

1-1-2009

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Arlie Loughnan
University of Sydney

Rita Shackel
University of Sydney

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Recommended Citation

Loughnan, Arlie and Shackel, Rita (2009) "The Travails of Postgraduate Research in Law," *Legal Education Review*: Vol. 19 : Iss. 1 , Article 5.

Available at: <https://epublications.bond.edu.au/ler/vol19/iss1/5>

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THE TRAVAILS OF POSTGRADUATE RESEARCH IN LAW

ARLIE LOUGHNAN AND RITA SHACKEL*

I INTRODUCTION

The face of postgraduate legal research in Australia has changed considerably in recent years. The number of students completing postgraduate research degrees at Australian law schools has burgeoned.¹ This increase represents a significant shift from recent decades, when the vast majority of postgraduate law students were enrolled in coursework programs, primarily Master of Laws (LLMs). This shift might reflect the increased prevalence of LLM degrees and accordingly the fact that this higher degree no longer enables graduates to differentiate themselves from others as it once did, in what is now an increasingly competitive law employment market. It also arguably reflects, at least in part, the growing recognition of, and demand for, postgraduate research degree qualifications in government and non-government professional contexts, as well as academia. This shift in the profile of postgraduate research in law has occurred against a background of significant change within legal education in Australia, including the proliferation of law schools around the country, the appearance of high fees, and changes to curricula and teaching practices.² The increase in the number of

* Lecturers, Faculty of Law, University of Sydney. The authors would like to thank Jordi Austin, Sabine Selchow and Julie Stubbs for their assistance in the preparation of this article and would like to acknowledge the excellent research assistance of Adriana Edmeades and Tanya Mitchell.

¹ As the Council for Australian Law Deans has noted, this began from ‘an historically low base’, reflecting a variety of factors including the absence of a requirement that ‘a beginning academic in law will necessarily have a completed PhD’: see Council of Australian Law Deans, *Statement on the Nature of Legal Research* (2005) 5 <<http://www.cald.asn.au/docs/cald%20statement%20on%20the%20nature%20of%20legal%20research%20-%202005.pdf>> at 23 December 2009.

² For discussion, see Margaret Thornton, ‘The Law School, the Market and the Knowledge Economy’ (2007) 17 *Legal Education Review* 1; Mary Keyes and Richard Johnstone, ‘Changing Legal Education: Rhetoric, Reality and Prospects for the Future’ (2004) 26 *Sydney Law Review* 537; Christine Parker and Andrew Goldsmith, ‘“Failed Sociologists” in the Market Place: Law Schools in Australia’ (1998) 25 *Journal of Law and Society* 1, for critical and historicised discussion of these and other issues. For a discussion of developments in legal education beyond Australia, see William M Sullivan et al, *Educating Lawyers: Preparation for the Profession of Law* (2007). This Carnegie Foundation for the Advancement

students undertaking postgraduate research degree programs in law has given rise to a particular set of structural issues relating to funding, training, progression, supervision and examination. In addition, it might be argued that a particular set of issues — for postgraduate study and postgraduate students of all stripes — is thrown up by the current temporal context. Pursuing a postgraduate research degree in the current era occurs in the context of historically low levels of public funding to universities, a looming shortage of academics, the ‘internationalisation’ of the student cohort and the globalisation of higher education more generally.³ In relation to law in particular, it would seem that these issues exacerbate the longstanding tension in legal education in Australia, and in other comparable common law countries, between studying law as training for professional practice and studying it as an intellectual discipline in its own right.⁴

This picture is further complicated by the fact that, in recent years, research degree programs in Australian law schools have multiplied and diversified. Research degree programs on offer in Australian law schools include Doctor of Philosophy (PhD), Doctor of Juridical Studies (SJD) and Masters of Laws (LLM) by Research degrees.⁵ These programs differ on the basis of whether the degree encompasses course work and the length of the thesis to be submitted for award of the degree. The proliferation of different higher degree research programs in law hints at the diversification of both the purposes served by higher degree research and the needs of students.⁶ However, the specific objectives of the different programs seem to be somewhat opaque and it is not evident whether there has been an overarching vision guiding these developments which, taken together, significantly alter the complexion of higher degree research

of Teaching report was highly critical of American legal education. For a discussion of the relevance of the report in the Australian context, see Susanne Owen and Gary Davis, *Report to Council of Australian Law Deans (Summary)* (2008) <http://www.cald.asn.au/docs/alte_Davis_Owen_report_comb.pdf> at 23 December 2009.

³ For a recent and detailed consideration of these and other issues, see the Department of Education and Workplace Relations, *Review of Australian Higher Education* (2008) <<http://www.deewr.gov.au/HigherEducation/Review/Pages/ReviewofAustralianHigherEducationReport.aspx>> at 23 December 2009 (the Bradley Report). See also Law Council of Australia, *2010: A Discussion Paper: Challenges for the Legal Profession* <http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uid=0BE36A97-1C23-CACD-2225-CBD6713A3E09&siteName=lca> at 23 December 2009.

⁴ This tension has been widely acknowledged: see, eg, Council of Australian Law Deans, above n 1, 1. For a detailed discussion of the professional dimensions of legal education in the US context, see Sullivan et al, above n 2, ch 1.

⁵ These degree programs are available through the University of Sydney, see Faculty of Law, University of Sydney, *Research Programs @ Sydney Law School* <<http://www.law.usyd.edu.au/fstudent/research/programs.shtml>> at 23 December 2009.

⁶ For instance, the SJD at the University of Sydney permits students to enrol in coursework subjects that provide a ‘staged and formative introduction to the process of creating a doctoral thesis’: Faculty of Law, University of Sydney, above n 5.

in law.⁷ This change in legal education seems to mirror the altered terrain of doctoral education in Australia more generally.⁸ In this significantly altered field, the path for the potential or commencing research student is not necessarily straightforward or clear, and the experience of ever-increasing numbers of postgraduate research students is both divergent and diverging.

Taken together, these changes are significant and it is therefore timely to advance the conversation about the current state of higher degree research in law in Australia. In attempting to further such a conversation, it seems most appropriate to begin with the place of the student and his or her experience of higher degree research. Placing the student at the centre of the discussion leads us to identify three aspects of higher degree research in law which form a common base of the student experience: the intellectual challenges of research in law; the personal aspects of the postgraduate research experience; and the supervision process and relationship.

This paper considers some of the issues that face both students undertaking postgraduate research degree programs in law and law schools offering such programs. Part II of the paper examines the intellectual challenges of postgraduate research, which revolve around the conceptualisation, execution and completion of a thesis. Part III focuses on personal facets of the postgraduate research experience that underpin the intellectual aspects of higher degree research in law, and Part IV discusses the supervision process and relationship in the law faculty context. With the current or prospective postgraduate research student or supervisor in mind, this article offers a modest set of suggestions for enhancing law students' research degree experience.

⁷ The range of higher degree research programs in law must be viewed alongside the more recent moves on the part of a number of Australian law schools to offer a Juris Doctor (JD) degree as an alternative to the Bachelor of Laws (LLB) for students with an undergraduate degree. In keeping with the North American model on which it is based, the JD is not a doctorate and does not bring with it the right to use the title 'doctor'.

⁸ For a discussion of the broader changes to doctoral education in Australia, including the advent of 'professional doctorates', see Alison Lee, Marie Brennan and Bill Green, 'Re-Imagining Doctoral Education: Professional Doctorates and Beyond' (2009) 28(3) *Higher Education Research and Development* 275–87; Ruth Neumann, 'Policy Driving Change in Doctoral Education' in David Boud and Alison Lee (eds), *Changing Practices of Doctoral Education* (2009) ch 16. For a critical assessment of the state of doctoral education in the US, see George E Walker et al, *The Formation of Scholars: Rethinking Doctoral Education for the Twenty-First Century* (2008).

II INTELLECTUAL CHALLENGES OF A RESEARCH DEGREE IN LAW

The intellectual challenges of completing a postgraduate research degree are likely to be foremost in the mind of any commencing or prospective postgraduate research student. The intellectual challenges of a research degree will in significant ways be unique to the individual student. Nonetheless, it is possible to identify a number of aspects of the intellectual experience that each student will have to address as he or she commences, pursues and completes a postgraduate research degree. This section of the paper examines these intellectual aspects of the law postgraduate research experience.

