

# ‘WINDS OF CHANGE’ A REVIEW OF RECENT LEGAL EDUCATION REFORMS IN ENGLAND AND WALES: A COMPARISON WITH THE CURRENT SITUATION IN AUSTRALIA

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## I. INTRODUCTION

In the modern era of legal education no common law jurisdiction for the training of lawyers can ignore what is happening within other common law jurisdictions. This would include innovations in teaching, training of law students and the changing patterns or redevelopment of law schools. The object of this study is to explore the contemporary nature of these innovations and the policy decisions which arose from them. In making these considerations account has been taken of the fact that one of the major influences on Australian legal education has been that of legal education in England and Wales (for the sake of brevity to be described as England or the English legal system).

Within the context of this paper it is the intention only to comment and analyse those recent reviews and reports which could have an effect on the future of English legal education and if appropriate to compare them with the current situation or practices taking place within the Australian context.

In 2005 at the Commonwealth Law Conference I gave a paper which involved a comparison of legal education between Australia and England.<sup>1</sup> At that time it was still acceptable to quote the Ormrod Review of 1971<sup>2</sup> and the Benson Report on Legal Services of 1979.<sup>3</sup> In 1988 the Marre Committee<sup>4</sup> had criticised legal education for not providing an adequate knowledge of the ‘core subject’, for failing to give students the basic skills of being able to present written arguments, to conduct research, and present oral arguments, and for not placing law in its social, commercial and European contexts.<sup>5</sup>

It was during this period that the Lord Chancellor’s Advisory Committee on Legal Education and Conduct (ACLEC) was established in April 1991 under the Courts and Legal Services Act 1990.<sup>6</sup> Its review of legal education commenced in 1992 with the First Report on Legal Education and Training being published in April 1996, followed in 1997 by a Second Report *Continuing professional development for solicitors and barristers*. These reports were succeeded by a number of further reports until the Committee was disbanded in 1999 and replaced by the Legal Services Board. The reports selected for review within this context are those which were directly related to legal education. The Advisory Committee was also concerned with professional conduct and much of its work through the decade 1990 to until its demise in 1990 was concerned with rights of audience in the superior courts particularly in respect of solicitors and employed barristers.<sup>7</sup>

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1 David Barker, ‘Legal Education in the Commonwealth – An Anglo-Australian Law Academic’s Perspective’ (Paper presented at the 50<sup>th</sup> Anniversary Commonwealth Law Conference, Westminster, London, 15 September 2005).

2 United Kingdom, *Report of the Committee on Legal Education (Ormrod Report)*, Cmd 4594 (1971).

3 United Kingdom, *Report of the Royal Commission on Legal Services (Benson Report)*, Cmd 7648 (1979).

4 United Kingdom, *Report on the Future of the Legal Profession (Marre Report)*, Bar Council and the Law Society (1988).

5 Andrew Halpin and Philip Palmers, ‘Acquiring Values’, (1988) 146 (6760) *New Law Journal*, 1357-58.

6 *Courts and Legal Services Act 1990* (UK) c41.

