

# AN AVALANCHE OF LAW SCHOOLS, 1989–2013

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## ABSTRACT

The period 1989 to 2013 was a pivotal period for the expansion of Australian legal education. Despite the fact that a ground breaking report relating to Australian legal education, the 1987 Pearce Report, had recommended that no further law schools be established in Australia, the two decades or so which succeeded it heralded an unprecedented establishment of twenty three additional law schools, an expansion which has continued until the present time.

This paper considers the reasons for this massive expansion of legal education and questions why Australian universities chose to establish so many new law schools during the period under review, whilst also reflecting on the overall effect which they have had on the development of the future legal profession and the legal community in general.

The paper incorporates a study of the way historians have been able to classify the various historical groupings of the dates of the foundation of various law schools into successive groups or ‘Waves’ culminating in the commencement of the ‘Third Wave’ law schools in 1989 onwards, a period which incorporates those law schools reviewed in this paper.

The Australian Law Reform Commission (ALRC) was of the view that the expansion of legal education in Australia could be attributed to the dynamic changes which had come about in the legal profession, such as national admission and practice, globalisation, the application of competition policy, emergence of multi-disciplinary partnerships and the influence of new information and communication technologies. The more cynical were inclined to adopt the alternative view also put forward by the ALRC which was that law faculties were attractive propositions for universities bringing prestige, professional links and excellent students at a modest cost as compared to the professional programmes such as medicine, dentistry and engineering.

## I. THIRD WAVE LAW SCHOOLS: HERALDING THE EXPLODING MARKET FOR LEGAL EDUCATION

The Pearce Report was part of a general ongoing review initiated by the Commonwealth Tertiary Education Commission (CTEC) to ensure that there was: ‘A program of thorough and authoritative assessments of the work of higher education institutions measured against objectives which are acceptable in academic and social terms.’ Additionally the Background to the Review states that: ‘It is intended that each discipline assessment will be undertaken by a small committee of people pre-eminent in their fields, who will act independently of the Commission and furnish advice to the Commission.’

The Pearce Report was commissioned in 1985 and submitted in 1987. The members of the Committee who were appointed were Dennis Pearce, Professor of Law, the Australian National University (Convenor); Enid Campbell, the Sir Isaac Isaacs Professor of Law, Monash University; and Don Harding, Professor of Law at the University of New South Wales.

One of the main recommendations of the Pearce Report in 1987 was an edict against a further expansion of law schools in Australia: ‘We do not think that there will be a need for a new

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law school, except perhaps in Queensland.<sup>1</sup> Despite this warning there was an unprecedented increase in Australian law schools between 1989 and 1997, when an additional sixteen were established; another eight were opened in the first twelve years of the twenty-first century. This group of law schools has become collectively known as the ‘Third Wave Law Schools’. The original six law schools founded during the period from European settlement to the beginning of the Second World War constituted the ‘First Wave’ and those established in the intermediate period, until the publication of the Pearce Report, were the ‘Second Wave’. It is very difficult to discover a rational explanation for the expansion. It might have arisen as an outcome of the Dawkins Reforms,<sup>2</sup> a series of Australian tertiary education reforms introduced during the period 1987 to 1988 by John Dawkins, the Federal Minister of Education from 1987 to 1992. These resulted in abolition of the binary divide between the former universities and colleges of advanced education, and accounted for the opportunity for more flexible programs being presented to potential students. The idea was to increase undergraduate student numbers, as universities were given economies of scale. These reforms have been explained as:

In late 1987 a new, energetic minister, John Dawkins, took over the expanded portfolio of Employment, Education and Training. He signalled immediately that he was bent on reform, publishing first a Green and then a White Paper which established a major blueprint for structural reform. He abolished the binary system and encouraged, through a blend of pressure and coercion, the amalgamation and merger of a number of college and universities. The result was that where there had been 19 universities and 69 CAEs in Australia in the binary system there emerged by 1994, a new single system of 36 universities.<sup>3</sup>

At this point it should be mentioned that while the reforms had a direct effect on the increase of student numbers in the universities they were not universally accepted as an improvement on the ‘value of the undergraduate curriculum and teaching and learning’.<sup>4</sup>

Margaret Thornton, a Professor of Law at the Australian National University, has been forthright in her views that the Dawkins reforms have had an adverse effect on the development of universities:

The Dawkins reforms, which brought an end to the binary system in Australia in 1988, signalled the beginning of the end of the *idea* of the university as envisaged by Newman, and its replacement with the idea of the university as a business.<sup>5</sup>

This quote has to be seen within the context of understanding the reference to Newman:

Cardinal Newman was a former Oxford University man, who was instrumental in the founding of the University of Dublin around the time when the reform of the ancient universities of England was well under way. His published series of lectures, produced in 1852 and entitled, *The idea of a University*, set out eloquently the ideal of general education where a young man could develop civilised values and a philosophical mind through the study of the accumulated wisdom of the past. The university was the realisation of this ideal.<sup>6</sup>

With respect to law schools, Professor Thornton is even more scathing about the effect of the Dawkins Reforms:

Law Schools that have been able to retain at least a vestige of autonomous faculty status through the recent upheavals are better able to withstand the depredations than those schools which form merely a constituent element of a mega-faculty, commonly dominated by business or management.<sup>7</sup>

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1 Dennis Pearce, Enid Campbell and Don Harding, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (AGPS, 1987) – (‘Pearce Report’).

2 *Higher Education Funding Act 1988* (Cth) <[http://austlii.edu.au/au/legis/cth/consol\\_act/hefa1988221/](http://austlii.edu.au/au/legis/cth/consol_act/hefa1988221/)>. Austlii.edu.au 2005-01-01. <http://www.austlii.edu.au/au/legis/cth/hefa1988221/>>

3 John Sharpham, ‘The Context for New Directions’ in John Sharpham and Grant Harman (eds), *Australia’s Future Universities* (University of New England Press, 1997) 23.