A Situating Legal Research

What is legal research or research in law? It may be assumed that a student embarking on a research degree in law will already have considered this question. It is important, however, to be both cognisant of and reflective about the nature and parameters of legal scholarship in the current era. In relation to the nature of legal scholarship, debate has long raged about its specificity, if any. As the Council for Australian Law Deans (CALD) has acknowledged, legal research is both similar to and different from research in the humanities and social sciences.⁹ Acknowledging the difficulty of the task of pinning down what it is that is distinctive about legal research, CALD suggests that, in part because of the primacy of doctrinal research and the distinctive notion of 'legal reasoning', legal research falls neither wholly within one or other category.¹⁰ In their Statement on the Nature of Legal Research, CALD has stated that legal research may be described as occurring in varying combinations of the following categories: doctrinal, theoretical, critical/reformist, fundamental/contextual, empirical, historical, comparative, institutional, process-oriented and interdisciplinary.¹¹ This list demonstrates the wide parameters of legal scholarship in the current era. In relation to interdisciplinary research, it should be noted that law students (like law academics) may be engaged in research that overlaps with that otherwise conducted under the umbrella of criminology, philosophy, business and economics, sociology and history, to name just a few allied disciplines. This list reveals that students undertaking research degrees in law may find that their research extends across more than one scholarly field. It also provides an indication of the variation in content and style that is apparent across postgraduate students' research projects, suggesting

⁹ Council of Australian Law Deans, above n 1, 3. See also Terry Hutchinson, *Research and Writing in Law* (2nd ed, 2006) 7–8.

¹⁰ Hutchinson, above n 9, 4.

¹¹ Council of Australian Law Deans, above n 1, 2.

in turn something of the diversity of experiences of individual students within the law postgraduate research degree cohort.

B *Formulating a Research Project and Developing a Thesis*

A student embarking on a postgraduate research degree may have only sketched out the broad contours of a research project, or perhaps merely have identified a particular topic or area of research, by the time he or she commences study. There is a significant difference between a research area (such as human rights law) and a research project (the development of a right to water in international law, for example). One of the first tasks postgraduate research students face is refining (and possibly defining for the first time) their research project. Here, a student is seeking to formulate a project, which can be completed by him or her, working with available resources, within the timeframe allowed.¹² Such a task encompasses defining central research questions, establishing methodology, identifying sources, and assessing relevant literature in the field. This process may, but will not necessarily, involve supervisor input and direction. In this respect, the humanities differ from the hard sciences as often, in the latter, students are presented with an already well-developed and clearly mapped out research project.¹³

The task of formulating a research project might require some revision of territory covered for the purposes of preparing a research proposal. Like any large project, it is easy to overestimate what can be achieved within 100,000 words or less and thus this process may well involve narrowing the scope of a planned project. Conversely, if a project has grown out of an earlier circumscribed research project (such as an essay for a coursework unit of study), it may be that a student starts with a project that will not permit the breadth or depth required of postgraduate research. This is less likely to be the case for postgraduate students in law, when compared with other disciplines such as science, as relatively few postgraduate law students are likely to be embarking on a project that seeks to develop previous research undertaken either as a result of work completed in a research team or as part of an honours year. Law graduates generally do not have such opportunities, which, in comparison, are the norm for science graduates. The task of refining and even reconceptualising research is likely to recur throughout the project as it evolves and changes over time, and may even be at issue in the final stages of a research project.

¹² For a useful list of questions to ask about a research project at this point, see Hutchinson, above n 9, 137–43.

¹³ See Ruth Neumann, *The Doctoral Education Experience: Diversity and Complexity* (Department of Education, Employment and Workplace Relations, 2003) 4.5 (DEST Report).

Over the course of a postgraduate research degree, a research topic should become a thesis. Students may be unclear about the scope and requirements of a thesis, even after having committed to at least commencing to write one. What is a thesis? The answer to this question varies according to the kind of thesis being written. A doctoral thesis has the highest requirements, including that of originality, which is discussed below. In general, a thesis may be understood according to the criteria set down for the award of a degree based on a thesis. An example is provided by the University of Sydney's examiner's report on a thesis for the award of a PhD. The report provides, in part:

The thesis should:

- (a) be a substantially original contribution to the knowledge of the subject concerned,
- (b) afford evidence of originality by the discovery of new facts, and/or
- (c) afford evidence of originality by the exercising of independent critical ability,
- (d) be satisfactory as regards literary presentation, and
- (e) contain a substantial amount of material which is suitable for publication.¹⁴

These criteria indicate that the evaluation of a thesis concerns not only the thesis in itself but also the thesis as evidence of the student's research capacity. Also, in relation to doctoral theses, David Evans and Paul Gruba caution against the ready assumption that a thesis involves reporting what has been found out in the course of research; rather, they suggest that a thesis will be read to determine whether a candidate should be admitted to an international community of scholars in his or her field.¹⁵ This is helpful to keep in mind: it means that, even aside from any requirement of originality, a student should aim to make a distinctive contribution to his or her field via a thesis. This core idea of the thesis is what marks it out as distinctive from other forms of legal research and writing, even that which occurs in academia. Providing detailed information about the nature of postgraduate research even prior to enrolment may assist in debunking any myths that may exist around the nature of a postgraduate thesis.¹⁶

¹⁴ The examiner's report form is available from University of Sydney, *PhD Award Sub-Committee Forms* <http://www.usyd.edu.au/ab/committees/rrtc/phd_award/forms.shtml> at 23 December 2009.

¹⁵ David Evans and Paul Gruba, *How to Write a Better Thesis* (2nd ed, 2002) 5.

¹⁶ While most universities and some faculties produce handbooks for doctoral or other students, these may include only practical information such as the formal requirements of a research degree program. However, even this type of information, along with induction programs, may assist with quality assurance and student satisfaction: see DEST Report, above n 13, 6.2, 8.3.

At the outset of a postgraduate research degree, students may find it useful to access and familiarise themselves with the requirements for the award of the postgraduate research degree they are pursuing. Reviewing a copy of the guidelines for examiners, or faculty or university policy documents, for example, will enable students to gain some understanding of what is expected of them. In addition, students may be advised to review copies of other Masters, SJD or PhD theses, available in libraries or electronically, to appreciate the general standard of postgraduate research projects, and to make notes of particular aspects of research and writing that they wish either to adopt or avoid. Some authors have advised that recent theses may be more useful than older ones as academic styles or trends may shift over time.¹⁷ Supervisors may be able to recommend particular theses which students may then use as a model for their own research and writing.

C *Becoming an Author*

A research project or thesis is likely to be the longest piece of writing undertaken by a student commencing a postgraduate research degree. Despite the apparent novelty of this, the conventional approach to writing for higher research degrees assumes that students will be sustained by discipline-specific writing skills acquired earlier in their education.¹⁸ In law, there would seem to be good reason to be cautious about the ongoing validity of this assumption. The nature of assessments in undergraduate legal education is such that short essays, case notes and formal sit-down exams have become the staple forms of the student writing experience. In addition, the emphasis in undergraduate legal education on content (within specific subdisciplinary areas) as opposed to skills or competencies (such as oral and written communication skills)¹⁹ may mean that a student commencing a higher research degree in law has not acquired sophisticated ability in legal writing. This is the case despite the fact that legal research and writing is likely to be included in the standard law curriculum, either as a standalone subject, or as an appendage to a substantive law subject. The result is that, via the postgraduate research experience, the student is learning to write as well as to

¹⁷ Evans and Gruba, above n 15, 7.

¹⁸ See Patrick Dunleavy, *Authoring a PhD* (1st ed, 2003) 3. In reflecting on the growing emphasis on teaching writing skills as part of doctoral programs across disciplines, Alison Lee and Claire Aitchison note that 'the problem of writing' is constructed as the 'dirty linen' of the institution, a source of discomfort for managers and academics, and separate from the 'real work' of the doctorate: see Alison Lee and Claire Aitchison, 'Writing for the Doctorate and Beyond' in David Boud and Alison Lee (eds), *Changing Practices of Doctoral Education* (2009) 95.