7 General Council of the Bar, *Annual Report* (1997).

## II. LEGAL EDUCATION ASPECTS: THE ENGLISH CONTEXT

A starting point to such an account would have to be the reforms brought about by the *Legal Services Act 2007* (UK)<sup>8</sup> which has been described by Professor Leighton, a leading law academic and commentator, as; ‘The most radical piece of legislation for a very long time in terms of both the structure and the role of the existing legal profession and for legal education.’<sup>9</sup> In the view of Patricia Leighton’s comment, this legislation also gave rise to the setting up of the ‘Legal Education and Training Review (LETR), 2011-2012 (which was previously described as ‘The Review 2020’) which was an initiative of: the Solicitors Regulation Authority (SRA), The Bar Standards Board (BSB), and the Institute of Legal Executives Professional Standards (IPS).<sup>10</sup> The brief for the Review was to: report on the main challenges and changes that will influence the shape of the future legal services sector and determine the legal services education and training system(s) necessary to underpin the structure.’<sup>11</sup> The cautionary note mentioned in the article by Patricia Leighton, as to the lack of effect of previous reviews involving legal education in England (other than the Ormrod Review), should be heeded, particularly in the light of a recent internet report (17 October 2011)<sup>12</sup> which stated that: ‘Speaking at a debate on legal education London last week, former Appeal Court Judge Sir Mark Potter, who with Dame Janet Gaymer chairs the LETR’S consultation steering panel, said his panel had met just once so far in a *purely introductory exercise* and would meet again next month’. On the LETR’S likely finish date, Sir Mark hinted that it could slip into 2013. He was still hopeful it could meet the end-of-2012 deadline, but warned: ‘That may be somewhat ambitious’.<sup>13</sup> In this respect the sense of the ongoing discussions would suggest that all parties have a concern with regard to the effectiveness of the role of the Qualifying Degree and the lack of availability of training contracts either with a firm of solicitors or the equivalence of pupillage within barristers’ chambers.

The Law Society of England and Wales (‘Law Society’) also recognised the impact of this legislation by describing it as: ‘Implementing the biggest reform of the regulation of legal services in England and Wales for a generation’.<sup>14</sup> It actually incorporates the recommendations made by Sir David Clementi in his 2004 independent review of the regulatory legal framework in England and Wales relating to the creation of: ‘A single supervisory body, the LSB, to oversee the approved regulators such as the Law Society and the Bar Council.’ It also: ‘Requires professional bodies to separate their regulatory and representative functions’ and: ‘Creates statutory objectives and duties for all regulatory bodies.’ This means in effect that under its authority granted by the Act the Legal Services Board may delegate various aspects of legal education and training to the SRA. This authority was established to achieve that part of the legislation which required the Law Society to divide its representative and regulatory functions with the latter day-to-day regulation of solicitors being delegated to the SRA, which although is functionally separate, is still funded by the Law Society.

It could be argued that the result of this legislation was that it effectively dealt with some of the core issues faced by the English legal profession and provided a framework for future reforms which were then urgently needed within English legal education. One of the major outcomes of the *Legal Services Act 2007* (UK) was fulfilment of the requirement as stated in the objectives of the Legal Services Board that: ‘An effective legal profession

8 *Legal Services Act 2007* (UK) c29.

9 Patricia Leighton, ‘The Legal Education and Training Review (LETR), 2011-2012’, (2011) 45(3) *The Law Teacher* 361.

10 Ibid.

11 The Solicitors Regulation Authority (SRA), The Bar Standards Board (BSB) and The Institute of Legal Executives Professional Standards (IPS), *Legal Education and Training Review, 2011-12* (2011).

12 <<http://www.legalfutures.co.uk/regulation/legal-executives/education-and-training-review-may-not-report-until-2013-potter-admits>>.

13 Ibid.

14 *The Law Society, The Legal Services Act 2007- Briefing* (29 November 2007).

——— ‘WINDS OF CHANGE’: RECENT LEGAL EDUCATION REFORMS IN ENGLAND AND WALES is one that is able to meet the changing need of consumers and contribute to the meeting of the regulatory objectives. The profession’s effectiveness is as much defined by consumers’ expectations as it is by the professions and covers quality, access and value. We consider that quality comes from having appropriate education, training and quality assurance mechanisms as well as a consumer driven, competitive market.’<sup>15</sup> This prompted a review of legal education.

