation of core areas of study is the tendency to conceive of 'international law' as being dominated by public international law. In practice, private international law or 'conflicts of law' is overwhelmingly the aspect of international law that is most valuable to lawyers in a trans-national commercial practice. As enrolments in private international law remain small, few graduates have any understanding of the subject or gain exposure to it in their legal education.

Any serious attempt to prepare students for global legal practice requires the inclusion of private international law in the core curriculum.

### **3.2.4 Balance between substantive law and practical legal skills**

The overriding concern of the current debate over the reform of Australian legal education has been whether to add substantive content to the current curriculum or to emphasise skills-based teaching. The parameters of this debate were set out in the ALRC Report, *Managing Justice* where it was observed that there are many competing pressures on law schools to increase skills-based legal education and that there is a reluctance to increase the substantive material in the curriculum.<sup>23</sup> The American Bar Association in its *Report of the Task*

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<sup>18</sup> Ibid 5.

<sup>19</sup> See Prof Andrew Stewart, cited in ALRC Report, above n 9, [2.65].

<sup>20</sup> AUTC Report, above n 3, 90.

<sup>21</sup> Ibid 199.

<sup>22</sup> Lecturer in 'Constitutional and Administrative Law' at Macquarie University.

<sup>23</sup> ALRC Report, above n 9, [2.71].

*Force on Law Schools and the Profession: Narrowing the Gap*,<sup>24</sup> and others such as Sharon Christensen and Sally Kift,<sup>25</sup> suggest prioritisation of the following skills in law school curricula:

- problem solving;
- legal analysis and reasoning;
- legal research;
- factual investigation;
- communication;
- counselling;
- negotiation;
- litigation and alternative dispute resolution, mediation and arbitration;
- management of legal work;
- recognising and resolving ethical dilemmas;
- drafting skills;
- promotion of justice and fairness; and
- professional development.

One of the effects of globalisation has been to stress the importance of such practical skills in contemporary legal education. Respondents in the AUTC Report observed that '[t]he influence of globalisation is to make curriculum slightly more attentive to generic skills, and to get people to think.'<sup>26</sup> One respondent noted that 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.*<sup>27</sup>

The ALRC Report compared Australian law schools to those in the US, concluding that the focus of foreign law schools has been on providing students with professional skills and values.<sup>28</sup> Law schools in the US are thus able to adjust to future developments in the law, taking an approach to legal training that emphasises 'what lawyers need to be able to do'. By contrast, Australia's Priestley 11 requirements have meant that Australian law schools have concentrated upon teaching areas of substantive law; that is, 'what lawyers need to know'.<sup>29</sup>

When considering how best to internationalise Australian legal education, it is important to change the perception of many academics that a necessary consequence of a shift towards an internationalised curriculum will be to overburden that curriculum. This was a common concern raised by lecturers in response to research conducted for this ILSAC report. Observations included the following:

*As far as international law... is concerned... there is simply no room whatsoever for that in such a short introductory level subject (Torts).*<sup>30</sup>

*Regrettably, it is not possible to incorporate much 'international' material into the available time frame.*<sup>31</sup>

*There is no international content in the course, unless one counts the usual smattering of English cases. And — given the concentrated nature of the course — no scope for doing so.*<sup>32</sup>

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<sup>24</sup> American Bar Association Section of Legal Education and Admissions to the Bar, *Legal Education and Professional Development — An Educational Continuum*, Report of the Task Force on Law Schools and the Profession (1992) ('MacCrate Report').

<sup>25</sup> Sharon Christensen and Sally Kift, 'Legal Skills and Ethics: Integration or Disintegration?' (Paper presented at the Commonwealth Legal Education Association Conference, Adelaide, 13 April 2000) 9.

<sup>26</sup> AUTC Report, above n 3, 198.

<sup>27</sup> Ibid 205.

<sup>28</sup> This was an outcome of the MacCrate Report. See ALRC Report, above n 9, [2.18]–[2.21].

<sup>29</sup> Ibid [2.20]–[2.21].

<sup>30</sup> Lecturer in 'Torts' at the University of Adelaide.

<sup>31</sup> Lecturer in 'Corporate Law' at the University of Adelaide.

*The main restriction is one of time — Equity here is taught in one semester and priority has to be given to the Australian law.*<sup>33</sup>

*Our subject has incredible scope for [including international and comparative content], but because it is a one-semester unit, we cannot cover what we need to, much less adopt a comparative law approach.*<sup>34</sup>

Internationalisation of legal education by developing the law curriculum and stressing practical legal skills requires a fundamental revision of substantive law and teaching methodology; adding to existing programs is not an alternative.

### **3.2.5 Vocational training**

An important impact of globalisation on legal services is that internationalisation of law school curricula, especially if this is taken to include practical legal skills, will strengthen the vocational training of law graduates. All law schools seek, to a greater or lesser extent, to meet market demands for well-trained, vocational lawyers.<sup>35</sup> Commercial law firms, in particular, call for a skills-based curriculum. Students also demand courses that enable them to meet the practical requirements of the qualification process and want to be career-focussed throughout their legal studies.<sup>36</sup>

However, law students are not homogenous in their reasons for studying law, nor are they so in their career expectations. Approximately 50 per cent of students start the law degree without intending to practise law. AUTC reports that '[o]f those who completed their law studies in Australia in 1995, 55% were working in the private legal profession three years later'; however, the generalist nature of legal skills is demonstrated by the fact that '82% of 1997 graduates [were] engaged in legal work of some kind'.<sup>37</sup> It appears that most law graduates now use their legal skills in a range of public and private sector work in law firms, corporations and business entities, government departments, international economic and development organisations, lobby groups and non-government organisations. These findings have recently been confirmed in a *Graduate Destination Survey* conducted by the University of Melbourne in 2002.<sup>38</sup>

An increased level of internationalisation of the curriculum can be expected to meet the contemporary needs of law graduates for a more vocationally oriented education. In its study, the AUTC asked whether it is necessary to sacrifice academic ideals to privilege market demand. One respondent observed, '[t]his 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.'<sup>39</sup> It should be possible to respond to the need to deliver global legal services by ensuring that apparently competing aims of legal education become more complementary to each other.

### **3.2.6 Australian law graduates in a competitive global market**

One increasingly emphasised objective of Australian legal education is to ensure that Australian law graduates are better able to compete effectively in the regional and international market for legal services. To meet this objective, law schools are incorporating more comparative and private international law material into courses, as distinct from public international law. In particular, there is a noticeable emphasis on law as it applies in the Asia-Pacific region. There may well be a perception in the student market that a degree that prepares an Australian graduate to practice law in other national jurisdictions is more valuable than a degree with more strictly national content.

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<sup>32</sup> Lecturer in 'The Law of Crime' at the University of Adelaide.

<sup>33</sup> Lecturer in 'Equity' at Canberra University.

<sup>34</sup> Lecturer in 'Business Organisations' at Deakin University.

<sup>35</sup> The Queensland University of Technology website explains that their 'Law School was established at the request of the legal profession who saw the need for a law school that provided a balance of theoretical and practical legal education': see Queensland University of Technology Faculty of Law, *About Us* (2002) <<http://www.law.qut.edu.au/about/>> at 30 September 2003.

<sup>36</sup> AUTC Report, above n 3, 269.

<sup>37</sup> *Ibid* 5.

<sup>38</sup> The University of Melbourne, *Graduate Destination Survey 2002* (2003) 74 (fig 10.2) <<http://www.unimelb.edu.au/UPO/ecycle/>> at 30 September 2003.

<sup>39</sup> AUTC Report, above n 3, 25.

Preparing law students for the global marketplace is multifaceted and no single strategy is likely to be successful. The ALRC Report stresses the need to teach ‘generic skills’. Producing graduates that are ‘well-rounded’, more global in outlook, with the ability to employ legal skills in a trans-national context, suggests the need for more inter-disciplinary study, including international politics and the humanities.

### 3.2.7 *An Australian law degree must be competitive to attract international students*

Further market surveys are required to understand the reasons why international students choose Australia as a destination for legal study, or indeed, why they do not.

Anecdotally, students from the Asian region are keen to enrol for Asian law subjects taught by law faculties where there are developed Asian law specialist centres. Similarly, overseas students generally seek to enrol in electives that have an international and comparative focus. In so far as an objective of internationalisation is to increase the number of fee-paying overseas students in Australian law schools in both graduate and undergraduate programs, law schools will be more competitive if they ensure that their courses and the skills taught in those courses are genuinely international and trans-national in focus. Internationalisation of law school curricula is thus entirely consistent with current Australian university policy.