¹⁹ This emphasis in undergraduate legal education has been widely noted and criticised: see, eg, Keyes and Johnstone, above n 2.

undertake research. Proficiency as a writer is a requirement of postgraduate legal research distinct from, although connected to, competency as a researcher in law.

Thesis writing is widely acknowledged to be a particular style of writing. Evidently, if they have not managed to do so in the course of their undergraduate studies, postgraduate research degree students are required to learn the conventions of academic writing, including citations and references, in the course of completing a thesis. In relation to law in particular, for students who have been or remain in legal practice while completing a postgraduate research degree, this form of writing may be unfamiliar. In addition, as it generally requires authors to carve out a particular space for their own contribution, and defend a particular approach (methodological, analytical or discursive), a thesis may have a more defensive tone than other forms of academic writing. In part, in light of this, some scholarship on higher education research has stressed the importance of authoring, as opposed to writing, with the former encompassing skills such as managing readers' expectations, and others have advocated approaches to writing that regard it as a social practice and a social action.²⁰ Taking these aspects of thesis writing together, it becomes apparent that postgraduate research degree training involves becoming an author as much as it involves becoming an expert with knowledge of a certain area or field of law. This means that the completion of postgraduate research degrees entails qualification as an academic writer, although students are simultaneously acquiring skills that are useful in a range of professional contexts.

There are many ways in which a student might be encouraged to develop his or her writing skills via the postgraduate research degree. Students may wish to select an author in their field (such as their supervisor) whose writing style they admire in order to emulate him or her. Individuals may also wish to undertake writing courses offered by their faculty or university and to learn editing skills, for example. In addition, students may be advised to expose themselves to good writing in other forms, such as in fiction or journalism, through novels, news media or blogs. Accepting that learning to write is part and parcel of a postgraduate research degree will help to ensure that a student takes this aspect of his or her work seriously and will produce a thesis that is well written.

²⁰ See, eg, Dunleavy, above n 18, 1–18; Lee and Aitchison, above n 18, 90–3.

D *Understanding and Developing a Methodology for Research*

What is methodology? While different definitions exist, perhaps the most straightforward way to understand methodology is as a technique or set of techniques used for gathering information and realising a valid outcome.²¹ Historically, methodology seems to have been given little attention in legal scholarship. This situation might be thought to mirror the distinction, mentioned above, between skills on the one hand and knowledge of content on the other, and the emphasis that has been placed on the latter rather than the former. Further, for some law students, methodology may appear to be uncontroversial or even non-negotiable, as a student may automatically turn to case law, legislation, legal codes, treaties and government materials such as parliamentary papers, and then subsequently to secondary sources such as academic commentary. However, ideally, resort to these sources in legal research would be a conscious decision, reflecting the needs of the research project. Like writing, discussed above, methodology should not be dismissed as merely incidental to the particular research involved in completing a thesis, or indeed to any academic research. Ability to execute particular kinds of research as well as knowledge of specific areas is part of the skillset of postgraduate research degree programs.

If methodology refers to the techniques to be used in undertaking research, it is clear that a wide range of methodologies will be potentially relevant to those engaged in legal research. Doctrinal legal research — which could be characterised as evidencing a linear structure (from hypothesis through evidence to conclusion), an expository flavour and a focus on written sources of law — might be regarded as standard or paradigmatic research in law.²² The high profile of this kind of legal scholarship seems to reflect the nature of legal practice and the demands of the profession.²³ Yet, while doctrinal research still represents a norm in law, other research techniques, such as social science and qualitative research methodologies, have made significant inroads in legal research.²⁴ In addition, and perhaps in a way that is disturbing for standard legal research, postmodern or post-structuralist research practices have also breached the fortress of the legal academy. Although there is a variety of different research approaches that are inspired by post-structural and discourse-theoretical premises, with respect to research strategy and methodology, these approaches are united in that they do not set out to verify a pre-determined hypothesis. As a result,

²¹ See Hutchinson, above n 9, 19.

²² See also Hutchinson, above n 9, 19–22.

²³ See Council of Australian Law Deans, above n 1, 3.

²⁴ See Hutchinson, above n 9, 87–118.

research projects in this vein may not conform to a linear structure and, indeed, the conceptualisation of research methodology may form a particularly significant component of the project (measured either in terms of the distinctiveness of the research or the percentage of research time taken for the student to complete it).

A rich set of resources, much of them originating outside the legal academy, exist to assist students in understanding and developing a methodology for their research.²⁵ Methodology may well also form the subject of discussion in postgraduate legal research courses alongside consideration of rapidly developing research techniques.²⁶ In determining which methodology will best suit their needs, students may be advised to think about the range of ways in which one topic or question may be approached and to read widely (even indiscriminately), in order to expose themselves to different perspectives on their selected topic. As part of the process of undertaking research, students may consider recording and reflecting on their research by keeping a research diary, or by preparing a series of short memos for their supervisor.²⁷ Such a reflective activity is useful because it will help to ensure that students do not unthinkingly pursue particular sources or approaches to the exclusion of others. It will also provide a helpful grounding when the student comes to explain the particular approach he or she has taken in introducing his or her research in the thesis.

E *A Sustained Research Project and the 'Evolving' Thesis*

Maintaining momentum and intellectual interest in a thesis are distinct challenges encoded in a postgraduate research project. A research degree thesis may well be the first sustained and independent academic project undertaken by a student. While some students may have experience of undergraduate honours theses, it should not be assumed that students will have written a piece of more than approximately 10,000 words in their first law degree. Even if postgraduate students go on to academic careers, a thesis may well be one of the largest pieces of writing undertaken, even compared with academic monographs. As discussed in Part III of this paper,

²⁵ See, eg, Reza Banakar and Max Travers (eds), *Theory and Method in Socio-Legal Research* (2005); Alan Bryman, *Social Research Methods* (2nd ed, 2004); Sharlene Nagy Hesse-Biber and Michelle Yaiser (eds), *Feminist Perspectives on Social Research* (2003); John Law, *After Method: Mess in Social Science Research* (2004); David Silverman (ed), *Qualitative Research: Theory, Method and Practice* (2nd ed, 2004).

²⁶ See, eg, Terry Hutchinson and Fiona Martin, 'Multi-Modal Delivery Approaches in Teaching Postgraduate Legal Research Courses' (1997) 15(2) *Journal of Professional Legal Education* 137.

²⁷ See Hutchinson, above n 9, 23–6.

sustaining a research project over a number of years requires not insignificant personal resources, as well as the support of others. In this context, the issue of the individualist culture of law schools, which has been widely noted and criticised,²⁸ is arguably exacerbated when it comes to postgraduate research students. The characteristics of higher degree research — a specific and independent project of interest to a narrow range of people even within a particular discipline — arguably promote isolation and even alienation among students.²⁹ In this context, students may feel unsupported and their progress may be impeded. This has potentially serious consequences for the student and his or her faculty if it delays completion or leads to non-completion.³⁰ This is particularly serious in a context where government funding for research degree students is issued on completion.

In terms of the intellectual dimensions of a sustained and independent research project, it is important for potential or commencing students to keep a number of factors in mind. First, students will arguably be better served by selecting a topic which will interest them beyond the short term, as well as one that will have sufficient breadth and depth such that it unfolds over the life of the project. As such, a topical or ‘trendy’ issue should nonetheless be something that the student is genuinely interested in. To use a popular expression, the student must ‘own’ his or her topic in order to be able to bring the research project to completion. Second, it is likely that the research project will change form (possibly significantly) by the time it is completed. This does not necessarily connote weakness or shortcomings in the initial proposal, nor a failure on the part of the student. As with any dynamic activity, the thesis will change and develop over time. In relation to law theses in particular, it may be necessary to take into account developments occurring during the course of the project (such as legislative or case law developments). Third, while it might be readily acknowledged that enthusiasm for

²⁸ See, eg, Keyes and Johnstone, above n 2, 4.