4 *Ibid* 24.

5 Margaret Thornton, *Privatising the Public University – The Case of Law* (Routledge, 2012) 16.

6 Peter Coaldrake and Lawrence Stedman, *On the Brink: Australia’s Universities Confronting Their Future* (University of Queensland Press, 1998) 36–7.

7 Thornton, above n 5, 18.

It is arguable that the Dawkins Reforms created an expansion of universities – and university law schools in particular – which realised the expectation of more students wishing to study law. However, the creation of more law schools during this period does not seem to have quenched the ongoing demand for more and more law student places in Australian universities.

## II. CHARACTERISTICS OF THE THIRD WAVE LAW SCHOOLS?

How should the advent of so many new law schools in Australia after 1989 be understood? The challenge is to understand the educational context, and to consider whether they are a true reflection of the changes which have come about in legal education and legal scholarship during the period between 1989 and the present time.

In Australian Law Reform Commission Report No 89, the early part of this period has been described with regard to the ongoing development of legal education as:

Over the past decade or so, legal education in Australia has undergone a period of unprecedented growth and change. To some extent, this parallels the dynamic change in the profession – characterised by rapid growth; moves towards national admission and practice; globalisation; the end of traditional statutory monopolies; the application of competition policy and competitive pressures; the rise of corporate ‘mega firms’; the emergence of multi-disciplinary partnerships; increasing calls for public accountability; more demanding clients; and the influence of new information and communication technologies – but many of the changes in legal education have been driven by other factors.<sup>8</sup>

Later in the Report there is a statement which might assist in explaining one of the reasons for the rapid expansion of law schools in Australia at this time:

Law faculties are attractive propositions for universities, bringing prestige, professional links and excellent students, at a modest cost compared with professional programs such as medicine, dentistry, veterinary science, architecture or engineering.<sup>9</sup>

When examining the expansion of legal education at this time it is helpful to identify the causes which may have brought about this change. Some assistance may be sought from a similar review which Michael Chesterman and David Weisbrot conducted with respect to law schools during an earlier period of Australian legal education (early 1960s to 1987).<sup>10</sup> While not all the five reasons advanced by Chesterman and Weisbrot are relevant to the current review, they do serve as a helpful starting point.<sup>11</sup>

The changes identified by Chesterman and Weisbrot included, first, the increase in the number of tertiary institutions offering full undergraduate degrees in law. This increase, coupled with the fact that most of these new law schools were located in the capital cities, led to the virtual abolition of non-degree training courses provided by the profession.<sup>12</sup> Second, there were changes in the degree program offered by new institutions. Third, there was a realisation that full-time law teaching had become a recognised academic career. Fourth, during the period under review many of the law schools experienced radical movements among the academic staff, sometimes also involving the law students.<sup>13</sup> And finally there was the influence of the newly appointed standing law reform commissions and other law reform committees on the development of research opportunities within the law schools, as well as the scope for law school staff to take unpaid leave and undertake secondments with these law reform bodies.<sup>14</sup>

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<sup>8</sup> Australian Law Reform Commission, *Managing Justice- A Review of the Federal Civil Justice system*, Report No 89 (2000) 117 [2.13].

<sup>9</sup> *Ibid* 118 [2.15].

<sup>10</sup> Michael Chesterman and David Weisbrot, ‘Legal Scholarship in Australia’ (1987) 50 *Modern Law Review* 709.

<sup>11</sup> *Ibid* 714.

<sup>12</sup> *Ibid*.

<sup>13</sup> *Ibid* 715.

<sup>14</sup> *Ibid* 716.

### A. *Location*

As a starting point there was a tendency for all of the earlier law schools to be located in the capital cities of each of the states and territories. However, this pattern was partly reversed by the Third Wave Universities, where the ratio of capital city universities to regional universities was 60 per cent to 40 per cent.

### B. *Themes Identifying Groups of New Law Schools*

Apart from the differences in location, it is useful to consider whether there were other definitive reasons for the establishment of these new-wave law schools. Another point of difference can be seen in the identification of law schools formed in the traditional mode as compared with those which merely perform an adjunct or supplementary role as a law degree program or course developed from, or remaining attached to, another main subject school or faculty. This most often occurs in the business area.

### C. *Is it a Law School or Not? – CALD Standards for Australian Law Schools*<sup>15</sup>

It could be argued that many of the new law schools established during the period under review would barely satisfy the requirements for a law school as defined by the Council of Australian Law Deans (CALD) in their Final Report, known as the ‘Coogee Sands’ Resolution. This was adopted unanimously at a CALD Meeting held at the Faculty of Law, University of New South Wales on 4 March 2008.<sup>16</sup> The resolution embraced a set of standards for Australian law schools which incorporated such topics as a statement of mission and objectives with respect to the law school’s course of study leading to its recognised law degree.<sup>17</sup> It included such matters as curriculum content and design, educational methods and course management. In addition, CALD would also include assessment methods and standards and the relationship between assessment and learning.<sup>18</sup> The standards also refer to the law school having sufficient members of academic staff possessing an appropriate range of qualifications and experience to fulfil the mission of the law school and meet the requirements of the standards.<sup>19</sup> There are also basic requirements with respect to the provision for a law library or law collection, together with an expectation relating to the law school having adequate resources and infrastructure, together with sufficient information and communication technology as well as course evaluation procedures.<sup>20</sup> Also included in the standards is recognition of the need for the law school to foster a relationship between research and teaching,<sup>21</sup> observe appropriate governance structures, and to possess appropriate administrative staff to support the implementation of the school’s educational program. Adoption of these standards also includes recognition of the need for the law school to interact with the legal profession. Finally, the law school would need to have procedures for regular reviews and updating of its structures and functions. It should be acknowledged that these standards were not meant to be mandatory for all Australian law schools but were to be regarded, in the words of the Resolution, as: ‘Preparing the ground for the possible use ... for the purposes of accreditation,’ and as exhorting the Deans to: ‘Seek to more closely identify which standards are core or minimum standards and which standards are aspirational.’<sup>22</sup>

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15 Council of Australian Law Deans, CALD, ‘Standards for Australian Law Schools’ (Final Report, Prepared by Christopher Roper, with input from the CALD Standing Committee on Standards and Accreditation, March 2008).