Critical to attracting more overseas students to study law in Australia is the recognition of Australian law degrees by other countries for the purposes of meeting practice requirements. The reluctance to recognise the majority of undergraduate Australian law degrees for the purpose of admission to practice in local jurisdictions overseas is reflected in the predominance of overseas students in postgraduate rather than undergraduate Australian law programs. The Universities of Melbourne, Sydney and New South Wales are outstanding in providing international and comparative law courses at the postgraduate level (see appendix C for a list of postgraduate courses specialising in international law). Perhaps one reason why there is relatively little emphasis on public and private international law or comparative law at an undergraduate level is because it is seen to be a specialised area of practice best suited to postgraduate study. One AUTC respondent commented, ‘at a strategic level, globalisation is regarded as more of an issue at the graduate level, because the school is acutely conscious that [it] needs international students for the revenue.’<sup>40</sup>

The Attorney General’s Department, through the ILSAC secretariat, has been working for many years to encourage the recognition of Australian LLB degrees within the Asian region. Malaysia currently recognises LLB degrees from fourteen of the twenty eight Australian law schools. In August 2003, the Attorney-General made direct representations to the Malaysian authorities seeking recognition of LLB degrees of the balance fourteen law schools. Over the last decade, Malaysia has consistently provided the highest percentage of overseas students studying law in Australia. A joint ILSAC – CALD submission has also resulted in Brunei Darussalam recognising LLB degrees from thirteen Australian law schools. The recent agreement by Singapore, under the Singapore-Australia Free Trade Agreement (SAFTA), to increase the recognition of LLB degrees from four to eight Australian law schools with the prospect of further increases over the life of SAFTA is another significant step forward. Similar initiatives need to be developed throughout the region.

There is a growing recognition of the importance of breaking down barriers to global legal practice and to the reciprocal recognition of qualifications. In 1998, for example, at the Paris Forum on the Trans-national Practice for the Legal Profession, several papers were produced considering measures that might be taken to reduce impediments preventing lawyers from practicing in jurisdictions other than those in which they had originally been trained.<sup>41</sup> If a law degree is to attract recognition in other jurisdictions it must meet the needs of global legal practice. There are clear implications for law curricular and skills training. If Australian legal education were to internationalise its programs, it may prove somewhat easier to attract recognition of its law degrees, particularly within the Asian region.

Linked to the international and regional recognition of Australian legal qualifications is the more general question of the ‘transportability’ of law degrees. As Flood has pointed out, ‘[m]ost of the major institutions — governmental, NGOs, supranational — in the western world (and many else where) are partly staffed by people with legal training ... It is one of the ultimate portable skills.’<sup>42</sup>

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<sup>40</sup> Ibid 206.

<sup>41</sup> (1999) 18 *Dickinson Journal of International Law* 1.

<sup>42</sup> Marlene Le Brun, ‘Transportable Law Degrees or Transportable Legal Know-How: The Fast Food/Chain Store Approach to Legal Work?’ (2001) 3 *University of Technology Sydney Law Review* 73, 75. See also John Flood, ‘Legal Education, Globalisation, and the New Imperialism’ in Fiona Cownie (ed), *The Law School — Global Issues, Local Questions* (1999) 131.

### 3.2.8 Law schools have differing agendas

The capacity and interest of Australian law schools to develop an internationalised LLB program is influenced by their differing histories, geographical locations and market agendas. Older, first wave law schools often have a reputation for specialising in public and international law and strive to be recognised as ‘the national law school’.<sup>43</sup> For such schools, cultivating a degree that is internationalised is a natural evolutionary step. First wave law schools are well placed to promote change in the content and pedagogy of the law degree and to promote this change to students. Thus far, first wave schools have quite successfully distinguished themselves by promoting an international/comparative law focus.<sup>44</sup> The reputation of the school, or the reputation that it is attempting to cultivate, also has a substantial impact on what subjects are adopted as ‘compulsory’ for the LLB degree.<sup>45</sup>

Although it is becoming necessary for all lawyers to be aware of public and private international law, the need for skills in international law depends on the kind of law a practitioner specialises in. Trans-national skills are, for example, particularly important for those who advise on foreign investment law in Asia or those working in areas developing through free trade agreements in the Asian region. Internationalisation of legal skills could be an issue that concerns only a few law schools that are positioned in major cities, and whose graduates work in CBD practices, major corporations or government departments.<sup>46</sup>

## 4. STRATEGIES ADOPTED BY LAW SCHOOLS TO PROMOTE INTERNATIONALISATION

### 4.1 Australian law schools

Australian law schools are internationalising their degrees in different ways. For the most part, law schools make no clear conceptual differentiation between the various strategies for internationalisation. All methods are being employed by most law faculties to a lesser or greater degree. This ILSAC study confirms the findings of the AUTC Report in identifying the following strategies:

- ‘internationalising’ core subjects by integrating international and comparative materials;<sup>47</sup>
- encouraging an inter-disciplinary approach, such as the introduction of a new combined degree program: Arts (International Studies)/LLB (eg University of New South Wales, University of Canberra);
- negotiating international exchange agreements and internships (eg University of Adelaide, Monash University);
- arranging study tours to China/Vietnam (eg University of Melbourne, University of Sydney, Monash University);

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<sup>43</sup> AUTC Report, above n 3, 32. It is likely that this reference is to the Australian National University in Canberra. ‘Located in the national capital, seat of the national Parliament and the High Court of Australia, the ANU Faculty of Law has developed an exceptional reputation in the area of public law, especially in constitutional and administrative law, and in the area of international law’: see Australian National University, ‘Our Faculty’, available at <<http://law.anu.edu.au/TheFaculty/OurFaculty.html>> at 30 September 2003.

<sup>44</sup> AUTC Report, above n 3, 41–2. It is likely that this reference is to the University of Melbourne.

<sup>45</sup> Ibid 93, 96, 98. The AUTC Report found that schools with a ‘commercial law focus’ will have a bias towards commercial law subjects in compulsory curricula, whereas other schools will prefer to make international law subjects and public law subjects compulsory: at 98.

<sup>46</sup> Ibid 198. One respondent claimed: ‘Not many of our students go into small to medium suburban or rural practice. It is essentially a CBD destination. A lot of that will be global.’

<sup>47</sup> One respondent in the AUTC Report said:

*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 possible, everybody is trying to do that, even though sometimes it’s just the use of international examples, even the review questions or exam questions are internationalised through the names used.*

Ibid 200.

- developing Asian Law studies through the establishment of specialist centres (eg University of Melbourne);
- fostering visits and lectures by international academics, especially from the Asian region;
- increasing the number of international and comparative law options available to undergraduates, though ability to select options is constrained by the need to meet the Priestley 11 and may not be necessary if international and comparative perspectives are integrated into core curricula;
- including international law in the core subjects required for the LLB (eg University of Sydney, Australian National University);
- cultivating an international network of alumni (eg Monash University);
- marketing the law school's program overseas to attract a larger number of international students; and
- offering LLM programs that specialise in international and comparative law (eg University of Melbourne, University of Sydney, University of New South Wales).

Professor Weisbrot pointed to two models for skills-based legal education in his address, 'What Lawyers Need to Know ... What Lawyers Need to be Able to Do': those provided by Bond University and Queensland University of Technology ('QUT'). Both these institutions also promote the integration of international law materials into their degrees. Bond University has three rotating electives specifically focussed on international law that are available for undergraduates, in conjunction with a lack of emphasis on international legal issues in the core courses. On the other hand, QUT makes the first-year level subject 'Laws and Global Perspectives' compulsory, and has as range of seven subjects in a 'Public, International and Comparative Law' elective stream available to undergraduates.<sup>48</sup>

The University of Tasmania and QUT stood out as model curricula for internationalisation. At these institutions, the programming appears to be flexible and responsive to change. Furthermore, the academics interviewed stressed the value of international and comparative legal materials and understood the need to integrate them where possible into the core curriculum. The Australian National University should also be recognised for having, to date, the most well-developed emphasis on international and public law in the LLB course offered at that institution. Monash University law school is the most explicit in its stated aims to internationalise, and is pursuing a number of different strategies towards internationalisation (at times complementary, at other times, competing).

#### **4.2 Overseas Law Schools**

The New York University Law School (Appendix B) appears to lead other US law schools in providing an internationalised learning environment with an externally focussed agenda. This is reflected in its promotional material, the breadth of programs which specifically promote the internationalisation of the practice and study of law, and in the wide array of international interest in the program, as evidenced by the large international student body and faculty.