²⁹ While some research indicates that research postgraduate students are more integrated into faculties and departments via research clusters and staff seminars. See, eg, Robin Humphrey and Peter McCarthy, ‘Recognising Difference: Providing for Postgraduate Students’ (1999) 24(3) *Studies in Higher Education* 371, 375. There is also research to suggest that research postgraduate students might feel particularly isolated; for discussion, see Stephen Colbran and Belinda Tynan, ‘Australian Legal Postgraduate Network’ (2006) 16 *Legal Education Review* 35.

³⁰ For information on postgraduate completion rates at Australian universities across all disciplines, see Yew Martin, Maureen MacLachlan and Tom Karmel, *Postgraduate Completion Rates* (1999) Department of Education, Training and Youth Affairs <<http://www.dest.gov.au/archive/highered/occpaper/01d/01d.pdf>> at 23 December 2009. This report indicates that postgraduate students in science disciplines are significantly more likely to complete than those in arts disciplines: at 9. The likelihood of completion generally decreases with age: at 9. The authors were unable to find more recent statistical information on the completion rates of students enrolled in postgraduate degree programs.

a particular project will necessarily wax and wane over a significant period of time, it is important to maintain a working rhythm with regard to the thesis. In relation to each of these factors, supervisors will be able to guide students as an individual scholar and for this reason, among others, it is vital to keep communication channels with supervisors open.³¹

F *The Requirement of 'Originality'*

One of the particular features of a PhD as opposed to other postgraduate research degrees is the requirement of originality. The requirement of originality seems to be something of a *bête noir* for doctoral research students. The diversity of postgraduate law research makes it difficult to prescribe the content of this term in any detailed way. However, it is worth recalling the first three requirements for an award of a PhD:

The thesis should:

- (a) be a substantially original contribution to the knowledge of the subject concerned,
- (b) afford evidence of originality by the discovery of new facts, and/or
- (c) afford evidence of originality by the exercising of independent critical ability.³²

Taken together, these requirements reveal that there are different ways of thinking about and satisfying the requirement of originality. In law, an 'original contribution to the knowledge of the subject' is likely to be evidenced by the 'exercising of independent critical ability'. One way of thinking about the originality requirement is to ask what value the thesis adds to existing discourse on the topic. The requirement of originality in the thesis should be borne in mind from the first stages of a research project. For example, the requirement should encourage students to develop, with their supervisor(s), a well-defined doctoral research topic, ensuring that they are not vulnerable to critique for having attempted to 'cover the field' in their area of research rather than focusing on a discrete question or topic.

However, it is important not to overestimate the difficulty of meeting the requirement of originality in a doctoral thesis. Estelle Phillips and Derek Pugh have identified the failure to understand the nature of a PhD by overestimating what is required of it as one of the impediments to completing it. According to these authors:

You can leave the paradigm shifts for after your PhD. And, empirically, that is indeed what happens. The theory of relativity (a classic example of a paradigm shift in relation to post-Newtonian physics) was not Einstein's

³¹ See Parts III and IV below.

³² See University of Sydney, *Degree of Doctor of Philosophy Examiner's Report on Thesis* <http://www.usyd.edu.au/ab/committees/rrtc/phd_award/PhD_Forms/Examiners_Report_Form_PhD.pdf> at 23 December 2009.

PhD thesis (that was a sensible contribution to Brownian motion theory). Das Kapital was not Marx's PhD (that was on the theories of two little-known Greek philosophers).³³

For students undertaking a postgraduate degree in order to enter academia, and as part of a process of managing students' own expectations of their performance, it may be useful to note that a Masters' or Doctoral thesis is unlikely to be their life's best work. This is particularly likely to be the case if the student pursues a career in academia. If students are to avoid the trap of succumbing to perfectionism, it might be useful to assist students to map out separate projects that may flow from the thesis after it is completed, for that student or for other scholars in his or her field.

G *Publishing Versus Completion*

For students completing higher research degrees in order to enter academia, the issue of whether and how to publish work during the degree will arise. With the 'publish or perish' mantra echoing in all levels of the academic establishment in the current era, students seeking entry level positions may seriously consider the need to publish while completing their degree. A planned publication could be directly related to the student's thesis, but may also be on a discrete topic unconnected to or only tangentially related to the larger project. The balance between completing a longer (and more significant) piece over time and publishing a short piece more quickly is a difficult one to strike. The challenge facing students in this regard is one which faces many academics who may be working on shorter pieces or articles at the same time as writing a monograph. Students will be able to receive advice from their supervisors regarding publication, and establish the balance between publication and completion that is optimal in their case. In seeking to strike this balance, students should bear in mind considerations such as the progress of their research to date, the best forum in which to air the arguments or data included in their thesis, and the imperative of developing an expertise in a particular field over the course of the degree program. This is a balancing act and it is notoriously difficult to get the balance right. Anecdotally at least, there may be increased pressure for postgraduate students in law to publish more extensively and more rapidly. This likely mirrors the increased pressure on legal academics more broadly to do so, as publication rates increasingly influence

³³ See Estelle Phillips and Derek Pugh, 'How Not to Get a PhD...', *The Guardian* (London), 8 November 2002 <<http://www.guardian.co.uk/education/2002/nov/08/highereducation.books>> at 23 December 2009. For a useful and critical discussion of the requirements of a PhD in the Australian context, including originality, see Rob Gilbert, 'The Doctorate as Curriculum' in David Boud and Alison Lee (eds), *Changing Practices of Doctoral Education* (2009) ch 5.

funding outcomes within faculties as do postgraduate completion rates. As a result, intending academics seeking to secure an academic appointment may view publication and completion of their doctorate as a necessary prerequisite for entry into legal academia.

H *The 'End Matter'*

The process of moving a thesis to completion and submission involves its own distinctive set of challenges. At this stage, careful (and even ruthless) editing of a thesis is essential. Poor editing may reflect poorly on the student, distract examiners, and undermine all the hard work that has gone into the thesis. When all the apparently intellectual work of a thesis has been completed, a student could be forgiven for thinking that the thesis is practically ready for submission. However, at this point, it is likely that a significant amount of work — formatting, finalising all references, preparing and incorporating appendices or diagrams, as well as printing and possibly binding a thesis — remains. It is easy to underestimate the time as well as the effort required for these pre-submission activities.³⁴ It is not unreasonable to allow two to three months for final editing, printing and binding of a PhD thesis. This is because what has been called the 'end matter' of a piece of academic writing is somewhat notorious.³⁵ It is in relation to the 'end matter' that problems such as missing footnotes, inadequate referencing and disappearing sources rear their heads. Chasing references or reformatting can be both difficult and time-consuming, and problems relating to the organisation of the thesis (such as length) can stretch out this stage of a research project. Compiling references, inserting footnotes and cross-references can be particularly time consuming if these have not been diligently managed throughout the writing of the dissertation. Beyond this, as discussed below, the personally demanding character of the higher degree research project means that, by this point, a student is likely to be exhausted and perhaps unable to remember why they wanted to do the project in the first place. Allowing sufficient time, and relying on external resources (such as proofreaders, where applicable and permissible), will assist students to overcome the final intellectual hurdle in completing a postgraduate research degree.

³⁴ Ibid.

³⁵ See Louis Menand, 'The End Matter', *The New Yorker* (New York), 6 October 2003 <http://www.newyorker.com/archive/2003/10/06/031006crbo_books1> at 23 December 2009.

III PERSONAL CHALLENGES OF A POSTGRADUATE RESEARCH DEGREE IN LAW

There is a regrettable paucity of published research on the experiences of postgraduate research students in law. There is also little published material and information which relates specifically to doctoral education in law.³⁶ A detailed search by the authors of several key education and law databases revealed no published articles dealing specifically with the experiences of law research degree students, either in Australia or overseas.³⁷ This finding is consistent with a more general paucity of published research on the nature, diversity and complexities of doctoral education in Australia, and a lack of any systematic evaluation of research degree supervision.³⁸ Accordingly, except anecdotally, little is known about the personal challenges of postgraduate research in law and more specifically what characterises the legal doctoral experience – how do postgraduate research students in law cope with their studies? What difficulties do students most commonly experience? And what initiatives can make the postgraduate research experience in law a more enriching and rewarding one for students? A demographical snapshot of postgraduate research students in law would also be useful to better understand some of the specific needs of this group or of particular sub-groups within it.³⁹

There are advantages at both the institutional level and the individual level in recognising and addressing the personal challenges

³⁶ Colbran and Tynan, above n 29, 37.