16 Passed unanimously, CALD Meeting 2008/1, University of New South Wales Faculty of Law, Sydney, Tuesday 4 March 2008.

17 CALD Standards, above n 15, 62.

18 Ibid 65.

19 Ibid.

20 Ibid 67–9.

21 Ibid.

22 Ibid 120.

#### D. *The Differing Characteristics of the Third Wave Law Schools*

The fact that even in 2008 the Australian law deans were reluctant to agree to any mandatory form of accreditation meant that no control was exercised over the introduction of further law degree programs and the establishment of new university law schools to administer them. This meant that all of the standards set out in the Coojee Sands Resolution remained aspirational, and at the time of the publication of this article no attempt has been made to enforce or even encourage the recognition of those which might be regarded as core or minimum standards.

It could be argued that the introduction of any new law program is subject to the approval of the appropriate state or territory admissions board, which exercises the judiciary's control over the admission of lawyers in each jurisdiction. The establishment of the New South Wales Barristers Admission Board on 18 June 1848 by the *Admissions Act 1848* (Imp) was the first recorded provision in Australia to regulate the admission of lawyers in New South Wales.<sup>23</sup> However, such control is limited to approval of legal educational courses which a candidate for admission to practice is required to undertake apart from satisfying any requirements as to good fame and character. The admissions board is therefore only interested in the contents of the curriculum of the qualifying law degree, and not in the way the subject is taught or in any of the other topics covered by the CALD Standards.

It is relevant here to provide a short overview of the law schools established since the publication of the Pearce Report in 1989. Such a survey might assist in drawing conclusions about how the new schools might differ from earlier law schools, and about the reasons which led to their being established. The survey offered here is arranged by state or territory jurisdiction.

##### 1. *New South Wales*

Within New South Wales, five of the six Third Wave law schools were established during the earlier part of the first decade covered in this review – 1990 to 1994. Every one of these law schools is led by a dean or head of school with the status of professor, who presides over a reasonably sized law school, in terms of staff and students.

The **University of Wollongong** is the oldest of the Third Wave law schools in the state. It was established in 1990 with the late Professor John Goldring as its Foundation Dean. He was succeeded in 1995 by Professor Helen Gamble, another highly respected law academic. The Wollongong law school has retained its independence as a Faculty of Law and is also one of a small number of law schools which still provides its own professional legal training program – practical legal training (PLT) for both its own and external law students.<sup>24</sup>

Another regional law school was founded as the **University of Newcastle** Law School in 1992. Law studies had previously been taught in the Faculty of Business prior to the founding of the Law School, which is now part of an enlarged Faculty of Law and Business. The Foundation Dean was Professor Neil Rees, who held that position during the period 1991 to 1999. The Newcastle law school was the first in the state to initiate a practical legal training program for its students. It also claims to be the only Australian law school to conduct its own legal practice: the University of Newcastle Legal Centre.<sup>25</sup>

There is a close affinity between the law schools at the **University of New England (Armidale)** and **Southern Cross University**. Both were originally part of a network university formed in 1989 in accordance with the *University of New England Act 1989* (NSW). This consisted of the former University of New England and the former Armidale College of Advanced

<sup>23</sup> An Act to regulate the admission in certain cases of Barrister of the Supreme Court of New South Wales Act 1848 (11 Vic. No.57).

<sup>24</sup> John Goldring, 'The University of Wollongong' in John Goldring, Charles Sampford and Ralph Simmonds (eds), *New Foundations in Legal Education* (Cavendish, 1998) 189–93.

<sup>25</sup> CALD, University of Newcastle. *Message from the Dean* <<http://www.cald.asn.au/slia/lawSchoolInfo.asp?id=20>>.



Education, together incorporating the Northern Rivers College of Advanced Education and the Orange Agricultural College. As some commentators have stated:

Australia's newest university, Southern Cross, is a product of a Dawkins amalgamation that didn't work. A marriage of the rather staid University of New England up on the tablelands with the go-getting, low status CAEs down on the coast never looked like surviving.<sup>26</sup>

The outcome was that with the enactment of the *University of New England Act 1993* (NSW) and the *Southern Cross University Act 1993* (NSW), the University of New England was re-formed in 1993 with one campus at Armidale,<sup>27</sup> and the new Southern Cross University was established in 1993 at campuses in Lismore and Coffs Harbour.<sup>28</sup>

The **University of Western Sydney** Law School was in its earlier days very much a hybrid law school. Although law had been taught within the three former federated members of the University of Western Sydney – Hawkesbury, Macarthur and Nepean – it was only in Macarthur and Nepean that law schools were established. The original UWS Law School was founded on the Parramatta Campus in 1993, while subsequently an additional, separate law school was established on the Campbelltown Campus in 1994. They remained separate until 1 January 2001, when the three former federated campus members of the university were amalgamated, and UWS became one multi-campus university; the two law schools merged into a single school within the College of Law and Business.<sup>29</sup>

The **University of Notre Dame Law School (Sydney)**, established in 2006, came well over a decade later than any of the other Third Wave law schools in the state. The school has an interesting role with its partner law school, Notre Dame (Fremantle), and the Catholic University law school, located in Melbourne, in adopting: 'An ethical and holistic approach to the service of law.'<sup>30</sup> With the other Catholic law schools and Bond University Law School, Notre Dame (Sydney) forms part of a unique small group of Australian private university law schools.