The focus for promotion of an international legal education has been the establishment of the Hauser Global Law School Program ('HGLS Program'), which

*reflects the law school's conviction that the practice of law has escaped the bounds of any particular jurisdiction and that legal education can no longer ignore the interpenetration of legal systems. Since its inception in 1994, the HGLSP has overseen a radical change in the structure of NYU Law faculty and curriculum, the composition of the student body, and the range of extracurricular opportunities. The goal has been to transform legal education and make NYU Law a 'global' rather than merely a national law school.*<sup>49</sup>

NYU Law School does not regard its efforts to internationalise as merely an adjunct to the basic Juris Doctor Program. Rather, NYU is attempting to revolutionise the outlook, function and results of legal training. Behind NYU Law School's claim to be 'build[ing] the international foundations for the international and

<sup>48</sup> See the more specific discussion of Bond University on pg 21–2 and of QUT on pg 20–1.

<sup>49</sup> New York University, 'Hauser Global Law School Program', available at <<http://www.law.nyu.edu/programs/globalawschool/>> at 30 September 2003.

national legal rules and institutions needed in the 21<sup>st</sup> century,<sup>50</sup> is the conviction that ‘every school or university has a responsibility to contribute to the global world.’<sup>51</sup>

Special features of the HGLS program, set out at appendix B, suggest that the success of the global law program reflects a willingness to invest in a fundamental revision of materials and curricula.

## **5. ISSUES TO CONSIDER IN DEVELOPING NATIONAL POLICY TO PROMOTE AN INTERNATIONALISED LAW DEGREE**

- Do Australian universities have the capacity or interest in becoming regional or global leaders in international legal education?
- How is ‘internationalisation’ differently conceived at different institutions? Does this impact on the combination of strategies used to achieve internationalisation aims?
- Is it appropriate to formulate a ‘national vision’ for internationalisation towards which all law schools can strive? Should it be left to individual institutions to develop an internationalised degree, which they can then market as being ‘different’ to those offered at other institutions?
- Is it likely that Australian law schools will become increasingly different in their development? For example, should metropolitan law schools offer internationalised curricula and skills while those in regional areas cater for those seeking a degree that is predominantly domestic in focus?

## **6. RECOMMENDATIONS**

The Legal Education Committee of ILSAC recommends that ILSAC make the following proposals to the Attorney-General:

- 6.1 That a representative committee be established to develop national policy and implement strategies to promote internationalisation of Australian legal education.
- 6.2 That incentives be developed through Commonwealth university funding to stimulate efforts to introduce global legal perspectives to substantive and skills-based legal education.
- 6.3 That a model syllabus be developed to promote the internationalisation of core legal subjects.
- 6.4 That practical skills necessary for the delivery of legal services in a global context be integrated into core subject areas of Australian legal education.
- 6.5 That an inter-disciplinary approach to legal education be promoted to enable law students to engage effectively with international organisations, particularly international trade and economic institutions.
- 6.6 That a national conference be held on the impact of globalisation on legal services to raise awareness among legal academics, law faculty management and practitioners about the need for a genuinely international approach to legal education.
- 6.7 That internationalisation of the law degree be achieved without adding significantly to the substantive content of the curriculum. In particular, efforts need to be made both to revise the Priestley 11 and to ensure that an international perspective is integrated into core areas of curriculum.

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<sup>50</sup> New York University Law School, ‘International Law for the Future’ [Autumn, 2002] *The Law School Magazine* 53, 53 (‘*Law School Magazine*’).

<sup>51</sup> The Hauser Global Law School Program, ‘Hauser Global Law School Program Renamed’ (2002) 9 *GlobaLaw Newsletter* 5 (‘*GlobaLaw*’).



## APPENDIX A

### Survey of Strategies to Achieve Internationalisation in Australian Law Schools

This appendix represents an example of law schools in Australian Universities that responded to the initial survey and provided comments and data on their curricula. A final draft of this report was provided to all Law Deans requesting input in relation to the correction of any factual errors. At that stage, Griffith University and Victoria University, both ‘third wave’ law schools, provided substantial comments on the international focus of their Law Schools and curricula. These comments have been incorporated into this appendix in section 3.

#### 1. ‘First Wave’ law schools

##### 1.1 *The University of Tasmania*

The University of Tasmania’s law school has emerged as a leader in Australia in fostering internationalisation among academic staff and at an institutional level. The law school particularly targets Malaysian overseas students in its course design, without detracting from the needs of students who aim to practice in Australian jurisdictions. Two years ago, in accordance with the strategic policy of the University of Tasmania, the law school’s Teaching and Learning Committee undertook a review of its courses to determine whether they adequately adopt a global perspective. More recently, these preliminary efforts have been followed up by examining how teaching methodology can impart or stimulate an internationalist approach to the employment of legal skills. Staff were asked specifically to identify the international and comparative content of their courses and to demonstrate how the materials were understood by students.

From the perspective of course design, the University of Tasmania law school is unique. Electives are split into five thematic areas and students are required to choose from each such area. The Group B stream of electives is in the International Law area (six subjects offered), from which students are required to complete one subject. The Teaching and Learning Committee indicates that this requirement is perceived by the law school to meet the University of Tasmania’s policy to ‘internationalise’.<sup>52</sup>

Relative to other institutions, the University of Tasmania seems successfully to have integrated international and comparative content compulsory courses. The ‘Contract Law’ course, for example, places Australian law within an international economic context and considers future international directions of the development of contract law. Another striking example is the Corporations Law course, which considers the relationship between the OECD Principles on Corporate Governance and the ASX standards; examines the international regulation of takeovers; and, during the finance component, considers the liquidity of Australian markets compared to other markets. Corporate governance models in the American, German and Japanese jurisdictions are compared. Students can expect to be assessed on the international developments studied. International materials are ‘interwoven into the respective part of the course, rather than taught as a separate unit.’<sup>53</sup>

In the Torts course, comparative case law from Canada, England and the US is used ‘mainly because there is not enough Australian litigation on the topics of nuisance, battery, assault’, in order to ‘show students how the law could be different (whether for the better or for the worse).’<sup>54</sup>

A parallel response to internationalisation has been to develop a separate optional course, ‘Comparative Administrative Law’, rather than to internationalise the current ‘Administrative Law’ course — in that instance, time pressures were perceived to be a significant constraining factor.

As the University of Tasmania law school is particularly concerned to meet the needs of Malaysian overseas students, the recent review process ensured that the compulsory subjects help graduates to meet the Malaysian Legal Qualifying Board requirements.

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<sup>52</sup> Such methods of course design are also said to give expression to a particular law school’s priorities, and ensure that students receive a well-rounded legal education rather than narrowing their perspective by selecting only legal theory/only commercial law (for example) to fill up optional elective spaces: see AUTC Report, above n 3, 111.

<sup>53</sup> Lecturer in ‘Corporations Law’ at the University of Tasmania.

<sup>54</sup> Lecturer in ‘The Law of Torts’ at the University of Tasmania.

Academics approached at this law school were very responsive to inquiries, perhaps because the school had recently undergone a review process that is particularly focussed on the strategy of internationalisation. Generally, participants agreed that international law is ‘important’ and that it is ‘desirable’ to integrate international/comparative materials into courses. However, many lecturers felt constrained by lack of time to do so.

*It is in my view important for students to understand that the Australian common law is not developing in isolation — therefore drawing on developments in other common law jurisdictions by inclusion of some case law is appropriate. To hope to do much more than this is probably unrealistic (unless the number of contact hours is increased).<sup>55</sup>*

*... due to severe time constraints and breadth of the unit it is difficult to effectively teach the domestic property law so whilst I would probably agree that there should be some exposure to international material at the undergraduate level it is not really possible under the current structure.<sup>56</sup>*

One faculty member demonstrated an awareness of student needs and graduate experience as follows:

*... on information received from graduates, they are finding the need to be able to understand the essential elements of administrative practice and review in different jurisdictions [is] becoming more central to their capacity to advise clients.<sup>57</sup>*

The University of Tasmania’s law school has a serious commitment to its objective to internationalise the curriculum and has adopted innovative strategies to ensure the law degree prepares students for global legal practice. A recent review of the curriculum proved to be an important stimulant to reform and may provide a model for other Australian law schools.