³⁷ The databases searched were: AGIS Plus Text (1975–present); Index to Foreign Legal Periodicals & Index to Legal Periodicals (1987–present); LegalTrac (1980–present); ERIC (1966–present); Expanded Academic ASAP. One article was found, which included discussion of doctorates in law in a comparison of ‘professional doctorates’ and PhDs: Ruth Neumann, ‘Doctoral Difference: Professional Doctorates and PhDs Compared’ (2005) 27 *Journal of Higher Education Policy and Management* 173. The absence of research on the student perspective on doctoral research has been noted by other authors: see Diana Leonard and Rosa Becker, ‘Enhancing the Doctoral Experience at the Local Level’ in David Boud and Alison Lee (eds), *Changing Practices of Doctoral Education* (2009) 71.

³⁸ Kay Harman, ‘Producing “Industry-Ready” Doctorates: Australian Co-operative Research Centre Approaches to Doctoral Education’ (2004) 26 *Studies in Continuing Education* 387, 393.

³⁹ For example, what is the mean age of doctoral candidates in law? Are students enrolled in PhD programs in law, on the whole, a slightly older group compared to other doctoral students? Unfortunately, there is little published research on the demographics of students enrolled in postgraduate research degree programs in law. Most law faculties are likely to collect this data but what is needed is collation and synthesis of such data across law schools to provide a broader snapshot of student demographics and ideally a national picture. Alternatively, the Australian Law Postgraduate Network (ALPN), for example, may in the future consider collecting such data through its membership and infrastructure. On application, the authors were informed that CALD did not have any Australia-wide statistical information (email on file with authors).

of postgraduate research. Identifying the personal challenges which commonly confront postgraduate research students is critical in order to assist law faculties and supervisors to consider how best to support students in need and make the postgraduate research experience as rewarding as possible for students. This is particularly important in light of high attrition rates, relatively slow completion rates in doctoral and research degree programs generally,⁴⁰ and some Australian research findings that indicate low levels of satisfaction on the part of postgraduate research students with their overall course experience and the quality and effectiveness of supervision.⁴¹ An understanding of the personal challenges that face students is also critical in order to assist individual students to avoid or overcome the isolation that may be felt during postgraduate research, particularly a PhD, and to help them to understand that they need not feel alone. Such insights may better enable students to access appropriate support in dealing with personal issues and other difficulties that may arise during a postgraduate research degree before problems become too serious or intractable.

Despite a lacuna in our evidence-based understanding of this area, few legal academics would dispute that postgraduate research in law, particularly doctoral research, requires enormous personal commitment. The personal effort, time and mental commitment demanded by a postgraduate research degree may at times seem overwhelming to the student; particularly, when coupled with the emotional, financial and family or relationship issues the student may also face. Such personal issues or difficulties may be induced by the strenuous demands of a postgraduate research degree itself or may reflect 'normal' and inevitable life events and stressors which arise independently of the student's course of postgraduate study. In any case, having to deal with personal difficulties as well as postgraduate research may place competing demands on students, which can be emotionally draining, physically exhausting, and may make for a frustrating and alienating experience for the student. The personal challenges that commonly arise during postgraduate research seem, generally, to be given less attention than the intellectual dimensions of completing a postgraduate research degree.⁴² In the authors' view,

⁴⁰ This issue was identified as a problem by the then Federal Minister for Education in 1999: see The Hon Dr David A Kemp MP, *Knowledge and Innovation: A Policy Statement on Research and Research Training* (Department of Education, Training and Youth Affairs, 1999) 17.

⁴¹ *Ibid* 394.

⁴² This view is consistent with the informal feedback received by the current authors at a recent seminar on 'Surviving the PhD' experience presented at the Sydney Law School's Postgraduate Students Conference 2008. Students expressed relief that the possible 'personal' challenges that may face doctoral students in law were openly canvassed with a view to stimulating an exchange around these issues. This informal feedback formed part of the impetus for the preparation of this article.

this reflects a discursive and institutional emphasis on the intellectual aspects of postgraduate research in law, which comes at the expense of discussion of other equally central aspects of the degree experience. This section of the paper seeks to contribute towards redressing that situation with a view to generating a more open conversation around the personal dimensions that often face and challenge students who are undertaking such a program of study.

A Psychological Dimensions

Whilst personal issues that are extraneous to, and independent of, postgraduate research itself may challenge the student, the demanding and intellectually consuming nature of postgraduate research in law, particularly a doctorate, may of itself generate psychological and/or emotional challenges which the student may find difficult to manage and which, if left unchecked, may seriously impede progress in the student's research. The psychological dimensions of postgraduate study in law have not been researched or discussed in the published literature. The current authors, however, through talking to postgraduate students informally, supervising student research projects and based on their own experiences of having completed PhDs in law, have identified a series of problems that seemingly confront postgraduate research students in law commonly. These include having to deal with the isolation and loneliness that often characterises legal research; maintaining sufficient motivation and interest in the research project and momentum towards completion; and managing and mitigating the impact of stress and burnout during the student's candidature. Each of these issues is discussed further below.

1 Isolation and the Loneliness of Doctoral and Legal Research

Students may often begin postgraduate research feeling positive and excited about their research. However, it is not uncommon for students to experience a negative shift in their feelings and, at some point in their candidature, begin to experience isolation and loneliness. In a study of the self-reported experiences of a group of PhD students in the Department of Management Communication at the University of Waikato in New Zealand, Annick Janson and colleagues described a 'chaos of feelings' and found that '[a]lthough present in a minor way at the start of [the PhD] journey, negative feelings intensified, coming in waves that increasingly battered [the students'] self-esteem'.⁴³ Such feelings apparently mirror the results

⁴³ Annick Janson, Laurie Howard and Michele Schoenberger-Orgad, 'The Odyssey of PhD Students Becoming a Community Practice' (2004) 67 *Business Communication Quarterly* 168, 171.

of the New Zealand University Academic Audits, which report widespread feelings of isolation among New Zealand's postgraduate students.⁴⁴ Janson and colleagues suggest that New Zealand and Australian doctoral students may be particularly susceptible to such feelings and to feeling unsupported in their doctoral studies because, unlike practices in the United States, PhD students in New Zealand and Australia are not part of a formal cohort of students and often they do not attend classes as part of their degree.⁴⁵ This is certainly the case for many Australian PhD students in law, as most doctoral programs in law require very little by way of coursework completion, and generally such requirements are limited to a few modules in legal research.

In addition, legal research, arguably, is inherently a particularly solitary enterprise. Most PhD and other postgraduate research students in law, not unlike many legal academics, undertake their research independently and not as part of a research team. This is quite different to doctoral candidates in some other disciplines, such as the basic sciences, where doctoral students may be engaged in experimental work alongside other scientists in a laboratory or similar setting, and may even be carrying out their research as part of a team or institutional or industry research program.⁴⁶ In contrast, postgraduate research students in law usually spend most of their time working in isolation, on their own at home, in a library or intermittently in office space provided by the student's faculty. Postgraduate research can also be a lonely experience as research students may have difficulties connecting with other scholars who are as deeply interested in their topic of research as they themselves are. Arguably, this problem is exacerbated as students progress in their degree and the focus of their research becomes narrower and more specialised. Stephen Colbran and Belinda Tynan suggest that the isolation of law postgraduate students is exacerbated by low concentrations of legal academics with doctoral degrees with whom students can engage with confidence.⁴⁷ The isolation felt by a postgraduate research student in law may be deepened even further if the student is not engaged in employment or work outside their course of study. Little is known about the extent and nature of employment amongst postgraduate research students in law, and it would be instructive to better understand their employment patterns. Such patterns have implications for the strategic development of

⁴⁴ *Ibid* 172.

⁴⁵ *Ibid*.