## 2. Victoria

No doubt because of the early influence of the law schools at the University of Melbourne and Monash University, there appears to have been less frenetic desire in Victoria for an increase in university law schools.

**La Trobe University** Law School, established in 1992 on the university's Melbourne campus, was therefore an interesting development in that it was building on a foundation of the University's 20-year experience in legal studies education (originated as cross-disciplinary studies in 1972). La Trobe had been founded in 1967 as Victoria's third university and had attempted to distinguish itself from its two traditional predecessor universities.

While La Trobe now offers traditional law programs very similar to those studied at other Australian law schools, it still claims: 'A strong commitment to social justice, interdisciplinary enquiry, an international perspective and practical experience that links learning with legal practice.'<sup>31</sup>

**Deakin University** Law School was also established in 1992, although the university itself had been formed in 1974 as one of the outcomes of the recommendations of the Ramsay Committee in 1970.<sup>32</sup> The university had expanded as a result of mergers with Warrnambool

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26 Dean Ashenden, Sandra Milligan and Rod Quin, *Good Universities Guide to Management Education* (Mandarin, 1994) 103.

27 History – University of New England <<http://www.une.edu.au/about/une/history.php>>.

28 Jim Jackson, 'Building an Accessible Law School – The Early Years: 1990–1996' (1997) 1 *Southern Cross University Law Review* 228.

29 CALD, University of Western Sydney, *Message from the Dean* <<http://www.cald.asn.au/slia/lawSchoolInfo.asp?id=27>>

30 CALD, National College of Law of the University of Notre Dame Australia, *Message from the Dean* <<http://www.cald.asn.au/slia/LawSchoolDeansMessage.asp?id=21>>.

31 La Trobe, Law, Courses and degrees <<http://www.latrobe.edu.au/courses/law>>.

32 CALD, Deakin *Message from the Dean*. <<http://www.cald.asn.au/slia/LawSchoolDeansMessage.asp/ID=4>>.

33 Ibid.

Institute of Advanced Education in 1990 and Victoria College in 1991.<sup>33</sup> The law school, which claims it was the first in Victoria to offer distance learning law degrees, is located on the Burwood and Geelong campuses of the University. It also operates within a virtual on-campus learning environment known as ‘Deakin Studies Online.’<sup>34</sup> The Law School is responsible for the operation of a Centre for Rural Regional Law and Justice (CRRJL), which seeks both to: ‘Enhance access to improved justice systems for rural and regional Australia’ and to ‘Determine and address issues impacting on the effective and equitable provision of justice system service to regional communities.’<sup>35</sup>

The creation of the **Victoria University** Law School is a story of dramatic changes in law teaching being brought about over an extremely short period. Prior to 2001 legal studies at the university had been offered through the Faculty of Business (Department of Legal and Executive Studies, or equivalent). In 1999 the law discipline at the university was reviewed by a panel chaired by Professor Richard Cullen of Monash University. The outcome of this review was that the Faculty of Business was renamed the Faculty of Business and Law, and the university appointed Professor Roman Tomasic (who had previously been the Head of Law at the Canberra College of Advanced Education) as its Foundation Professor of Law in 2000.<sup>36</sup> In November 2000 the Council of Legal Education approved the university’s practice-based LLB program, and the first student cohort commenced their studies for the LLB degree at the University’s Footscray Park Campus in 2001.<sup>37</sup> Also in 2001 there was the official launch of the Sir Zelman Cowen Centre for Continuing Legal Education.<sup>38</sup> The Centre is housed in the old Public Records Office building on Queen Street in the Melbourne Central Business District. This meant that within a period of just two years the university had inaugurated a new law school with all the appropriate resources, on a prime site in the centre of Melbourne, within the close proximity of both the Federal Court and the Supreme Court of Victoria. In fact in this respect the law school was better placed for contacts with both the judiciary and the legal profession than any other of its more traditional predecessor Victorian law schools.

The ongoing saga of the establishment of a law school at the **Royal Melbourne Institute of Technology University (RMIT)** is a reflection of how persistence can achieve an outcome which had not been originally anticipated. The Council of Legal Education instigated a law course at the Institute of Technology purely as an emergency measure to alleviate the lack of law school facilities in Victoria in 1962, pending establishment of the Monash University Law School.<sup>39</sup> This course operated until 1978, and 545 students completed the course. Despite the fact that the program came to an end in 1978, the RMIT Business Faculty maintained an impressive group of lawyers teaching law-related subjects. After a break of 29 years, in 2007 RMIT introduced a Graduate Juris Doctor degree program leading to admission as a practising lawyer. This program was based within the RMIT Graduate School of Business and Law.<sup>40</sup>

The most recent law school to be established in Victoria was at the **Australian Catholic University (ACU)**, instituted in Melbourne in March 2012 when the Foundation Dean, Professor Brian Fitzgerald, commenced his role. It was intended that the ACU Law School should be a dual-campus law school, with law degree teaching commencing at the Melbourne Campus in 2013 and in Sydney in 2014. Professor Fitzgerald has stated: ‘The core goals of ACU – commitment to human dignity and respect, social justice, ethical practice and public service – are what will make this a tremendous laboratory for legal education.’<sup>41</sup>

Like Notre Dame, the ACU Law School has emphasised its global connections with the premier United States law schools of Georgetown University in Washington and Fordham University in New York.