## **1.2 The University of Melbourne**

The University of Melbourne’s *Strategic Plan 2003* expresses the objectives of ‘International Positioning’ and ‘encouraging the internationalisation of curricula’ across the entirety of the courses taught at the University.<sup>58</sup> The law school has a significant range of international and comparative courses at the undergraduate and graduate levels and a growing number (92) of PhD or RHD students, most of whom are conducting research in aspects of international and comparative law.<sup>59</sup>

The undergraduate degree has a strong Australian focus, but students will be aware that there is a body of public and private international law and comparative law which may have implications for how law is practised in the future. Some integration of an international perspective is achieved in core subjects. An introduction to international law is made in the first-year subject ‘History and Philosophy of Law I’, where consideration is given to whether the Australian legal system recognises ‘other’ forms of law such as indigenous customary law, international law and religious law. One week of seminars is devoted to comparative law, with a particular focus on Chinese and Islamic law, the development of non-secular legal systems and the operation of dual legal systems within specified jurisdictions. A second week is devoted to international law and Australia, covering the relationship between international and national law, treaty law, customary law and policy issues.

Later year options include International Law, Advanced International Law, Human Rights Law, Law and Society in Asia, Commercial Law in Asia, Issues in Chinese Law, Issues in Japanese Law, Land, Race and Law in South East Asia, Law and Civil Society in Asia and others offered biannually such as International Labour Law, International Environmental Law, International Trade Law, International Economic Organisations and International Humanitarian Law.

Other subjects, such as ‘Torts’ and ‘Contracts’, use international and comparative materials mainly in their capacity to further illuminate the nature of domestic law. For example, many references to the UNIDROIT

<sup>55</sup> Lecturer in ‘The Law of Torts’ at the University of Tasmania.

<sup>56</sup> Lecturer in ‘Property’ at the University of Tasmania.

<sup>57</sup> Lecturer in ‘Administrative Law’ at the University of Tasmania.

<sup>58</sup> ‘International Positioning’, in the University of Melbourne, *Strategic Plan 2003: Goals and Strategies*, point 4.5 <<http://www.unimelb.edu.au/publications/strategicplan/goals.html>> at 30 September 2003.

<sup>59</sup> Faculty of Law, the University of Melbourne, *Research Performance 2002* (draft).

Principles of International Commercial Contracts after various topics are taught in Contracts. An examination of the New Zealand no-fault compensation scheme is covered in Torts. This course also includes decisions of the European Court of Human Rights, indicating an understanding of the jurisprudential development of domestic torts law through a regional court.

The 'Constitutional and Administrative Law' course examines the external affairs power of the Australian Constitution and considers the relationship between international law and Australian law. The 'Criminal Law and Procedure' course considers, in an introductory way, the impact of international norms on criminal law debates in Australia. The subject's examination of all domestic issues engages with relevant law reform debates in overseas jurisdictions.

The critical legal perspectives of 'History and Philosophy of Law I' are reinforced in 'Jurisprudence' and 'History and Philosophy of Law II' where Critical Race Theory is studied. This includes examination and analysis of Latin American and American theory.

Civil Procedure integrates comparative content and analysis throughout the subject. For example the subject includes the study of civil justice law reform initiatives in overseas jurisdictions. Property includes discussion and analysis of indigenous legal issues and in this context refers frequently to Canadian law and legal developments. Equity considers law from other common law jurisdictions, especially Canadian law in the context of fiduciary obligations.

The non-examinable status of comparative materials in a subject such as 'Corporations Law' means that students are likely to regard them as of academic rather than practical relevance.

### 1.3 *The University of Sydney*

The University of Sydney has identified international objectives in its planning, and has nominated the following strategies:

- increasing international student enrolment, and providing support for international students through exchange/study abroad programs;
- increasing the university's international profile;
- encouraging overseas visitors; and
- fostering academic initiatives.<sup>60</sup>

The law school has adopted many of these strategies and is, in particular, noted for its efforts to make international enrolments easier. It was one of the first law schools in Australia to make the subject 'International Law' a compulsory subject for undergraduate students taught over a semester with extra teaching time as compared to other subjects generally taught over a semester in Australian University Law Schools. It is divided into two parts — private international law and public international law — and considers the relationship between these two branches. 'The unit provides an opportunity to consider the implications for Australia of globalisation'.<sup>61</sup> The fact that 'International Law' is a compulsory subject is regarded as significant in that it 'reflects an institutional philosophy that these areas of study are fundamental in a university education in law'<sup>62</sup> and 'indicates our Faculty's commitment to the subject.'<sup>63</sup>

One related effect of making 'International Law' compulsory may, however, have been to isolate the international and comparative content within the curricula, perhaps keeping it from being integrated into other core subjects. For example, the 'Contracts' course makes no mention of the UNIDROIT principles or international forums for commercial arbitration, perhaps because the 'International Law' course covers 'choice of law in contract and choice of law in tort.'

Notably, 'Contracts' has a heavy emphasis on training students to operate in a common law system, being described as 'basically a case law unit'.<sup>64</sup> There are three minor comparisons with the UK jurisdiction, for the purposes of considering reform of the Australian legislative system. Similarly, 'Equity' is seen to be 'very

<sup>60</sup> 'Goal Four: Internationalisation', in the University of Sydney, *Strategic Plan 1999–2004* (1999) 19 <[http://www.usyd.edu.au/about/publication/pub/sp\\_goal4.pdf](http://www.usyd.edu.au/about/publication/pub/sp_goal4.pdf)> at 30 September 2003.

<sup>61</sup> Faculty of Law, the University of Sydney, *Faculty of Law Handbook* (2003) 6.

<sup>62</sup> Lecturer in 'International Law' and 'Torts' at the University of Sydney.

<sup>63</sup> Lecturer in 'Litigation' at the University of Sydney.

<sup>64</sup> *Faculty of Law Handbook*, above n 61, 5.

much a common law world subject where private international law has had modest impact... the *Hague Convention on Recognition of Trusts*... is regarded as too detailed for our coverage of Trusts in a general undergraduate course'.<sup>65</sup> 'Law, Lawyers and Justice' examines 'the effects an adversarial culture has on the way lawyers interact with clients and opposing parties.'<sup>66</sup>

There is certainly scope in the core courses for integration of international and comparative material, but it is an initiative that is yet to be undertaken. An exception is the first-year course 'Foundations of Law', taught in five parts, with the fifth part being devoted to international law and human rights. There is a series of materials and questions covering war crimes and the Nuremberg trials, and the relationship between international and domestic law. An innovative week is spent on considering national sovereignty and the war on terrorism, and the impact of the war in Australia. There is also a comparison with South Africa in the consideration of the topic, 'Courts and Judicial Functions'.

The law school offers a range of international and comparative law electives, in areas such as human rights, Chinese law, comparative constitutionalism, and a unique subject, 'Law, Communications, Culture and Global Economies.' There are two elective streams, and undergraduate students must choose from both.

Making 'International Law' a compulsory subject ensures that students all get a basic understanding of the area and encourages them to see it as more than merely a specialised area of academic interest. However, it seems to remove the incentive for other core courses to integrate international/comparative material. This is probably reinforced by the inclusion of so much international legal theory in the introductory course 'Legal Institutions'. The push to 'internationalise' seems to mean the addition of a number of extra strategies rather than to adopt a fundamental change in the content and method of teaching.

#### 1.4 *University of Adelaide*

Even though the law school of the University of Adelaide has been the home of some of Australia's finest international lawyers, the institution remains, however, relatively strongly domestic in its educational focus. International and comparative law are available in elective and postgraduate subjects and the curriculum seems not to have integrated such materials into core or introductory subjects.

Core courses do not demonstrate any significant interest in internationalisation of the curriculum. This may be due to the perception of the place of international law in legal studies held by faculty staff:

*'In Property Law at Adelaide we only make use of comparative materials. I consider that public international law and conflicts are only very marginally relevant to the subject.'*<sup>67</sup>

Similar to the University of Melbourne's 'History and Philosophy of Law I', the law school has developed a course entitled 'Introduction to Australian Law' which includes international legal materials to introduce students to 'other families of legal systems' and 'comparative law'. One week of the course is spent on international law, another week on human rights law. However, on the whole, the teaching of international/comparative legal materials is being left to specialised courses. Compare, for example, 'Criminal Law' and the elective, 'Selected Issues in Criminal Law and Procedure'.

International law subjects are not compulsory. There is a standard selection of international law options, covering human rights, trade, the Jessup Moot competition and other selected topics.

The innovative Masters in Comparative Law has been run by the University of Adelaide in the past in conjunction with the University of Mannheim, with the aim of exposing Australian students to a civil law system in a significant and meaningful way.

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<sup>65</sup> Lecturer in 'Equity' at the University of Sydney.

<sup>66</sup> *Faculty of Law Handbook*, above n 61, 6.