⁴⁶ In the federal government's Department of Education Science and Training (DEST) study of students undertaking Australian doctoral degrees, disciplinary specificity was identified as one of the features affecting doctoral experiences: see DEST Report, above n 13, ch 2. See also Harman, above n 38.

⁴⁷ Colbran and Tynan, above n 29, 39.

financial support schemes⁴⁸ for postgraduate research students in law and development of suitable educational frameworks for the delivery of such programs. In particular, if students are deeply embedded in the workforce whilst undertaking postgraduate research degrees in law, this may signal opportunities for further developing industry-based and funded postgraduate research programs in law.⁴⁹

A postgraduate research degree may represent a social burden as students find they have less time to spend with family and friends; this is often the case in the later stages of a research degree. Furthermore, it is often difficult to explain the nature of legal research to either non-lawyers or those outside academia. As a result, students may generally feel unsupported by peers, family and friends. The potential social isolation of the postgraduate research student points to the need for institutions and departments to ensure that students are at least provided with strong support structures within the institutional setting.⁵⁰

At an individual level, postgraduate research students in law need to be able to identify the point at which feelings of isolation become counterproductive for them and to their goals, and find ways to move through this critical point.⁵¹ Supervisors also represent an important link between postgraduate students and the broader faculty and its activities, and can help postgraduate students tap into 'loose networks' of support or scholarly exchange.⁵² At an institutional level, law faculties and research clusters may need to work to counter the effect of the absence of a formal departmental role (in a laboratory, for example) for postgraduate researchers.⁵³ Postgraduate students should be encouraged to participate in the scholarly life of the law faculty; for example, by inviting students to participate in staff seminars and to present papers in appropriate forums. Law faculties can help students to combat such isolation by facilitating the organisation of postgraduate events, where students can meet one another, talk about their research and doctoral related experiences and, importantly, share common experiences. Research has identified the pivotal role of the department or faculty in providing 'doctoral students with their most important educational, academic and administrative relationships'.⁵⁴ As reflected in the goals of the

⁴⁸ For a discussion of issues relevant to offering doctoral students adequate financial support and resources, see DEST Report, above n 13, 5.6.

⁴⁹ See DEST Report, above n 13, 4.5.1, for a discussion of industry-funded doctoral topics and the challenges posed by such programs.

⁵⁰ For a discussion of support structures and mechanisms in doctorate education, see DEST Report, above n 13, 5.

⁵¹ Janson, Howard and Schoenberger-Orgad, above n 43, 178.

⁵² *Ibid* 179.

⁵³ This was identified by DEST as most noticeably affecting acculturation opportunities for doctoral researchers in the 'soft' disciplines: see DEST Report, above n 13, 4.7

⁵⁴ DEST Report, above n 13, 4.8.

ALPN, there is also increased recognition that the development of collaborative structures for postgraduate research supervision between law schools, particularly for doctoral candidates, with a view to building a community of practice, may represent an important paradigm shift for legal academia in the future.⁵⁵

2 *Maintaining Motivation and Interest*

Faced with the intellectual challenges posed by postgraduate research in law, and the potentially isolating aspects of legal research, students may find it difficult to maintain motivation and interest in their research project. Anecdotally, most full-time PhDs in law take between three and five years to complete and longer when part of the candidature is part-time.⁵⁶ During this time, faculty support is arguably crucial. Structured progress reviews, such as annual panel reviews in the absence of the supervisor, can assist in identifying and solving problems and are reported to be particularly welcomed by doctoral students across disciplines and universities.⁵⁷ The individual student will need to identify what strategies are likely to be most effective for them in maintaining motivation and interest in their postgraduate work — talking to other students and sharing ideas on this issue may be useful. Other strategies may also be helpful in maintaining motivation and interest; for example, students may find it useful to work on different parts of their research project concurrently so as to increase the variability of the work being undertaken and thereby ward off boredom. Students may also benefit from strategies which are directed at changing the rhythm and pattern of their work by either changing the intellectual focus or taking strategic breaks. Setting realistic and achievable goals can also promote motivation and continued interest. Students who feel they are not meeting their goals may find that their motivation and interest begins to waiver. Goals need to be continually revisited and reviewed as the research project develops. The supervisor may have a key role in assisting students with this process.

In addition, for the individual student, it is important to acknowledge that it is possible to lose motivation and interest in research as a result of an unexpected change in focus or direction in their research plan. In this respect, it must be recalled that

⁵⁵ Colbran and Tynan, above n 29, 50.

⁵⁶ In their study of 139 doctoral degree holders, Dinham and Scott found that the majority of participants completed their degrees in either three (20 per cent), four (18 per cent) or five years (20 per cent). Women were more likely to take longer to complete their degrees with 25 per cent taking five years to complete their doctorate: see Steve Dinham and Catherine Scott, *The Doctorate — Talking About the Degree* (University of Western Sydney, 1999). This research is not specific to doctoral candidates in law but, arguably, provides a snapshot of trends generally amongst doctoral students.

⁵⁷ DEST Report, above n 13, 6.3.

postgraduate research, particularly a PhD, is a learning process and accordingly students should not feel discouraged by the fact that their research is gradually evolving over time — often a thesis ends up looking quite different to what was initially envisaged.⁵⁸ Maintaining motivation and enthusiasm in postgraduate research through all its highs and lows will be facilitated by a deep interest and passion for the research topic.⁵⁹

3 *Dealing with Stress and 'Burnout'*

Understanding the nature and potential sources of the different stresses that may arise during a postgraduate research degree is important for the student, so that he or she can identify and deal with such stresses at first sight and thereby avert burnout. One of the most important things for students to recognise is that many of their feelings, frustrations and difficulties are not unique to them but are also common to other students. This is not to trivialise or homogenise an individual's experiences but simply to suggest that, sometimes, knowing that others share similar experiences can greatly assist in maintaining or regaining a balanced perspective. Shared understandings with others can also help in overcoming such difficulties.⁶⁰ On a practical level, some simple strategies grounded in common sense but too often forgotten can help postgraduate research students deal with stress and burnout; for example, maintaining a healthy and balanced lifestyle is important — eating well and getting enough exercise, relaxation and sleep is obviously essential in managing stress and avoiding burnout. Taking appropriate breaks from work is also important. More time spent working on research does not necessarily equate to increased productivity as information overload may become counterproductive.⁶¹ Learning to cut one's losses is a useful skill — sometimes perseverance is needed, but other times dogged persistence is counterproductive and can result in time being wasted and unnecessary frustration.

Getting help earlier rather than later is important in managing stress and burnout. Postgraduate research students should be encouraged to seek assistance as soon as a problem arises so that difficulties can be dealt with swiftly and more serious problems averted. Some students may want to talk to their supervisor(s) about such difficulties and accordingly supervisors should be well-equipped and know where to refer students for appropriate assistance.

⁵⁸ See Part I of this paper.

⁵⁹ DEST Report, above n 13, 4.5.

⁶⁰ Janson, Howard and Schoenberger-Orgad, above n 43, 173.

⁶¹ See, eg, Rodger W Griffith, Kerry D Carson and Daniel B Marin, 'Information Load: A Test of an Inverted-U Hypothesis with Hourly and Salaried Employees' (2006) 22 *Journal of Applied Psychology* 763. This study examined the impact of information load in an employment context but the findings are, arguably, generalisable to other settings as well, such as study.

It is also in the interest of institutions to establish appropriate support services to assist students to deal with stress and burnout. Most universities have a university counselling service that can assist students with such issues. Unfortunately, postgraduate students may be less likely to access such services compared to undergraduate students. Data from the University of Sydney's Counselling Service, for example, indicates underuse of counselling services by postgraduate students.⁶² For students that do access such services, close to half of all postgraduate students are presenting for mental health difficulties. This is a higher proportion than for undergraduate students (although still high at 40 per cent of all presentations). The most common mental health difficulties are anxiety, depression and stress, followed by interpersonal difficulties and then study-related difficulties.⁶³ Students should understand that asking for help is not indicative of failure: most people need help at some point and needing help is perfectly normal. The potential impact of mental health issues is particularly important for postgraduate students in law given the findings of recent research indicating that depression and other mental health issues plague law students and the legal profession.⁶⁴ All postgraduate law students will have experienced the rigorous demands of undergraduate law school and many will have spent time working in the profession and have experienced the unique demands and pressures of legal work or practice. Some postgraduate students in law may therefore come back to study having already faced or possibly while still dealing with depression or burnout.