### III. THE ENGLISH LEGAL EDUCATION AND TRAINING REVIEW

It is accepted that the major reason for the Review was the *Legal Services Act 2007* (UK). This has been explained in the context of: ‘The deregulatory and consumerist thrust of the Act has major implications for nature and delivery of legal skills and the mechanisms through which they are delivered.’<sup>16</sup>

Patricia Leighton, in giving this explanation also commented that: ‘There is a sense, therefore, that a reformed system of education and training will have to respond to a far more complex and competitive world, and that many of our traditional norms and expectations are under challenge.’<sup>17</sup> Leighton also said that: ‘Turning to legal education itself, the interest will be not just in the future of the law degree and of traditional legal skills but in questions such as who are we educating and for what career?’<sup>18</sup>

One of the first actions taken in respect of the Review was by the SRA, which in acting on behalf of the BSB and the ILEPS, commissioned a contractor to undertake research into: ‘Legal education and training in England and Wales and internationally as well as systems in other sectors and professions.’<sup>19</sup> The successful contractors were also required: ‘To examine the educational requirements placed upon individuals entering the sector; the requirements for continuing education for individuals and entities; and the requirement placed upon those educating individuals and entities.’ In this respect the successful contractors were the United Kingdom Centre for Legal Education based at the University of Warwick under the leadership of Professor Julian Webb, the Director of the Centre.

The choice of selecting a contractor to undertake this research was in itself unusual, particularly as the University of Warwick’s United Kingdom Centre for Legal Education had had its Government funding withdrawn at the end of the 2011, effectively bringing to a close its recognition as a research centre. However its previous Director, Professor Julian Webb, is a highly regarded expert in legal education and no-one would question his effectiveness in the role of leading a team of experts in complying with the requirements of the Review.

The Consultation Steering Panel under the Joint Chairs, Dame Janet Gaymer and Sir Mark Potter is deputed to provide advice and information to the research team and to the regulators, whilst also being required to form strategic relationships across the sector and to promote the review outcome to the widest possible audience. It could be questioned as to whether the informal nature of these requirements could lead to a lack of control over the activities of the research team but such are the reputations of the Joint Chairs in their respective fields of expertise that this outcome is considered unlikely. In this respect there is much to be gained from both the Joint Chairs and the Consultation Steering Panel developing contacts within the legal and wider public community.

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15 Legal Services Board, *Legal Services Act 2007: The Regulatory Objectives* (2007) 12.

16 Leighton, above n 10

17 Ibid 363.

18 Ibid.

19 *What is LETR?* Legal Education and Training Review (2011) [Online] <<http://letr.org.uk/about/what-is-letr/>>.

Some commentators believe that - in the words of Neil Rose of the Guardian Newspaper: ‘This legal education review will transform the legal market.’<sup>20</sup> Rose went on to say that: ‘The problems of the legal education and training system have been well documented over recent months, dominated in particular by too many law students chasing too few jobs, the debt they accumulate in the process and the impact on diversity.’ Rose also said that whilst: ‘It is too early to predict what will come out of the review it seems likely to embrace the wider emerging trends in the regulation of lawyers.’<sup>21</sup>

In addition Rose forecasted:

So everything is up for grabs, such as: the possibility of national assessments at the point of entry to the profession; common training of would-be solicitors and barristers; replacing the training contract/pupillage with a more flexible period of supervised practice; fewer linear breaks and distinctions between vocational courses and work-based learning; and a new approach to post-qualification continuing professional development that focuses on ensuring ongoing competence rather than the current system of simply counting how many hours of course, lawyers have been on.<sup>22</sup>

Rose concluded that: ‘So this means an end to the professional monopoly: the right to practise will be separated from having a title such as solicitor or barrister. That doesn’t mean the titles will become unimportant but there will be multiple routes to becoming a lawyer’.<sup>23</sup> It will be instructive to see if the outcomes are as drastic as predicted by this and other commentators.