<sup>67</sup> Lecturer in 'Property Law' at the University of Adelaide.

## 2. 'Second Wave' law schools

### 2.1 *Australian National University*

The Australian National University law school offers an undergraduate LLB program in which students can choose from a wide variety of international law electives allowing some level of specialisation at the undergraduate level. There are also specialist programs in the LLM and Graduate Diplomas which include an international law stream as well as courses like International Environmental Law in the environmental law stream. ANU has built a reputation for being 'the national university' — the implications of being situated in the nation's capital for international law are that the institution is well-placed to integrate international law issues into the curriculum; indeed, a strong focus on public international law already exists. The law school's reputation as a premier institution for promoting international law is reflected in its promotional material:

*The Faculty of Law at ANU has a unique strength in international law, both in Australian and world-wide terms. We have over half a dozen members of staff who actively teach and research in international law and have international reputations in their fields. They are often called upon to advise Australian parliaments and government departments as well as advising governments, organisations, groups and individuals around the world. Accordingly, the Faculty is able to offer an extremely wide and varied selection of international law courses, including more specialised areas like international human rights law, law of international organisations, international law of the environment and international trade law, in which practical aspects of international law are fully integrated. Each year students in the Faculty compete in the Jessup International Law Moot Court Competition. The Australian rounds of this international law school competition are held at the ANU, with the international finals (which ANU has won on more than one occasion) held in Washington DC. In addition, students can undertake internships in government departments and with other organisations concerned with international law. Many ANU students go on to practise international law. All these activities demonstrate why the Faculty of Law has a reputation as one of the leading centres of excellence in international law in the world.<sup>68</sup>*

'International Law' is a compulsory first-year subject at ANU. The rationale for making it so is that '[n]o major area of Australian law remains unaffected by international law, so an understanding of international law is essential for any legal practitioner in the twenty-first century.'<sup>69</sup> Rather than examining in detail all aspects of international law, the course 'aims to offer an introduction to the main principles and substantive elements of the international legal system'.<sup>70</sup> This prepares students who choose to pursue their interest for more detailed study of the area in other electives offered by the faculty. The course has a strong emphasis on public international law, covering the role of the United Nations and other international institutions, treaty interpretation and customary law, international relations and laws applicable to the use of force. Importantly, alongside a study of theoretical foundations of international law, the course equips students with practical skills for practising international law, aiming to help them 'understand the language and methodology of international law',<sup>71</sup> and to develop research skills for international law sources.

Students' first introduction to international law appears in the subject 'Foundations of Australian Law', where there is an examination of the European continental civil law system and the way in which treaties affect domestic law in Australia. This is followed by 'International Law' (see above), and 'Australian Public Law', in which one class is devoted to studying the role of conventions and the application of international law. The 'Legal Theory' course is necessarily comparative in that it aims to foster a critical and reflective attitude towards legal systems and explore the nature of law in modern societies. This seems to be mostly a theoretical subject, with lectures organised around theoretical concepts rather than comparative examples.

In terms of other core courses, there is limited references to comparative case law ('Equity and Trusts', 'Torts', etc). There is no covering of UNIDROIT principles in 'Contracts', and interestingly, quite a lot of referencing to older UK case law.

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<sup>68</sup> Australian National University, 'About the Law Faculty', available at <<http://law.anu.edu.au/TheFaculty/AbouttheLawFaculty.html#International%20Law>> at 30 September 2003.

<sup>69</sup> Faculty of Law, the Australian National University, *LLB Handbook* (2003) 86.

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.*

Similarly to the University of Sydney, ANU law school's strategy of emphasising international law by containing it in a compulsory subject could well be having the effect of quarantining international and comparative law issues from other core subjects. The subject 'International Law' is dynamic and interesting, raising students' awareness of a number of topical issues. In contrast, it does not cover in detail the private international law issues that the University of Sydney is so conscious to emphasise.

## 2.2 *Monash University*

The marketing of the Monash University law school (via its website) emphasises the University's global links and forward-thinking vision: 'The law school will increasingly become an international law school' which is 'helping students prepare for a changing world.'<sup>72</sup> At over 2200 enrolments in March 2003, Monash University's undergraduate program is the largest in Australia.<sup>73</sup> The strategies for internationalisation cited by the Monash law school are increasing enrolments of international students in the law school, and the growing number of student exchange programs. As part of the 'fundamental values' cited to be guiding the school, there are professional, ethical and international directions that are specifically delineated. The international aims of the school are that it operates on a global as well as a local level. This encompasses the following strategies:

- introduction of more subjects with international content and relevance;
- transformation of existing subjects through international material;
- strengthening of postgraduate programs in international and comparative law;
- increasing international student enrolments;
- developing an international alumni community;
- undertaking research at an international level; and
- establishing stronger links with international law schools and firms.

These strategies indicate that, for Monash University law school, 'internationalisation' implies that changes to the curriculum (the first three strategies) occur in tandem with changes to the make-up and mode of operation of the law school (the latter four strategies). There is some evidence that this second kind of internationalisation strategy is already being implemented — through exchanges and study abroad programs with a wide variety of institutions; an agreement for accreditation in Singapore for the top 30 per cent of graduates in the LLB program; the offering of short courses for overseas visitors; and internship programs with international law firms and organisations such as the World Bank (Washington, DC) and the United Nations.

A survey of course content at Monash University demonstrates that, from the point of view of internationalisation, the curriculum has yet to meet the stated aims of the law school's 'international directions':

- The 'Torts', 'Criminal Law and Procedure', 'Contracts', 'Property Law', 'Administrative Law', 'Equity' and 'Evidence' courses demonstrate inclusion of few international materials.
- 'Australian Legal Systems' makes students aware of the British roots of the Australian legal institutions and of the family of common law system countries, including material that compares the Australian electoral system with that of other countries.
- 'Constitutional Law', in its coverage of the corporations power, looks at foreign corporations. This occurs alongside the standard coverage of the external affairs power.
- When asked about the inclusion of international materials in the 'Corporations Law' course, the course co-ordinator observed that '[t]his material is included where relevant, eg, international developments in corporate governance [regarding] in-house counsel. Where it is included, it is assessable along with everything else.'<sup>74</sup> There does not appear to be a conscious or directed attempt to compare the Australian corporate law system with that of another comparative model or to situate it in a global context.

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<sup>72</sup> Monash University, 'Welcome from the Dean of Law, Professor Stephen Parker', available at <<http://www.law.monash.edu.au/welcome.html>> at 30 September 2003.

<sup>73</sup> *Student Profile — Law* (2003) Monash University Statistical Services <<http://www.firm.monash.edu.au/statistics/enrol/2003/Profiles/Tables/enrol-mar31-faculty-law.pdf>> at 30 September 2003.

<sup>74</sup> Lecturer in 'Corporations Law' at Monash University.

The lack of international content was noted by one lecturer to be ‘ironic, considering that so many of us (academics) are interested in international and human rights stuff.’<sup>75</sup>

Time constraints were again cited as an obstructive factor in internationalising course content — for example, as ‘Constitutional Law’ has recently been reduced by the semester system. This was seen as an impediment to including more comparative or international materials. Furthermore, there was an attitude expressed that a more in-depth understanding of international legal issues is most appropriately made available through postgraduate and optional units:

*[B]asic comparisons... drawn between federal, state and UK systems in various contexts ... is enough in an undergrad course to give students the benefit of understanding that laws differ in different jurisdictions ... there is little scope in this unit to teach about systems that are very different, such as civil law or the American system.*<sup>76</sup>

There are several new and innovative postgraduate units on offer — including ‘International Organisations’, ‘International Air Law’, ‘International Space Law’ and ‘International Sale of Goods’.

Monash University law school has a clearly articulated policy for internationalisation that needs to filter down to the level of changing course content for individual courses. As it stands, the exposure to international and comparative law by undergraduate students is not systematic; one lecturer commented that ‘Most students are exposed to international law principles via their optional subjects.’<sup>77</sup>

Some of the policies are innovative and unique to Monash law school. No other law school, for example, included in this study has so strongly identified development of an international alumni community as a way of internationalising the institution. Monash University is pro-actively and successfully building up links at a global level with a variety of educational and other institutions, and is well-positioned to meet international student demand for a degree that is not limited by a focus on Australian law and the domestic legal community.

Maintenance and development of a strong postgraduate program remains central to the Monash law school’s strategies for internationalisation.

### 2.3 *Macquarie University*

The law school at Macquarie University has long maintained an emphasis on understanding law in its socio-political context. For this reason, the programs offered typically have a comparative and international approach. Many points of comparison are made with other legal systems.