B *Work–Life Balance*

Achieving a work–life balance is notoriously difficult for postgraduate research students (and arguably academics as well).

⁶² The authors are grateful to Ms Jordi Austin, Head, University of Sydney Counselling Service, for providing the data cited here. This service has also identified the difficulties that may arise in accessing postgraduate students and getting them to participate in one-to-one sessions or group programs. Since 2006, the University of Sydney Counselling Service has been running some outreach programs targeted specifically at PhD students and this has resulted in a slight increase in the proportion of postgraduate students using the service, but still proportionally lower than the undergraduate population.

⁶³ Due to the constraints of the service's database, reporting is limited to a single presenting issue per consultation. This does not adequately reflect the complexity of problems students are bringing to the consultations. For example, it is not uncommon for a student to present with a study-related problem that is causing distress, and interpersonal conflict. Females are generally much better users of all health and mental health facilities, and this is also true for female PhD students. At the University of Sydney Counselling Service, male students constitute roughly 32 per cent of clients (on the rise from 28 per cent in 2006).

⁶⁴ Norm Kelk et al, 'Courting the Blues: Attitudes Towards Depression in Australian Law Students and Legal Practitioners' (2009) *Brain and Mind Research Institute Monograph* 1.

Difficulties in balancing personal demands and the demands of a postgraduate research degree can exacerbate the psychological issues discussed above and lead to difficulties, as well as hinder a student from making progress in their research. Postgraduate research students may be faced with financial pressures or employment-related difficulties; many postgraduate students in law seemingly continue to work either full-time or part-time during their doctorate.⁶⁵ Moreover, often, postgraduate students also have parenting, family or other care responsibilities that need to be balanced with the demands of their degree program. Given that many postgraduate students in law complete at least five or six years of undergraduate study, and that many also complete practical legal training requirements, and may spend some time in practice before returning to postgraduate study, it is likely that many postgraduate students in law, particularly doctoral students, are approaching midlife at the time of commencing postgraduate study and certainly by completion. Steve Dinham and Catherine Scott reported that almost half of their sample of doctoral students across a range of disciplines were in their 30s at the time the doctorate was awarded, with an approximately equal number being in their 20s and 40s. Women (32 per cent) were more likely than men (22 per cent) to be in their 40s.⁶⁶ This means that many postgraduate students in law are more likely to be at a point in their life when they are facing major life events such as marital or relationship breakdown, illness in a loved one or even be facing their own health issues. Dinham and Scott found that the vast majority (91 per cent) of participants in their study reported changes in their personal life while completing their doctorate.⁶⁷ The most common changes experienced were family and personal life (60 per cent), changes to life outside the family (14 per cent), financial changes (14 per cent) and work changes (9 per cent). A majority of participants reported experiencing pressures, difficulties or crises during their PhD.

1 *Financial Pressures*

Often, postgraduate research students have financial commitments that must be met despite their study; for example, due to family responsibilities. In particular, students may be faced with substantial financial pressures if they had to give up full-time work to undertake postgraduate study.⁶⁸ Anecdotally, it seems as if law students are in a different position when compared with students in other disciplines. For example, in some disciplines such as in the physical or medical

⁶⁵ See, eg, Dinham and Scott who reported that the majority of their sample had worked either full-time or part-time during their degree: above n 56, 46.

⁶⁶ Ibid 11–12.

⁶⁷ Ibid 53.

⁶⁸ Dinham and Scott reported that almost a quarter of their participants stated that they found it difficult to support themselves during their PhD: ibid 38.

sciences, it is not uncommon for doctoral students who have not secured a scholarship to receive funding through a program grant or other such source, and even for students on a scholarship or research fellowship to receive further top-up funding. Such opportunities in law are relatively rare — if a postgraduate research student is engaged in research work, usually, it will be supplemental to their thesis rather than an avenue that permits them to undertake their research in a paid capacity.⁶⁹ For those postgraduate research students who are recipients of a scholarship, the time constraints for completion imposed by the scholarship may be an added pressure and thus the scholarship may represent something of a mixed blessing.⁷⁰

2 *Family Life and Relationships*

Balancing a research degree with family life and commitments can be challenging. This is particularly so for those students who have parenting or other care responsibilities. A research degree may place additional stress on relationships. For some students, the thesis becomes a target of resentment as it represents a source of encroachment on time with family, particularly young children. Conversely, the demands of a young family or other care responsibilities may lead to resentment being felt by the student because such responsibilities may seem to detract from time that could otherwise be spent in furtherance of research. For those students with family, parenting or other care responsibilities, it is critical to try and set clear and reasonable boundaries around the research project and degree. Setting realistic goals is important in order to avoid a pattern of frustration.

Maintaining a healthy and balanced family and social life is also important for postgraduate research students in order to retain ‘sanity’. Allowing oneself to become socially isolated during postgraduate research is not healthy and can lead to depression and loneliness, which in the long term will clearly be counterproductive to the student’s research work. Striving for balance is important; knowing when that balance has been compromised and taking steps to get help is vital.

⁶⁹ DEST identified stark resource differences and opportunities for doctoral students in the hard and soft disciplines as a cause for governmental concern: see DEST Report, above n 13, 8.2.

⁷⁰ Most scholarships available to PhD students, such as an Australian Postgraduate Award, can be held only for three years (two years for Research Masters) with the possibility of a maximum extension of up to six months, subject to satisfactory progress and provided the grounds are related to study and are beyond the control of the student: *Commonwealth Scholarship Guidelines* <<http://www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200510274?OpenDocument>> at 23 December 2009.

3 *The PhD and Major Life Events*

Major life events such as relationship breakdown, diagnosis of serious or chronic illness in a loved one or even one's own illness can arise at any time, particularly as we get older. This means that often postgraduate research students will have to cope with such events during the course of their degree. Rather than struggling alone in dealing with major stresses of this kind, students may benefit from talking to their supervisors and letting them know what is going on as soon as possible. A key trait, which students look for in the student-supervisor relationship is effective supervisor support and guidance.⁷¹ Students should also seek the assistance of support services such as university counselling services and postgraduate student associations, among other groups.

4 *Full-Time or Part-Time Candidature*

The decision of whether to undertake postgraduate research in law by full-time or part-time study may be a difficult one that requires a student to take into account a host of different factors. Central to this decision may be the need to continue full-time work either because of financial or career-related concerns. For example, PhD students in law who have an academic appointment may on the one hand feel that progress in their PhD is at times compromised by academic responsibilities such as full undergraduate teaching loads. On the other hand, again anecdotally, PhD students particularly in the later stages of their candidature are seemingly, increasingly, being encouraged to secure an academic appointment as an important step in their career progression, given the increasingly competitive nature of legal academia. Postgraduate students may also have to decide on part-time or full-time candidature in light of other personal circumstances such as caring responsibilities (an issue which arguably arises for women particularly).⁷² Lastly, the availability of scholarships that may be taken part-time, and restrictions on the number of hours that a student may work while receiving a scholarship may influence the decision about full- or part-time candidature. The relative advantages and disadvantages of part-time versus full-time candidature will need to be weighed up by each student in light of their own individual circumstances. However, in general, students should be alert to the fact that whilst full-time candidature may be appealing as it allows more rapid progression and completion of the degree it may also involve more stress and take more of a personal toll. Conversely, part-time study may allow the student to more easily balance their

⁷¹ DEST Report, above n 13, 4.8.

⁷² Dinham and Scott, above n 56, 12 found women were slightly more likely to undertake their doctorate degree part-time (37 per cent) compared to men (32 per cent).

research work with other responsibilities and commitments; but it can sometimes lead to inadequate time being given to research, and it may be difficult for students to gain momentum in their research, particularly early on in the life of the project. A lack of adequate progress may lead to students losing interest in their research and eventually opting to drop out of the program. For some students, a combination of full-time and part-time candidature over the life of the degree may work best in balancing competing demands. There is no optimal time at which, or mode by which, to undertake a postgraduate research degree in law. Individual circumstances will vary; however, understanding some of the challenges posed by a postgraduate research degree in law can better prepare prospective students and aid informed decision-making and planning around higher-degree research.