Neil Rose does, of course, describe the real problems facing the legal profession and the legal community generally and which it is hoped that the Review will solve. Whilst it is commonly accepted that approximately one half of law graduates do not enter the legal profession, for the other half who do wish to enter legal practice there is the restriction based on the unavailability of enough training contracts for both potential solicitors and barristers. As one commentator has noted: ‘In response to growing concern within the profession about unrealistic and uninformed student aspirations about the ease with which training contracts can be secured, the Law Society campaigned in 2009 to bring these issues to greater prominence.’<sup>24</sup>

A recent legal education conference convened by the Society of Legal Scholars, in June 2012, had the theme ‘Reviewing Legal Education: The Way Forward.’ This conference could be regarded as a good barometer of current thinking regarding future policy and the possible outcomes of the Review as it included the presentation of a number of papers which reflected the views and opinions of a broad cross-section of the legal community. However it would have to be acknowledged that there was nothing really new in the topics covered at the Conference, and that the views expressed reinforced the views of those which had already been expounded on previous occasions.

A major criticism of this approach would be that the conference offered an ideal opportunity to its participants to analyse and consider potential reforms to the current English legal education system and its effect on the future of the legal profession and ultimately its influence on the legal community. It also afforded the participants a chance to stake a claim in its future directions. However any detailed analysis of the papers presented at the conference would discover a refusal on the part of the presenters to adopt any policy for progressive change. This would include either the progress in technological advancements in legal education, or the philosophical underpinning of developments in teaching and learning which are currently taking place within the legal education environment.

20 Neil Rose, ‘Forget Tesco law, this legal education review will transform the legal market’, *Guardian.co.uk* (19 March 2012) <<http://www.guardian.co.uk/law/2012/mar/19/review-legal-education-change-market>>.

21 Ibid.

22 Ibid.

23 Ibid.

24 Andrew Francis, *At the Edge of Law* (Ashgate, 2011) 4.

What did come out of the discussion which is pertinent to consider within the terms of the whole debate regarding the future of legal education, was the questioning of the role of the Qualifying Law Degree (QLD) in the academic stage of legal education generally. Again this raised the ever present problem for legal educators as to whether the QLD was to be: the preparation for a career in law, a liberal arts degree or a combination of both? The fact that these questions were raised by both Tony King, the Chair of the Education and Training Committee of the Law Society<sup>25</sup> and Baroness Ruth Deeth, the Chair of the Bar Standards Board<sup>26</sup> obviously means that they will not be easily dismissed by the Review Committee. It is worth noting that in Baroness Deeth stated in her presentation that LETR has queried the need for the QLD at all. However she also recognised that in its present form, the LETR does guarantee a commonality with regard to the preparation for the next stage of professional legal training.

Certainly it does the raise the question as to whether the foundation subjects still provide a sufficient knowledge base. In this respect the matters raised by Baroness Deeth’s paper as to whether new areas such as ethics, interpersonal skills, client care, international law or management, should be added or substituted are worthy of future consideration.

It would seem that the tenor of the papers presented at this conference, and in particular that of Baroness Ruth Deeth, reflect the views of commentators and others involved with the Review who have already observed that there could be some radical changes recommended with respect to the Qualifying Law Degree curriculum and the structure of the training program for both the Bar Practice Training course and the Law Practice course. There could also be a widening of the concept of the definition of the term ‘lawyer’ with less emphasis on the use of the terminology of barrister or solicitor.

As another of the other presenters commented when advocating change to legal education, one of the problems is that: ‘Lawyers, law students and legal academics, in fact anyone involve with the law hold tenaciously, even furiously, to their opinions about legal education.’<sup>27</sup> However as a keen observer of legal education, my view is that reform of the legal profession has already been greatly progressed in England and Wales over the last decade and there is no reason why this should not in occur in legal education as well.

### *B. The Cost Of Legal Education Funding In England*

Before discussing the Australian context, a note on the cost of legal education is necessary. The Browne Review of Higher Education Funding<sup>28</sup> recommended that the cap of £3,290 (\$5,222) tuition fees per year charged by universities in England and Wales should be removed, that the point at which tuition fees loans should be paid back be raised from £15,000 (\$23,805) per year to £21,000 (\$33,327), that the repayment loans scheme provide that loans be paid back at 9% with respect to any income earned over £21,000 (\$33,327) and that part-time students should have an equal entitlement to tuition under the Student Finance Plan. These recommendations were mainly accepted by the United Kingdom Government except that they rejected the proposal to completely remove the tuition fees cap but raised it to £9,000 (\$14,283) whilst adjusting the rate of interest with respect to the paying back of the interest on student loans.