- ‘Criminal Law and Procedure’, compares the development of criminal justice and punishment in Anglo-common law countries.
- ‘Constitutional and Administrative Law’ compares the Australian with other modern constitutions.
- ‘Public Law II’ includes a comparative analysis of American and Canadian constitutional jurisprudence.
- ‘Contracts’ compares Australian contract theory with material from England and the US.

Time constraints were cited as the problem preventing the inclusion of substantial and comparative material. This is especially the case for a course such as ‘Constitutional Law’, which was reduced from a full year to half a year after ‘Administrative Law’ became a requirement for practice by the Legal Practitioners Admission Board (LPAB). The content of ‘Contracts law’ is similarly constrained by LPAB requirements.

Macquarie University law school places a strong emphasis on studying law in social, cultural and economic context. This leads naturally to the inclusion of much comparative material, mostly for the purposes of better understanding and enabling analysis of the Australian legal system. The requirements set down by the LPAB were seen as a significant restraint on the capacity of course planners to develop a more international or trans-national course content.

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<sup>75</sup> Lecturer in ‘Constitutional Law’ at Monash University.

<sup>76</sup> Lecturer in ‘Administrative Law’ at Monash University.

<sup>77</sup> Ibid.

## 2.4 *The University of New South Wales*

The law school of the University of New South Wales is similar to that of the University of Macquarie University in its emphasis on understanding 'law in context'. Comparative materials are integrated in the usual subject areas, though international law tends to be taught from a theoretical perspective ('Legal Theory' and 'Law and Social Theory'). In teaching international law, this law school places a significant importance on the development of international legal research skills, providing an opportunity to do so through 'Advanced Legal Research'. This is a good example of a course marrying the need to develop practical legal skills with the inclusion of internationalised content.

Some examples of international and comparative course content are the following:

- 'Criminal Law 1': one class examines internationalism and human rights.
- 'Public Law': uses the Fiji constitutional crisis as a case study; examines Bill of Rights debates in Australia.
- 'Constitutional Law': covers external affairs power and treaty implementation; includes an interesting comparison of the Australian Constitution with the US commerce power; and has several US cases listed on reading guide.
- 'Legal Theory': highlights human rights in East Asia; considers legal responses to cultural diversity.
- 'Law and Social Theory': considers globalisation theory, the implications of 'the currently prevailing social paradigm of *neo-liberalism* or *neo-conservatism*.'<sup>78</sup>
- Six electives are available to undergraduates on international law topics, and students can choose from a wide range of options.

## 2.5 *Queensland University of Technology*

The law school at QUT is a national leader and model in the development of an internationalised curriculum. Serious efforts have been made to integrate global materials in the curriculum and special subjects have been developed to explore the legal implications of globalisation.

The first-year semester-long compulsory unit, 'Laws and Global Perspectives', aims to 'give students an appreciation of the global context in which the Australian legal system operates and an understanding of how international and overseas legal systems impact on our own.'<sup>79</sup> It builds on the previous subject 'Law, Society and Justice' that considers the broad social context in which the Australian legal system operates. This course covers public international law, private international law and comparative law. Importantly, one of the key skills obtained from this course is using electronic research tools to research and maintain an understanding of current international law and in other jurisdictions. The curriculum generally appears to fuse an emphasis on internationalisation with a skills-based curricula.

Possibly a similar issue of 'quarantining' of the global law subjects has arisen as a result. Other core units seem to exclude international or comparative law materials in their course objectives.

'Legal Institutions and Method': examines international and comparative factors in determining sources of law, and methods of interpreting law. This is supported by the international legal research and problem-solving skills covered in 'Legal Research and Writing' and 'Advanced Research and Legal Reasoning' (similar to the University of New South Wales in this topic's specific inclusion in the syllabus of the research subject).

In 'Principles of Equity' and 'Trusts', students study 'not only the substantive law, but also the various historical, socio-economic, political and international factors which have influenced the manner in which the law of equity has developed and the way in which it may develop in the future.'<sup>80</sup>

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<sup>78</sup> Faculty of Law, the University of New South Wales, *Law and Social Theory: Course Outline* (2003) 3 <<http://www.law.unsw.edu.au/subjinfo/laws8820.doc>> at 30 September 2003.

<sup>79</sup> Faculty of Law, Queensland University of Technology, *Laws and Global Perspectives: Unit Outline* (2003) <<http://www.law.qut.edu.au/courses/ugrad/lunits.jsp>> at 30 September 2003.

<sup>80</sup> Faculty of Law, Queensland University of Technology, *Principles of Equity: Unit Outline* (2003) <<http://www.law.qut.edu.au/courses/ugrad/lunits.jsp>> at 30 September 2003.

Elective streams are divided into ‘Corporate and Commercial’, ‘General Practice’, ‘Skills’ and ‘Other Areas of Law’ streams. There are six subjects clustered under the heading, ‘Public, International and Comparative Law’, which forms a subset of the ‘General Practice’ stream. The subjects offered represent an interesting selection. The separation of the ‘Skills’ stream from the others raises a point of contention — this structure has advantages (allowing students to choose to make the content of their LLB more vocational) and disadvantages (from the perspective of internationalisation, it doesn’t ensure that international law skills will be taught in subjects such as ‘Advocacy’ and ‘Alternative Dispute Resolution’ — however, the skills emphasis in the ‘Laws and Global Perspectives’ course may alleviate this concern).

The QUT law school has a dynamic international curriculum, notably including a compulsory first-year subject that addresses globalisation, and an emphasis on developing international legal research skills in more than one subject. Similarly to other second wave universities, all units at QUT aim to give a broad understanding of the law ‘in context’. However, international materials are still predominantly found in the ‘regular’ courses. Other units such as Contracts, Torts and Property remain lacking in emphasis of international or comparative issues. Criminal Law is particularly focussed on Queensland law.

### 3. ‘Third Wave’ law schools

#### 3.1 *Deakin University*

Examples of the inclusion of international and comparative materials by Deakin University law school include:

- ‘Introduction to Law’: One topic of 10 is devoted to international law. Also, there is some comparative contextualisation of the Western legal tradition.
- ‘Contracts’: a brief consideration of the *Vienna Convention on the International Sale of Goods*.
- ‘Criminal Law’: includes usual comparisons to the UK jurisdiction.

Students are encouraged to undertake ‘International Commercial Law’ after completing the foundation courses of ‘Contract’ and ‘Commercial Law’.

Again, the pressures of time were cited as an impeding factor for internationalisation: ‘Our subject has incredible scope for [including an international focus], especially regarding directors’ duties, but because it is a one semester unit, we cannot cover what we need to, much less adopt a comparative law approach.’<sup>81</sup>

Deakin University offers an LLB program specifically focussed on domestic commercial law. While there is a wide selection of international commercial law subjects, the core subjects are not integrating international or comparative material in a systematic way at present.

#### 3.2 *Bond University*

Examples of the inclusion of international and comparative materials Bond University law school include:

- ‘Legal Reasoning’: uses case studies of judicial protection of human rights under the Australian Constitution.
- ‘Constitutional Law’: includes standard coverage of the external affairs power.
- One ‘Humanities’ stream subject, ‘Cultural and Ethical Values’, includes a comparison of the Western Christian tradition with the Confucian tradition.

There is little emphasis (evident from core course summaries) on international or comparative material. Eight law electives are available on international law issues: ‘International Law’, ‘International Banking and Finance Law’, ‘International Investment Transactions’, ‘International Business Taxation’, ‘International Trade and Business Law’, ‘International Contracts’, ‘International Commercial Arbitration’ and ‘International Humanitarian Law’.

Bond University offers an LLB program specifically focussed on domestic commercial law, with an emphasis on practical skill development. This is particularly achieved by making the subjects ‘Strategic Management’ and ‘Entrepreneurship’ compulsory (subjects offered by the business school). Bond University

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<sup>81</sup> Lecturer in ‘Business Organisations’ at Deakin University.

law school is promoted as a teaching a model curriculum because of its emphasis on legal skills development, rather than the adoption of internationalisation strategies.

### **3.3 *Griffith University***

Information provided by Griffith University about the internationalisation activities of its law school is summarised below.