34 Ibid.

35 Richard Coverdale, ‘Director’s welcome’ (undated, Centre for Rural Regional Law and Justice).

36 *Victoria University Annual Report 2000* (Victoria University Archives, VUS 40).

37 Ibid.

38 Ibid.

39 Peter Balmford, ‘The Foundation of the Monash Law School’ (1989) 10 *Monash University Law Review* 150.

40 CALD, RMIT University, *Message from the Dean* 3/2/2011 <<http://www.cald.asn.au/slia/lawSchoolInfo.asp?id=31>>.

41 Ibid.

### 3. *Queensland*

**The Bond University** School of Law was the first law school to be established in 1989, following the Pearce Committee's strictures against further law schools in Australia, although it had acknowledged that if another law school were needed, it should be located in Queensland.<sup>42</sup> Professor Tony Tarr was the Foundation Dean. The school's commencement was hardly promising. Eric Colvin, a foundation professor, has described how: 'In May of 1989, the school welcomed its first students, 97 adventurous spirits who waded through the sea of mud engulfing a half-completed campus.'<sup>43</sup>

Because of its private status, it was not constrained by the bureaucracy encountered by law schools in the public universities, nor did it have the financial burden of cross-subsiding other subject disciplines.<sup>44</sup> For this reason it was able to recruit a significant number of highly regarded law academics from other Australian law schools and overseas. Other advantages that Bond had over many other Australian law schools was that it could operate with weekly tutorials for small, interactive groups. It also taught three semester a year, which meant students were able to study more intensively, and it was one of the first law schools to introduce student evaluation of all subjects every semester.<sup>45</sup>

**James Cook University** Law School was established in 1989. Its first students were admitted in 1990 to an LLB program offered on both the Townsville and Cairns campuses of the University. The Foundation Dean of the Law School was Professor Ken Sutton. There is a fascinating insight as to the reason why James Cook University was permitted to host a law degree program. The explanation is contained in an article by Justice John Dowsett,<sup>46</sup> who explains that while the university had been teaching law subjects for many years, there had been no suggestion that it would have an accredited law degree in the foreseeable future. But then:

Suddenly, at a monthly Judges' meeting in Brisbane, we were asked to accredit a law degree course at James Cook. The folklore of the Supreme Court is that the Northern Judge, Sir George Kneipp, who was also the Chancellor of James Cook, had decided that it was time for a law degree to be taught in the north. He allegedly had gone ahead without reference to his colleagues on the Court, more importantly and audaciously, without the Commonwealth's approval. Whether the story is true or not, I am sure it is substantially true, I have no doubt that George Kneipp had the courage, standing and foresight to have done just that.<sup>47</sup>

The law school now has approximately 450 students, mostly undergraduates, with an annual intake of 180 students each year.

The **Griffith University** Law School was founded in 1992. It was appropriate that a university named after the first Chief Justice of the High Court of Australia should eventually incorporate a law school. Griffith is one of the larger Australian law schools, with an annual intake of at least 400 undergraduate students. Charles Sampford, the Foundation Dean, tells of the way the University's Law Education Advisory Committee decided three basic issues for the foundation of the Law school.<sup>48</sup> These were that:

Law would be an independent faculty, unlike several new and existing law schools departments of other departments of other faculties. Secondly, law would receive a *rich mix* of funding. Finally, given Griffith's strength in interdisciplinary work and in a number of disciplines that were of importance to law (public policy, environmental studies, Asian studies and international business), the university should make a feature of this and concentrate on combined degrees with those areas.<sup>49</sup>

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42 Pearce Report, above n 1.

43 Eric Colvin, 'Bond Law School: Reflection on the First Ten Years' (1999) 10 *Bond Law Review* 1.

44 Ibid 163.

45 Ibid 163-4.

46 Justice John Dowsett, 'The Law and the Legal Profession – Expectations and Reality' (2004) 11 *James Cook Law Review* 4.

47 Ibid 5.

48 Charles Samford, 'Starting a Law School from Scratch: The Griffith Experience' in Goldring, Sampford and Simmonds, above n 24, 182.

49 Ibid.



The **University of Southern Queensland** Law School owes its establishment in 2005 and the development of its law programs to the enthusiasm and energy of Professor Rosalind Mason, who commenced teaching in the Department of Law in Toowoomba as a lecturer in 1988. Since the accreditation of its law programs by the Legal Practitioners Board of Queensland in 2005, the law school has offered both the LLB and the JD qualification under the current Head of School, Professor Mike Robertson.<sup>50</sup> The school is making use of its expertise in distance education in offering all law programs, internally and online, for students enrolled externally.<sup>51</sup>

The penultimate law school to be located in Queensland was the **University of Central Queensland** Law School, launched in 2011 by the Honourable Michael Kirby, a former Justice of the High Court of Australia. The LLB and JD programs of this law school are unique in Australia in that from the very beginning of the law school they have been taught wholly online.<sup>52</sup> In endorsing this method of learning, Kirby was of the view that offering the program wholly online offered the following challenges: ‘1) Upholding participation, 2) Student feedback, 3) [Need for] Mentors and chat rooms, 4) Equity and outreach, 5) Staff selection and development, 6) Library resources, 7) [Problems of] Physical interaction, 8) Student health and wellbeing, 9) Overseas outreach.’<sup>53</sup>

The latest law school established in Queensland is the **University of the Sunshine Coast** Law School, which is initially to be integrated into that University’s Faculty of Arts and Business. In November 2012 the University advertised for applications for the position of the Inaugural Professor of Law,<sup>54</sup> and breaking with convention made a joint professorial appointment to a husband and wife team, Professors Neil and Anne Rees, who had both served at some time as Deans of the University of Newcastle Law School.<sup>55</sup>