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25 Tony King, ‘Facing the Future: Developing Academic Legal Education’ (Paper presented at the Society of Legal Scholars Legal Education Conference, Institute of Advanced Legal Studies, University of London, 12 June 2012).

26 Baroness Ruth Deeth, ‘The Academic Stage of Education: Is it fit for the Purpose?’ (Paper presented at the Society of Legal Scholars Legal Education Conference, Institute of Advance Legal Studies, University of London, 12 June 2012).

27 Anthony Bradney, ‘The LLB in the Twenty-First Century’ (Paper presented at the Society of Legal Scholars Legal Education conference, Institute of Advanced legal Studies, University of London, 12 June 2012).

28 John Browne, *An Independent Review of Higher Education Funding and Student Finance* (2010).

In the view of law academic Andrew Francis: ‘Part-time law students are more broadly marginalized in their experience of legal education.’<sup>29</sup> This proposal ‘to move towards greater equalization of the fee regime of part-time and full-time students, is to be welcomed.’<sup>30</sup> It will have to be seen as to whether the raising of fees for tertiary education will have any effect on those enrolling in law programs. Whilst law remains the top subject choice, the total number of applications for law as at 15 January 2012 was down by 3.8%, but this was in comparison to an overall drop in applications for all subject areas of 7%.<sup>31</sup>

### C. Legal Education Reforms: The Australian Context

Over the period of the last five years of ALTA Conferences the author of this paper has examined a number of reviews mainly carried out by or on behalf of the Council of Australian Law Deans (CALD) in their own capacity or sometimes in collaboration with the former Australian Learning and Teaching Council (ALTC). These have included: Christopher Roper, *Standards for Australian Law Schools*, CALD (2008); Susanne Owen and Garry Davis, *Learning and Teaching in the Discipline of Law: Achieving and Sustaining Excellence in a Changed and Changing Environment*, ALTC and CALD (2009); and Mark Israel and Sally Kift, ‘Bachelor of Law Standards’, *Learning and Teaching Academic Standards Projects*, ALTC (2010). These three key reports are discussed below:

### D. Standards for Australian Law Schools

This move has been towards having minimum standards for legal education in Australia. This attempt is not new. In Chapter 2 of the Australian Law Reform Commission’s Report in 2000 titled *Managing Justice*, there is an interesting account of a previous attempt by the Law Council of Australia in 1994 to establish a National Appraisal and Standards Committee to accredit law schools with an explanation of the reason why it failed.<sup>32</sup> Some 23 years later in 2007, following a meeting in 2007 with all the relevant parties at the Law Convention in Sydney, the Law Council of Australia established a Legal Education Committee which included representatives from CALD, ALTA, APLEC and ALSA to discuss mutual problems and developments relating to legal education.

At the same time greater co-operation within CALD itself led to the establishment of a CALD Standing Committee on Standards and Accreditation (‘Committee’). The Committee sought the assistance of Christopher Roper, AM, a former Head of both the Leo Cussen Institute in Melbourne and the College of Law in Sydney, in the drafting of a document: ‘*Standards for Australian Law Schools*.’<sup>33</sup>

A brief history of the standards project had been drafted by Professor Michael Coper, the then Chair of the Standards Committee, and was published on 9 March 2008.<sup>34</sup> This brief history is a useful explanation of the main standards project document. The most significant statement within this account is the paragraph declaring: ‘It should be said immediately that the overwhelming purpose of the CALD standards project is to enhance the quality of Australian law schools in all of their diverse endeavours, and to do so by assisting all Australian law schools to strive for and to reach a clearly articulated set of standards.’<sup>35</sup> The paragraph concludes: ‘The point is that the standards are intended to be beneficial, not punitive, they are written largely in general rather than tightly prescriptive terms, and allow for diversity in the different ways in

29 Andrew Francis above n 13, 43.

30 Ibid.

31 Anthony Bradney above n 16.

32 The Australian Law Reform Commission, *Managing Justice – A review of the federal justice system*, Report No 89 (2000) 123.