- Mapping of how students develop legal and generic skills relevant to student employment in an international community and this has been integrated into the way the Priestley 11 subjects are taught over the first three years of the degree. A current curriculum review is aimed at strengthening this aspect of the curriculum (among others).
- It is compulsory for students to complete at least one international/comparative law elective.
- Undergraduate students may not take a 'straight law' degree but can take one of a number of combined degree programs such as Law/International Relations.
- Griffith Law School encourages student exchanges for one semester to other Law Schools around the world and has established an international internship program aimed at supporting student interest in learning about law through practice in a foreign country.
- The Law School's Strategic Plan contains a firm commitment to continued internationalisation, at the level of curriculum, staff and student exchanges, and employment of new staff.

### **3.4 *Victoria University***

Information provided by Victoria University about its law school is summarised below.

The Victoria Law School is a school within the Faculty of Business and Law at Victoria University. It accepted its first undergraduate students in 2001. The Law School teaches a number of legal subjects at offshore locations in Asia.

Substantial material from other legal systems, including those outside the common law family, is included in certain subjects on the curriculum, including the compulsory subjects. For example:

- 'Australian Legal Systems in Context', examines historical and current developments in law with the use of international and comparative materials.
- 'Corporations Law 2' covers legal regimes and practices of the US, EU and UK.
- 'Real Property Law' includes identification of the elements of the international model of land title registration and the three main international systems in the area – French-Iberian systems, Germanic systems and Torrens system/common law.
- 'Federal Constitutional Law' compares the Australian constitution with EU and US constitutions as well as covering the external affairs power and treaty implementation.

Optional subjects such as Environmental Law and Intellectual Property Law include international aspects as well as the clear examples of Comparative Commercial Law, Asian Legal Systems, International Trade Law and Conflict of Laws.

Postgraduate studies at Victoria University have also been internationalised, notably the Masters in Comparative Commercial Law.

## APPENDIX B

### Case Studies – Overseas Law Schools

#### 1. New York University Law School

##### 1.1 *What strategies have been adopted?*

The NYU law school has employed the following strategies in its pursuit of internationalisation. These strategies are implemented both through and additionally to the HGLS Program:

###### (a) *Inclusion of global materials in first-year courses*

International or global materials have been introduced from the first year of the program to ‘sensitize students in their first and most impressionable year of legal study to global perspectives and the way that domestic law is affected by other legal systems.’<sup>82</sup> Extensive materials comparing the American legal system with the legal systems in other common law, civil law and Asian legal systems have been integrated into the program, including international and supranational primary sources of law. All materials are then integrated into the final examination of a given subject.

Leading experts Professors Eleanor Fox, Larry Kramer, Linda Silberman and Frank Upham, Jim Jacobs, Oscar Chase, Rochelle Dreyfuss, Helen Hershkof have contributed to the development of global materials in ‘traditional’ areas, such as Torts and Civil Procedure.

###### (b) *Pioneering international law curriculum development*

The HGLS Program aims to make students aware of the social choices and cultural structures behind legal systems. The emphasis on this aspect of legal education is as strong as the teaching of practical legal skills. The syllabus of the ‘Civil Procedure’ course is, for example, described as ‘highlight[ing] the reality that procedural systems are the product of choice; there is no universal consensus on how best to serve the values of accuracy, fairness, and efficiency, and even on whether these are the values that a procedural system ought to serve.’<sup>83</sup> This approach is supported by the inclusion in the course of research papers that present international perspectives from all legal systems.

Academics have cooperated to develop new curricular. An example is the new course, ‘International Litigation’, taught by Professors Andreas Lowenfeld and Linda Silberman, which explores litigation in both the public and private law contexts.

###### (c) *International and comparative law introduction for first-year students*

This strategy adopts a less formalised content as it depends on the expertise of current visiting and permanent faculty. It encompasses international law lectures and informal lunches with global professors.<sup>84</sup> The effect of this strategy is to foster an interest in international legal issues at an early point in their legal studies, encouraging them to choose international law subjects in the latter years of their LLM.

###### (d) *Colloquia*

The HGLS Program hosts a range of seminars and lectures open to all students and staff. A recent example is the weekly ‘Globalization and its Discontents’ colloquium, where scholars present papers to be in a round-table format to promote discussion by both staff and students.

###### (e) *Facilitating options to study and work abroad*

The NYU law school both funds and facilitates internships and clerkships with premium international institutions. The Institute for International Law and Justice is particularly active in this initiative, funding

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<sup>82</sup> See *GlobaLaw*, above n 51, 10.

<sup>83</sup> New York University Law School, *Civil Procedure Syllabus* (2002), cited in *ibid*, 11.

<sup>84</sup> *GlobaLaw*, above n 51, 11.

internships to the UN International Law Commission, the International Criminal Tribunal for Rwanda, the Office of the UN High Commissioner for Refugees, and International Court of Justice traineeships.

Exchange agreements with other international law schools, Institutes and Centres are encouraged.

(f) *Changing the composition of the student body*

There is a highly diverse student body represented at NYU law school, and the law school's culture thrives on this diversity. This is a reflection of the size and diversity New York City itself, and the city's attraction as a world centre for academia as well as many other areas of human endeavour.

(g) *Increasing the rate and number of visiting international faculty, collective research projects and research fellowships*

NYU law school has the ability to draw several high profile visitors; including former President Bill Clinton, US Supreme Court Justice Ruth Bader Ginsburg and US trade representatives. This is undertaken not only through the HGLS Program, but also through other programs such as the Institute for International Law and Justice.

The ability to attract international scholars and researches is seen to 'prepare graduates for the global environment in which they will practice.'<sup>85</sup>

Examples of Research Fellowships include:

- the Visiting Scholar and Visiting Researcher Programs at NYU;
- the Emile Noel Fellowship at the Jean Monnet Centre;
- the Hauser Research Scholar Fellowship as part of the HGLS Program;
- the Visiting Fellow Program associated with the Institute for International Law and Justice; and
- sponsorship of two Global Law Faculty by the Global Public Service Law Project, to work in conjunction with the HGLS Program, to increase awareness and understanding of the variety of public interest law activities undertaken in different contexts around the world.

(h) *Market perception*

Student surveys provide some empirical evidence that NYU Law School's strategies for internationalisation are effective in stimulating student choice in legal education institutions:

*When I was selecting a law school, NYU's staunch commitment to the Hauser Global Law School Program was a key consideration. Simply put, my purpose for going to law school was not to be a cloistered law student, rather to become an international lawyer.'*<sup>86</sup>

Professor Joseph Weiler, the Director of the HGLS Program, observes that 'Hausers are rightly considered as the Rhodes Scholars of legal education.'<sup>87</sup> Such a claim reflects confidence in the calibre and innovative nature of the program offered. The success of the HGLS Program in internationalising legal education, along with the other strategies employed by the NYU law school, also represents the culmination of years of strategic planning, along with the investment of significant financial and other resources. In considering the NYU law school as a model for Australian law schools, its superior status in the international academic community (reflecting its location and the incomparably greater resources available) should be taken into account.

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<sup>85</sup> New York University Law School, 'Programs, Colloquia, Institutes, and Centres', available at <<http://www.law.nyu.edu/pcic/programs.html>> at 30 September 2003.

<sup>86</sup> Margaret Katri Lewis (student), cited in New York University Law School, 'Internships, Clerkships, and Fieldwork', *Law School Magazine*, above n 50, 73.

<sup>87</sup> Prof Joseph Weiler, in New York University Law School, 'The Turn to Scholarship: Joseph Weiler to Lead Hauser Global Law School', *Law School Magazine*, above n 50, 81.

Internationalisation of the law degree at NYU also reflects its strategic objective of creating a 'think-tank' to inform legal minds for the future roles of lawyers as national and global leaders, providing them with the theoretical and ethical grounding to participate in and foster an integrated global order.

## 2. Columbia Law School

Columbia is one of the oldest law schools in the US offering JD and Graduate programs. It advertises its International and Comparative Law program by claiming that it

*has been internationalizing US legal education since its founding before the American Civil War. Long before global markets and instant worldwide communications made these fields critical to the everyday work of practicing lawyers, and decades before most US law schools offered even introductory courses in international and comparative law ... Today, Columbia's commitment to international and comparative law ... has no peer among US law schools.*<sup>88</sup>

At the very least, Australian law schools can learn something of how to market themselves overseas from such statements. Columbia has, indeed, established an enviable program of global law through the number of international faculty and visiting specialists, the development of an international and comparative law curriculum, the creation of comprehensive law library collections, the negotiation of study abroad programs with other law schools, and the establishment of regional and international centres.

Columbia offers three major streams of courses under a general theme of international law: public international law, private international law (or trans-national practice), and comparative and foreign law. Students may choose among them or stay with a nominated stream. The list of available course and seminar options is rich and varied and would be highly attractive to both American and overseas students. For example, it is notable that the courses are not confined (as is often the case) to European law, but rather they include the study of Asian legal systems and the developing law of international economic organisations such as the WTO.