#### 4. *Western Australia*

Western Australia was one of the last states to possess a law school, the University of Western Australia being established in 1927. This continued as the sole law school in the state until the founding of the **Murdoch University** Law School in 1990. As in other Australian states, the impetus for the creation of an additional Western Australian law school was an undersupply of graduate lawyers in the state. Again the development of this law school was influenced by the appointment of an outstanding candidate as Dean when Ralph Simmonds was appointed as Foundation Professor in 1990, and subsequently as Dean in 1991.<sup>56</sup>

Professor Simmonds expressed one of the major aims of the new law school as being:

To formulate a program of study that meets the requirements of the governing bodies of the West Australian legal profession for recognition for admission to articles of clerkship. But we will also offer the scope of earning two degrees through a carefully structured program of joint study of law and another major discipline.<sup>57</sup>

While he continued as Dean of the Law School, Professor Simmonds was appointed as a Commissioner of the Western Australian Law Reform Commission from 1996 to 2004, becoming its Chairman in 2001. In 2004 he was appointed as a Justice of the Supreme Court of Western Australia, one of the few law academics in Australia to achieve promotion to the judiciary.<sup>58</sup>

50 Mike Robertson, ‘Welcome to Law at USQ’ (University of Southern Queensland, 5/12/2013) <<http://www.usq.edu.au/business-law/schools/law>>.

51 Ibid.

52 Hon Michael Kirby, ‘Online Legal Education: the New CQU Law Degree’ (Speech delivered at the Launch of Online Legal Education: The New CQU Law Degree, the University of Central Queensland, 9 May 2011).

53 Ibid 13–19.

54 Advertisement – Inaugural Professor of Law – University of the Sunshine Coast <<http://www.usc.edu.au/university/jobs-at-usc/inaug-prof-law.htm>>.

55 University of the Sunshine Coast, ‘University appoints Professors of Law’ (Media Release, undated) 4 <[www.usw.edu.au](http://www.usw.edu.au)>.

56 Philip Evans and Gabriel Moens (eds), *Murdoch Law School: The Search for Excellence* (Murdoch University, 2010) 8.

57 Ibid.

58 Ibid 2.

However, with a comparatively small break between November 2003 and September 2005, when it was served by two interim deans, Murdoch was fortunate to appoint another long-term Dean, Professor Gabriel Moens, who served from 2005 until 2012.<sup>59</sup>

There was a break of seven years before the foundation of another law school in Western Australia, when the **University of Notre Dame Australia** Law School was established in 1997, at Fremantle. A private university, Notre Dame Australia has strong collegial links with the American University of Notre Dame located in Notre Dame, Indiana. Its Foundation Dean, Professor Gregg Craven, became the Vice-Chancellor the Australian Catholic University (ACU) in 2008. One of his successors as Dean of the Law School, Professor Celia Hammond, became the third Vice-Chancellor of the University of Notre Dame, also in 2008.

**Edith Cowan University** Law School followed in 2005. The Foundation Head of School was Professor Paul Moyle, who was previously an academic at the University of Western Australia Law Faculty. Professor Moyle had a particular interest in the sociology of law, having published two texts relating to the conduct and management of prisons.<sup>60</sup> He was therefore an ideal choice for a law school that was going to focus on law and justice studies. Professor Moyle also took an interest in legal education, being for some time the convenor of the Legal Interest Group of the Australasian Law Teachers Association and also for the period 2005–07 the Chair of the Association.<sup>61</sup> This tradition of Law and Social Legal Studies is still carried on at the university; the most recent appointment as Head of School, in August 2012, was Professor Anne Wallace, who held previous appointments as Deputy Director of the Australasian Institute of Judicial Administration (AIJA) and as a Principal Solicitor for the Australian Government Solicitor.

Western Australia's latest law school, established in 2012, is **Curtin University** Law School. The university was able to appoint Professor Paul Fairall as its Foundation Dean of Law. Professor Fairall is regarded as one of Australia's most experienced and longest serving law deans. Previously he had completed a five-year term as Foundation Dean of Law at the University of South Australia, prior to which he had been the Dean of Law at the University of Adelaide and James Cook University. He had also served as Chair of CALD from 2001 to 2002.<sup>62</sup>

His previous experience, and the fact that Curtin University had had a large contingent of law academics already teaching business and tax law, enabled the law school to make an early start on developing a law degree, which was quickly approved by the Legal Practice Board of Western Australia.<sup>63</sup> This early accreditation of the law degree enabled the school to enrol 120 students in the first semester in 2013.<sup>64</sup>

### 5. *South Australia*

The University of Adelaide remained the pre-eminent and only University law school in South Australia until the establishment of the **Flinders University** Law School in 1992. The Foundation Dean was Professor Rebecca Bailey-Harris, who had been a senior lecturer and Dean of the Faculty of Law at the University of Adelaide prior to taking up the appointment at Flinders in 1991.<sup>65</sup> Bailey-Harris was followed as Dean by Professor Andrew Stewart, formerly of the University of Sydney Law School, who served in this position from 1994 to 1997. In 1997 he was replaced by Associate Professor Tony Moore, who was first Dean until 2000, and then remained at the Law School until his retirement as a full-time academic in September 2004.

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<sup>59</sup> Ibid 10.

<sup>60</sup> Graeme Coss and Anne Duffield (eds) *Australasian Law Teachers Association, Directory of Members* (LBC Information Services and the Australasian Law Teachers Association, 2003).

<sup>61</sup> *ALTA List of Former Chairpersons* (2012) <[http://alta.edu.au/resources/PDFs/ALTA%20Officers/Former%20Chairpersons%20of%20ALTA%20\(Updated%20April%202012\).pdf](http://alta.edu.au/resources/PDFs/ALTA%20Officers/Former%20Chairpersons%20of%20ALTA%20(Updated%20April%202012).pdf)>.