33 Council of Australian Law Deans, *Standards for Australian Law Schools Final Report* (March 2008).

34 Michael Coper, *A Brief History of the CALD Standards Project* (March 2008).

35 Michael Coper, CALD Report, *ALTA Newsletter* (Summer 2008).

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which law schools might seek to fulfil their particular missions. The object is to lift the quality of our various contributions to the discipline of law as a whole, and work together to do so.<sup>36</sup>

As to the standards themselves, their relevance is incorporated in a unanimous resolution adopted by CALD at its first meeting on 4 March 2008 at the University of New South Wales, Faculty of Law Conference Centre at Coogee Sands. The meeting is titled the ‘Coogee Sands’ Resolution due to the conference location.<sup>37</sup> This was a notable triumph for CALD and ensured that not only was the agreement inclusive of all Australian law schools, but confirmed that by approaching the initiative in this way it forestalled any outside official body or institution from imposing any unacceptable or draconian forms of standards on the law schools.

### E. *Learning and Teaching in the Discipline of Law*

Building on the success of their major Report in 2008 titled *Standards for Australian Law Schools*, a complementary related project was finalised by CALD in 2009 titled: *Learning and Teaching in the Discipline of Law: Achieving and Sustaining Excellence in a Changed and Changing Environment*<sup>38</sup> it was funded by the former Australian Learning and Teaching council (ALTC). The contents of this Report (CALD/ALTC Report) are also the subject of this paper (subsequently referred to as the ‘CALD Project/Report’).

The predecessor which formed the basis for this current 2009 project was a former Australian Universities Teaching (Committee) AUTC funded project titled ‘Learning Outcomes and Curriculum Development in Law’<sup>39</sup> launched at the 2003 Commonwealth Law Conference in Melbourne. This Project was a highly sophisticated exercise which involved some detailed consideration of aspects of legal education which CALD had previously left to individual law schools or research centres to research or resolve. The project incorporated:

#### 1. *Scoping and Methodologies*

This included a stock-take of legal education developments in Australia which had taken place over the past 20 years,<sup>40</sup> including diversity, fast tracking of degrees and diverse modes of legal study.<sup>41</sup> Methodologies incorporated updating workshops, regional roundtables and the mapping of current practices, together with student surveys relating to mental health issues and academic surveys on ethics and professionalism.<sup>42</sup> In its summary to this part of the project, chapter 4, it stated that there was a need for more engaging approaches and the production of more fully rounded law graduates.<sup>43</sup>

#### 2. *Graduate Attributes*

Due to the greater pressure on Universities to produce graduates who are to become future members of the profession, the Report emphasised the need to focus on aspects such as knowledge, skills and personal attributes.<sup>44</sup> The Report also stated that not only is legal education expected to take cognisance of these broader based university-specified Graduate Attributes, but that the law curriculum should also be expected to meet the legal profession’s accreditation standards. In

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36 Ibid 2.

37 CALD Meeting, *Special Resolution 2008/1 – Standards (2008)* (‘the Coogee Sands’ Resolution).

38 Susanne Owen and Garry Davis, *Learning and Teaching in the Discipline of Law: Achieving and Sustaining Excellence in a Changed and Changing Environment*, Australian Learning & Teaching Council, Council of Australian Law Deans, Report Finalisation (full date/pinpoint 2009), 3.

39 Richard Johnstone and Vignaendra, ‘*Learning Outcomes and Curriculum Development in Law*’ (2003).

[Online] <<http://cald.asn.au/docs>> (8 December 2009).