One effect of globalisation on legal education is the pressure for law degrees that will be recognised in two or more jurisdictions; so-called 'jointly badged' law degrees. Columbia offers a Foreign Dual Degree Program that enables students to complete a law degree recognised both by Columbia and by an overseas law school. Columbia has thus responded in an innovative, if controversial, way to the demands of trans-national legal practice. The Columbia model might usefully be adopted by Australian law schools, particularly in conjunction with law schools found in the Asian region.

Columbia also offers students the opportunity to take part in the Jessup International law Moot as a substitute for the Foundation Year Moot. To enable a focus so early in the JD on international law is a significant recognition of the growth of international legal commercial practice.

Columbia has a well-earned international reputation for its international and comparative law program. An examination of the core subjects within the JD program, however, suggests that there has been little integration of international and comparative legal systems within the curriculum. Columbia has not employed terms such as 'global' in its descriptions of its programs, (although one course deals with 'global governance') and, on the whole, it appears to maintain a fairly traditional approach to teaching law.

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<sup>88</sup> 'International Programs: Introduction' (2003) Columbia Law School  
<[http://www.law.columbia.edu/center\\_program/intl\\_progs](http://www.law.columbia.edu/center_program/intl_progs)> at 30 September 2003.

## APPENDIX C

### A Survey of Australian Graduate Diploma and Masters Courses in International and Comparative Law

University	Graduate level programs available
University of Tasmania	Master of Laws (research) Doctor of Philosophy
University of Melbourne	Graduate Diploma in International Law Graduate Diploma in International Tax Graduate Diploma in Transnational Law Master of Comparative Law Master of International Tax Master of Public & International Law
University of Sydney	Master of International Law Master of International Business and Law Graduate Diploma in International Law Graduate Diploma in International Business and Law Master of Asian and Pacific Legal Systems
University of Adelaide	Master of Comparative Laws (soon to lapse)
Australian National University	Graduate Diploma in International Law Master of International Law
Monash University	Graduate Diploma in Law (Digital Economy Law) Graduate Diploma in Law (International and Comparative Law) Master of Laws (International and Comparative Law)
Macquarie University	Master of Laws (research) offered No coursework Masters available on international law
The University of New South Wales	Master of Asian and Comparative Law Master of Comparative Law Master of Human Rights and Social Justice Master of International Law
Queensland University of Technology	Master of Laws (research) offered No coursework Masters available on international law
Deakin University	Master of Laws (research) offered No coursework Masters available on international law
Bond University	Master of International Trade Law
University of Technology, Sydney	Master of International Trade Law Graduate Certificate of International Trade Law
Griffith University	Master of International Sports Law Graduate Certificate of International Sports Law
University of Western Australia	Master of Laws (research) offered No coursework Masters available on international law
Victoria University	Master of Comparative Commercial Law

## **APPENDIX D**

### **A brief history on achieving a national approach to legal education in Australia and the creation of the Law Admissions Consultative Committee (LACC)**

*This is an extract of a note prepared by Sir Laurence Street AC KCMG QC for an ILSAC meeting on 3 December 2003.*

The history of LACC goes back to the late 1970's at a time when each State and Territory had its own legal profession with its own controlling Admission Authority. Law degrees underlying admission were not automatically accredited in other States and Territories nor were interstate practitioners automatically entitled to admission.

The creation of a single national Australian law profession was a goal much desired by some. The first step along this path was to achieve recognition throughout Australia of law degrees from the various universities as a qualification for admission. In order to achieve this it was necessary that the various law Admission Authorities should agree on the basic content of the law course to be taught by universities in their respective jurisdictions. In the late 1970's I wrote to the Chairs of the other State and Territory Admission Authorities (in most instances this was the Chief Justice) proposing that we form a Consultative Committee of Law Admission Authorities (CCLAA) in order to reach common agreement upon the content of a law course which we would all recognize automatically.

All agreed to join in forming this Committee either themselves or through a nominee. After forming the Committee I nominated Mr Justice Hope as my nominee and he took up the role of Chair of the Committee.

The task proved extraordinarily difficult as various Admission Authorities and their members (most of whom were Judges and some of whom through age or inherent conservatism were far from enthusiastic about the project) held widely divergent views.

Much valuable work was done and ultimately the CCLAA came up with a unanimous endorsement of five core subjects with the rider that in each case they should be fleshed out by other law-related subjects.

Notwithstanding the Committee's recommendation of the five core subjects, some Universities resented strongly the imposition of any compulsory core as an intrusion into their academic freedom to structure their courses as they thought best. One State law Admission Authority was implacably opposed to a basic core which did not include some 12 or 13 named courses. And there were various shades of opinion between these two extremes.

When Mr Justice Hope relinquished his position I nominated Mr Justice Priestley from the NSW Supreme Court and he succeeded Mr Justice Hope as Chairman.

Again, much valuable work was done under Priestley J's Chairmanship towards achieving Australia-wide consensus and ultimately what has become known as the Priestley Eleven emerged as a basic structure to which all would subscribe.

In the meantime there was an increasing flow of interstate admissions and this provided the logical basis for the next step of procuring from each State and Territory amendments to its legal practitioner's legislation which would in effect create a single national profession administered, as a matter of convenience, by the State or Territory of origin. Again there were difficulties and delays in carrying forward this step. It was seen in some places as having relatively low priority. I believe we are now, happily, on the verge of accomplishing this step. Apart from the overwhelming advantages of domestic convenience and regularity, it will enable Australia to open our doors more freely to foreign lawyers and their commercial clients involved in international trade with Australia. And we will be able to aspire on the international stage to having Australian lawyers recognized and accredited as such in other countries.

A parallel and logical next step after clearing away the cobwebs of the past on the domestic scene is to achieve international recognition of Australian law degrees. In the early days of ILSAC (which was formed in 1990) one of the matters that was discussed from time to time was a project involving researching the reasons why so many students from Asia were attracted to West Coast US Law schools rather than Australian Law Schools. The hope was that the collation of data would enable Australian Law Schools to meet international expectation and thus attract students from Asia. Although simple to state, the carrying out of

such a project and the ultimate implementation or utilization of its results involved complex considerations and ILSAC has not been in a position to carry it forward thus far.

The excellent Paper prepared by the Legal Education and Training Committee of ILSAC under the Chair of Professor Gillian Triggs is an exciting and admirable revitalization of the pursuit of this ideal. The central recommendation of that Committee is:

*“That a representative committee be established to develop national policy and implement strategies to promote internationalisation of Australian legal education.”*

There are also other associated recommendations.

I enthusiastically and unreservedly support the Report and Recommendation of Professor Triggs’s Committee and I commend it to the members of ILSAC, and more widely, as a blueprint for achieving internationalization of the Australian Law degree.

27 November 2003

## **APPENDIX E**

### **List of Australian University Law Schools with Accredited Undergraduate Law Degrees (in alphabetical order)<sup>89</sup>**

#### **Australian Capital Territory**

The Australian National University (1955)

University of Canberra (1991)

#### **New South Wales**

Macquarie University (1974)

Southern Cross University (1993)

University of Newcastle (1992)

University of New England (1992)

University of New South Wales (1971)

University of Sydney (1855)

University of Technology, Sydney (1977)

University of Western Sydney (2001)<sup>90</sup>

University of Wollongong (1990)

#### **Northern Territory**

Charles Darwin University (1992)

#### **Queensland**

Bond University (1989)

Griffith University (1992)

James Cook University (1990)

Queensland University of Technology (1989)

University of Queensland (1935)

#### **South Australia**

Flinders University of South Australia (1992)

University of Adelaide (1883)

#### **Tasmania**

University of Tasmania (1893)

#### **Victoria**

Deakin University (1992)

La Trobe University (1992)

The University of Melbourne (1857)

Monash University (1963)

Victoria University (2001)

#### **Western Australia**

Murdoch University (1990)

University of Notre Dame (1998)

University of Western Australia (1927)

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<sup>89</sup> Some of the law schools predate the year identified above as they were in operation in short periods prior to full accreditation of those relevant institutes as universities.

<sup>90</sup> The University of Western Sydney School of Law came into existence on 1 January 2001 as a result of the amalgamation of the three federated members of the University of Western Sydney - Hawkesbury, Macarthur and Nepean. The new School brings together the law programs of the University of Western Sydney, Macarthur (1994) and the University of Western Sydney, Nepean (1995).