<sup>62</sup> Curtin University: Curtin News, *Proposed new law degree for Curtin University* (15 March 2012) <<http://news.curtin.edu.au/media-releases/proposed-new-law-degree-for-curtin-university>>.

<sup>63</sup> Curtin University: Curtin News, *Curtin law degree approved* (17 September 2012) <<http://news.curtin.edu.au/media-release/curtin-law-degree-approved/>>.

<sup>64</sup> Ibid.

<sup>65</sup> Anthony Moore, 'Tribute to Rebecca Bailey-Harris' (1995–1997) 1 *Flinders Journal of Law Reform* 1.

As in other states, the Flinders Law School was established to help meet an overwhelming demand for university places in law which could not continue to be satisfied by the University of Adelaide. The Flinders Law School has been an innovative law school in that apart from its Bachelor of Laws degree in 1999 it introduced a Bachelor of Law and Legal Practice Degree whose graduates were able to meet all the requirements for admission to practice as part of their undergraduate law degree. This came about because of an agreement between the Law School and the Law Society of South Australia, whereby Flinders law students undertook a subject taught by the Law Society.<sup>66</sup>

South Australia remained a two-law school state until the establishment of the **University of South Australia** Law School in 2007. There was an unusually long delay in establishing the law school, as the university itself had been established in 1991; since that time there had been a strong critical mass of law academics in the Department of Business. The moving force in the development of the law school was Professor Paul Fairall, who later occupied the same role in the establishment of the Curtin Law School. Although the LLB program is taught over four years it is possible for students to complete it within three. Students were also given the opportunity to commence their studies in each of the three university terms, starting in February, June or September. On a similar basis to that at Flinders University Law School, there was provision for students to gain admission to the Law Society of South Australia's Graduate Diploma of Legal Practice in the last year of their undergraduate studies, enabling them to be admitted to practice as soon as they had graduated with their law degree.<sup>67</sup> On his departure to Curtin University at the end of 2011, Professor Fairall was replaced in March 2012 as Dean by Professor Roman Tomasic, another experience law academic who served as Dean only until November 2012, although he has remained at the law school as a Professor of Law.<sup>68</sup>

#### 6. Northern Territory

Because of the size of its population (219,880) it is not surprising that the Northern Territory only has one university, **Charles Darwin University**. Previously known as the Northern Territory University, it was founded in 1989 – by yet another merger instigated by the Federal Minister of Education at that time, John Dawkins – of the Darwin Institute of Technology and the University College of Northern Territory. However, a further merger took place in August 2003 when, as a result of an initiative of the interim Vice-Chancellor of the University, Professor Ken McKinnon, the Northern Territory Legislative Assembly enacted the Charles Darwin University Bill, which merged the University with the Alice Springs' Centralian College to form the Charles Darwin University. It came into operation from 1 January 2004.<sup>69</sup>

In 1990 Ned Aughterson was appointed as the Foundation Professor of Law, becoming Foundation Dean in 1992 on the establishment of a separate Faculty of Law.<sup>70</sup> He continued in this role until 1996, when his position as Dean was replaced by Professor Jenny Blockland, who had taken up a position as a lecturer in law at the faculty in 1990. Jenny Blockland left the faculty in 1998 to follow a distinguished career within the Northern Territory as Magistrate in 2002, Chief Magistrate in 2006 and as a Justice of the Supreme Court in 2010.<sup>71</sup>

In 1998, law had reverted to the status of a 'law school' within a newly formed School of Law, Business and Arts, subsequently again changing its status in 2003 to that of 'law discipline' within the School of Law and Business. Ned Aughterson retained his position as professor at the Law School, either on a full-time or part-time basis.<sup>72</sup> It was during his tenure as Head of

<sup>66</sup> Flinders University Law School Information Sheet <[http://www.flinders.edu.au/law/fls/fls\\_home.cfm/](http://www.flinders.edu.au/law/fls/fls_home.cfm/)>

<sup>67</sup> Studying Law in Australia – A guide to Australia's law schools – CALD/University of South Australia – *Message from the Dean* <<http://www.cald.asn.au/slia/LawSchoolDeansMessage.asp/ID=30/>>

<sup>68</sup> Roman Tomasic, 'Staff-Profile Roman Tomasic (2012) *Edition Two ALTA Newsletter* 18.

<sup>69</sup> Austin Asche, 'Law's Illustrious Past, Bright Future', (2006 *Charles Darwin University School of Law 20<sup>th</sup> Anniversary*) 26.

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

<sup>71</sup> Transcript of Proceedings, *Ceremonial Sitting to Welcome The Honourable Justice Jenny May Blokland*, Supreme Court of the Northern Territory, Hon. Chief Justice B R Martin, 9 April 2010.

<sup>72</sup> Austin Asche, above n 73.

the Law Discipline that he presided over the Australasian Law Teachers Conference which was held at the University in 2004.

### 7. *Australian Capital Territory*

**The University of Canberra** School of Law had its origins in the Canberra College of Advanced Education, established in 1965. It became the University of Canberra under the sponsorship of Monash University in 1990. The Law School was established in 1993.<sup>73</sup> In 2008 it introduced a Justice Studies program, which prepares students for careers in the justice sector.<sup>74</sup> The course incorporates justice policy and administration, court and tribunal management, law enforcement and corrections. Roman Tomasic became Head of the Law Discipline at the Canberra College of Advanced Education in 1985. He was appointed the Foundation Professor of Law in 1989 and was instrumental in the development of the new law school, serving as inaugural Head of School. He was also elected as the Chair of the University Academic Board. There is no doubt that Professor Tomasic played a major role in the development of both the university and the school of law during his fifteen years at Canberra.