40 CALD/ALTC Report, above n 29, 7.

41 Ibid.

42 Ibid, 12.

43 Ibid, 51.

44 CALD/ALTC Report, above n 29, 54.

this respect there was a need to take note of the concerns expressed with regard to the creation of a dichotomy between the focus on content as required by the professional accreditation process versus the expectation of enlightened members of the legal community that there should be an emphasis on skills and values, as reiterated in the Australian Law Reform Commission (ALRC) Report, *Managing Justice* (2000), that: ‘Legal education [should be] around what lawyers need to be able to do [rather than] what lawyers need know.’<sup>45</sup>

### 3. *Ethics, Professionalism and Service*

The account in this part of the Project reflects some of the confusion that has arisen in recent years as to the context for the teaching of ethics in the LL.B curriculum (Quoting the AUTC *Learning Outcomes Report*).<sup>46</sup> The latter part of this Project Chapter relates to the ongoing debate of the role of ‘pro bono legal service’ – as to whether it should be a compulsory part of the law degree curriculum – reflecting that CALD had made no formal decision as to its role. This ongoing reluctance by CALD to adopt a formal policy whereby all law students in Australia would have to become involved in pro bono programs as part of their legal training was adversely commented upon by the Hon. Michael Kirby, the former Justice of the High Court of Australia, in his forward to the text *Community Engagement in Contemporary Legal Education*.<sup>47</sup>

### 4. *Legal Education And The Mental Wellbeing Of Australian Law Students*

One of the goals of the CALD Project was the development of a: ‘Baseline data regarding the mental wellbeing of law students including their understanding of relevant issues, personal experiences and knowledge of assistance mechanisms which are in place’.<sup>48</sup> This incorporated a study undertaken by the Brain and Mind Research Institute at the University of Sydney.<sup>49</sup>

### 5. *Infrastructure, Linkages and the Future Legal/Legal Education within wider Higher Education and Context*

The titles of the final two chapters of the CALD Project Report provide a good lead into an evaluation and appropriateness of the Project and its relevance to the future development of Australian legal education. Within the former chapter *Infrastructure Linkages and the Future*,<sup>50</sup> there is an identification of a workable infrastructure for current and ongoing consultation and engagement by CALD with key stakeholders in legal education.

One of the heartening aspects of this Project was that it broke down the barriers between the respective law schools and encouraged greater co-operation between them. The Report said: ‘This has involved sharing ideas about various law schools’ directions and achievements in relation to Graduate Attributes and Assessment Topics through involving law academics in workshops and regional round tables to develop collaborative ideas and materials.’<sup>51</sup> It also points the way for the future development of Australian legal education with the highlighting of factors which can lead to its success. These include: ‘The need for a clear and focussed plan and project management, including ongoing formative evaluation processes to ensure working systematically towards outcomes delete space here and deliverables’<sup>52</sup> and

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45 Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System* Report No 89 (2000) [2.21].

46 Johnstone and Vignaendra, above n 30, 122.

47 Patrick Keyzer, Amy Kenworthy and Gail Wilson (eds), *Community Engagement in Contemporary Legal Education: Pro Bono, Clinical Legal Education and Service-Learning* (2009), ii-viii.

48 CALD/ALTC Report, above n 29, 119.

49 Ibid.

50 Ibid 135.

51 Ibid 147.

52 Ibid 148.



Raising awareness of innovations and building skills for individuals and across law schools, through working together and sharing materials across universities ... wider dissemination communication occurs through materials development and within conferences and other accessible publications and this has the potential to improve programs within the discipline on an Australia basis.<sup>53</sup>

There is an expectation that these outcomes and aspirations of the Project Report will form a firm basis for the increasing development of contemporary legal education in Australia.

*F. The Threshold Learning Outcomes (TLOs) for the Bachelor of Laws (LLB) Degree*<sup>54</sup>

The Learning and Teaching Academic Standards (LTAS) project in Law and in particular the set of six Threshold Learning Outcomes (TLOs) for the Bachelor of Laws degree will obviously have a wide effect on the future outcomes of the LLB in representing what a Bachelor of Laws graduate is expected ‘[t]o know, understand and be able to do as a result of learning.’<sup>55</sup>

The TLOs cover six aspects of expected standards to be incorporated within the LLB degree program. The intention of the project is that the TLOs will assist law schools in their implementation to enable demonstration of the learning outcomes at the requisite qualification level.<sup>56</sup> The TLOs:

- TLO 1: Knowledge.
- TLO 2: Ethics and professional responsibility.
- TLO 3: Thinking skills.
- TLO 4: Research skills.
- TLO 5: Communication and collaboration.
- TLO 6: Self-management.<sup>57</sup>

The relevance of the TLOs and their application to elements of the LLB are explained in the detailed notes on the: *Threshold Learning Outcomes for the Bachelor of Laws*,<sup>58</sup> The accompanying notes explain that they are: ‘*Intended to offer non-prescriptive guidance on how to interpret the TLOs.*’<sup>59</sup> It is not the role of the LTAS project to tell law schools how they should go about the learning, teaching or assessment of their students.<sup>60</sup>

In my view the TLOs have to be seen in the context of that which academic and legal author John Bell has stated to be:

The core of legal education...lies in a distinct subject-matter and distinct methods of dealing with it. [That] legal education is not just the study of law, but a study which also inculcates the ability to make use of law, to analyse it, and to criticize it as a member of the legal community’.<sup>61</sup>

This leads the discussion on to the future influence of TLOs on the law degree. In this respect the final comment may be left to Professor Jill McKeough formerly the Chairperson of the

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53 Ibid 149.

54 Sally Kift and Mark Israel, *Learning and Teaching Academic Standards Project, ‘Bachelor of Laws,’ Learning and Teaching Academic Standards Statement*, Australian Learning and Teaching Council (2010).

55 Kift and Israel above n 46, 1.

56 Ibid 9.

57 Ibid 10.

58 Ibid 11.

59 Ibid.

60 Ibid.

61 John Bell, ‘Legal Education’ in Peter Cane and Mark Tushnet (eds), *The Oxford Handbook of Legal Studies*, (Oxford University Press, 2003) 905.

Council of Australian Law Deans who stated in a letter to the Higher Education Supplement of The Australian newspaper that:

The Legal Admissions Consultative Committee has recommended these TLOs as requirements for admission to legal practice. Embedding and assessing the TLOs will be a challenge for some institutions producing law graduates, but will lead to a closer match between graduates of university law schools and the needs of our society and economy. The professionalism and competence of a sound and ethical lawyer with the threshold skills the TLOs enshrine add value and is an important investment in Australia's future.<sup>62</sup>

#### IV. CONCLUSION

The conclusion that a reviewer could come to in comparing the reports and recommendations for reforms within the two respective jurisdictions of England (and Wales) and Australia would be that the former have been generated by organisations outside the law schools or law academic associations whereas the latter have been initiatives developed mostly by the law schools or their representative associations.

In this respect it is appropriate to restate a view recently expressed in a similar paper that law academics are conscious that many of the criticisms and expressed dissatisfaction with the legal profession and its low standing within the community are often referred back to perceived inefficiencies in legal education and consequently reflect poorly on the status of academic lawyers. However in countering this view it is necessary to identify the most significant challenges faced by legal educators in order to respond in a positive way. Andrew Francis has identified these major challenges as; 'Core legal knowledge, forming the foundation of a collective project of legal professionalism, in an age of multi-disciplinary and cross-jurisdictional practice.'<sup>63</sup> To these could be added the influence of globalisation and the interconnectedness of law teaching across the common law jurisdictions particularly the two identified in this paper, England and Australia.

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62 Jill McKeough, 'Letter to the Editor', *The Australian – Higher Education* (Sydney) 6 April 2011, 33.

63 Andrew Francis above n 13, 53.