## III. HAVE THIRD WAVE LAW SCHOOLS ENHANCED OR HINDERED THE DEVELOPMENT OF AUSTRALIAN LEGAL EDUCATION?

The ever-increasing number of law schools in Australia will eventually come to an end; of the public universities there are now only three – Charles Sturt University, the former University of Ballarat (styled Federation University since its amalgamation with the Gippsland campus of Monash University in 2013) and Swinburne University of Technology – which do not now support a law school. However, there is no reason to believe that at some time in the future these three remaining tertiary institution will not also adopt a law degree program within their undergraduate or postgraduate course offerings.

It is, however, still difficult to ascertain any particular reason for this major extension of law programs and their supporting law schools, divisions or units in Australia since 1989, the so called ‘Third Wave’ law schools. The most recent attempt to discover themes or trends which distinguished this group of law schools was made in a text published in 1998 and edited by John Goldring, Charles Sampford and Ralph Simmonds.<sup>75</sup> The most helpful chapter is titled *Growth, Diversity and Accountability*;<sup>76</sup> the author, Ralph Simmonds, places the newer, ‘Third Wave’ law schools within the context of Australian law schools generally. Until 1997 most of the ‘Third Wave’ law schools could be numbered among a grouping of *small* (100 to 299 students) or *medium* (300 to 599) sized institutions, as compared with the three larger groups: *larger* (600 to 999), *large* (1000 to 1499) and *very large* (1500 to 2000).<sup>77</sup> It could be accepted that this trend in size has been followed by the subsequent law schools. Examination of the profiles of these newer law schools would indicate that most of them have built on their existing infrastructure of law academics already employed by the host university, usually in departments of business or, to a lesser extent, social science or arts – departments which have more easily converted to teaching law degree programs. The existence of these law academics in situ has encouraged the development of joint degree or combined degree programs, usually, but not always, involving combined or joint LLB and Bachelor of Business degrees. It would also appear that because of the background of a more generalist approach already existing among current law academics transferred to the new law schools, there has been a greater tendency to adopt law-related programs such a ‘Justice’ or ‘Law and Society Studies’ in addition to the more traditional law degrees.

<sup>73</sup> CALD, University of Canberra Law School, Message from the Dean <<http://www.cald.asn.au/slia/lawSchoolInfo.asp?id=16>>.

<sup>74</sup> *Ibid.*

<sup>75</sup> Goldring, Sampford and Simmonds, above n 24.

<sup>76</sup> Ralph Simmonds, ‘Growth, Diversity and Accountability’ in Goldring, Sampford and Simmonds, above n 24, 55.

<sup>77</sup> *Ibid.* 59.

Ralph Simmons was also of the view that there was a greater emphasis on innovation with respect to teaching and assessment strategies in the ‘Third Wave’ law schools than had occurred in the earlier law schools.<sup>78</sup>

However, it would be fair to support the view that such innovations and those which have followed, particularly as a result of technical advancements in teaching techniques, would now have been adopted by most, if not all, Australian law schools. Certainly the evidence can be accepted on the basis of the papers given at the Annual Conferences of the Australasian Law Schools or contained in such journals as the Australian Law Education Review or the Legal Education Digest.

One of the major arguments advanced by tertiary institutions wishing to introduce law programs is that they are relatively cheap to teach and therefore, for federally funded universities, there is an opportunity for law programs to cross-subsidise other areas within the university. While such an argument would have been true in the past – particularly with regard to the more traditional universities, other than the University of New South Wales Law Faculty – there has been a change of attitude towards such a policy, much of it brought about by the law students themselves. One aspect of this has been the increasing proportion of students studying law who already have a prior degree, this being a basic requirement of anyone enrolling in a JD program. These students will already have been funded on a HECS basis and therefore will need to be self-funded, usually by obtaining a government (fee-help) loan. This means they will have a greater interest in obtaining value for money and ensuring that their law programs are appropriately resourced, and that their teaching is effectively assessed and monitored. Another leading commentator on Australian legal education, Michael Chesterman, made some informative comments in *The New Law Schools: What’s New in Them?*<sup>79</sup> Making allowances for the fact that the article was published in 1998, it is still pertinent with regard to law schools established during the period 1989–87 and after that date. Chesterman was of the view that:

During the 1990s, each of the new law schools, on or after their conception or birth, has had to determine its individual niche ... this has been done in a climate which has been hostile in one respect but in at least one other way has been relatively climate has been hostile in so far as the new law schools have been told regularly and forcefully by practitioners, politicians and sundry other pundits – relying mostly on crude comparisons between current numbers of law students (most of them part-time) and practising lawyers (most of them full-time) in Australia – *that the last thing that this country needs right now is more law schools*. The favourable factor is that the existing law schools, channelling much of their educational growth during the 1980s and the early 1990s in the directions which I have mentioned, left many gaps in legal education which could be best filled by new players in the field. A brief survey of the new schools paying attention to w schools their public aspirations rather than their specific achievements ... shows that they did indeed try and fill these gaps.<sup>80</sup>

The preoccupation of the earlier law schools identified by Chesterman was the expansion of the LLB programs within city conurbations in a way that would make graduates attractive to the predominantly business-orientated major law firms, and the development of postgraduate degrees for the same reason.<sup>81</sup> The achievement of the ‘Third Wave’ law schools was, in his view, their emphasis on practical skills training and practical experience, integration of law with other disciplines, distance learning and initiatives.<sup>82</sup>

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78 Ibid 63.

79 Michael Chesterman, ‘The New Law Schools: What’s New in Them?’ in Goldring, Sampford and Simmons, above n 24, 204.

80 Ibid 205.

81 Ibid 204.

82 Ibid 205–6.