IV SOME PRACTICAL CONSIDERATIONS IN UNDERTAKING POSTGRADUATE RESEARCH IN LAW

Postgraduate research students from the outset of their candidature need to carefully consider how they work best and what conditions are likely to optimise their productivity. Everyone works differently: what works for one student will not necessarily work for another; moreover, a student may have to employ different and varied strategies at different points in their doctoral project. By the time a student enters a postgraduate research degree program in law, it is assumed they will have had sufficient experience in the study of law so as to have at least some insights into their academic strengths and weaknesses, and understand how they work best and what conditions are most likely to precipitate high-level intellectual engagement and a sustained output. To sustain the intellectual and personal demands of postgraduate research, students must enjoy the work they are doing and ‘own’ their project.⁷³ An experienced supervisor who is well-attuned to the diverse needs of doctoral students and whose pedagogy in supervision reflects the need for flexibility in supervisory practices can assist the individual student to identify particular approaches which are most likely to suit the student in their doctoral project.⁷⁴ Whilst postgraduate students already have a substantial background in university study, the demands and nature of postgraduate research are in some key respects quite different to the study that has previously been undertaken by students, particularly at undergraduate level. A preliminary discussion between the student and supervisor(s) about such issues may also facilitate and enhance

⁷³ DEST Report, above n 13, 4.5.

⁷⁴ See Angela Brew and Tai Peseta, ‘Supervision Development and Recognition in a Reflexive Space’ in David Boud and Alison Lee (eds), *Changing Practices of Doctoral Education* (2009) ch 10.

the student–supervisor relationship. Establishing a positive working relationship between student and supervisor based on mutual respect⁷⁵ and shared understandings and expectations of one another is an important if not essential goal for postgraduate research supervisors and students.

At the outset of a postgraduate research project, students should also give careful consideration to the formal requirements they must meet in completing their thesis; for example, the word limit, how the thesis should be presented, and what is involved in the examination process. Understanding these formal requirements will assist the student in developing their thesis and help them plan ahead, save time, and possibly eliminate unnecessary stress later on.

A Maintaining a Good Working Relationship between Student and Supervisors

Success in a postgraduate research degree is in important ways contingent upon the student–supervisor relationship.⁷⁶ Somewhat surprisingly, there seems to be a relatively limited literature on supervisory practices in postgraduate research programs in law.⁷⁷ Stephen Colbran and Belinda Tynan⁷⁸ point to a paucity of discipline-relevant supervisory training and practice in law. Some researchers have suggested that the pressure of teaching, research, publication and administration on academic staff has resulted in changes in supervisory practices such as a move to peer-group seminars for postgraduate research students.⁷⁹ Clearly, this is an area that warrants further research and academic discussion. Angela Brew and Tai Peseta suggest that doctoral education generally now increasingly occupies ‘contested and reflexive space — a space operating at a number of different levels’.⁸⁰ This means that the doctoral project and experience is shaped and influenced by interactions at and across the governmental level, the institutional level, the faculty level, the supervisor level and at the level of the individual student. Inevitably, this will mean that doctoral practices result ‘in sometimes conflicting challenges and dilemmas, as different agendas are played out in particular contexts.’⁸¹ At a basic level, it is clear that one of the

⁷⁵ Mutual respect and trust between student and supervisor have been identified as key factors that influence some students’ choices for supervision: DEST Report, above n 13, 4.4.

⁷⁶ Dunleavy, above n 18, 4.

⁷⁷ For useful discussions on the supervisory process, see Stephen Colbran, ‘Collaborative Supervision of Legal Doctoral Theses through E-Learning’ (2004) 1 *University of New England Law Journal* 1–29. See also Desmond Manderson, ‘Asking Better Questions: Approaching the Process of Thesis Supervision’ (1996) 46(3) *Journal of Legal Education* 407.

⁷⁸ Colbran and Tynan, above n 29, 38.

⁷⁹ Dunleavy, above n 18, 4.

⁸⁰ Brew and Peseta, above n 74, 126.

⁸¹ *Ibid.*

most important things a postgraduate research student can do is to nurture a strong and productive relationship with their supervisor(s). A positive and arguably active and interactive relationship between student and supervisor will enhance the postgraduate research experience. Students need to take ownership of their research project and understand that they are primarily responsible for it and will need to actively foster and drive a strong and constructive relationship with their supervisor(s). It must be acknowledged, though, that sometimes masked and competing agendas and politics will impact on the student–supervisor relationship and render the student relatively powerless in the relationship and as against broader faculty or institutional politics.⁸² In this section of the article, some important aspects of developing and maintaining a good working relationship between research students and supervisor(s) are discussed, recognising the reflexive space in which doctoral education is embedded.

1 *Choosing a Supervisor*

At the outset, postgraduate research students need to consider possibilities for supervision. Most law schools require a postgraduate research degree student to be supervised by at least two supervisors — usually a primary and associate supervisor.⁸³ Finding suitable postgraduate supervision in law may be difficult. This is in part due to low concentrations of area-related expertise within institutions as well as difficulties in finding appropriately qualified and experienced supervisors who have the necessary methodological experience demanded by increasingly diverse and interdisciplinary projects.⁸⁴ Sometimes, potential supervisors are limited in their capacity for supervision due to limited resources and other workload demands. Availability of resources is often a key factor that will impact a supervisor’s decision to accept or reject a student for supervision.⁸⁵ Central to a functional student–supervisor relationship is a strong match between the proposed research project and supervisor expertise and skills.⁸⁶ Compatibility of personalities between student and supervisor is also important.⁸⁷ In assessing the potential of a prospective student for postgraduate research, supervisors will generally consider the student’s academic record; however, some supervisors also consider as important personal characteristics

⁸² Dinham and Scott, above n 56, 2.

⁸³ For example, this is the policy of the University of Sydney: see *University of Sydney (Doctor of Philosophy (PhD)) Rule 2004*, 9.1, <http://www.usyd.edu.au/calendar/05j_PhD_rule.shtml> at 23 December 2009.

⁸⁴ *Ibid.*

⁸⁵ DEST Report, above n 13, 3.4.

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

such as perseverance, dedication, enthusiasm, determination, and a burning desire to resolve a particular problem.⁸⁸

2 *Mutual Understandings and Expectations*

A strong and productive relationship requires mutual understandings and expectations as between student and supervisor(s). At the outset, students should seek to develop mutual understanding with their supervisor(s) on issues such as: key goals in the research project; the direction and focus of the research project; and what approach the student wants to adopt in their project (both in terms of the content and the approach to research and writing). Supervisors and students must be mindful of the fact that sometimes power differentials between the supervisor and student can lead to students feeling forced to accept a particular paradigm or theoretical framework for their research project.⁸⁹ A supervisor's conception of their role in supervision and their supervision pedagogy may influence the supervisor–student dynamic and the balance of power between supervisor and student. Brew and Peseta suggest that supervisors should be encouraged to take a critical view of their supervisory role and critically reflect on their supervision practices.⁹⁰ Students should be supported with a view to facilitating constructive exchange with supervisors about potential impediments to their progress including conceptual schisms and any other issues such as work commitments or other responsibilities — it is better to deal with such issues upfront and early on in the piece rather than after problems become entrenched or incompatible expectations have been allowed to fester which undermine the student–supervisor relationship.

3 *Maintaining Good Communication*

Good communication — defined by DEST to consist of open and frequent communication — is fundamental to establishing and maintaining a productive relationship between student and supervisor.⁹¹ Ideally, the student and supervisor should discuss at the outset expectations about how often and by what means communication will take place. Some students require or desire regular communication with their supervisor(s) and other students are more comfortable with less frequent communication. The student and supervisor(s) need to achieve a mutual understanding around communication as early as possible in the relationship in order to avoid misunderstandings or a complete breakdown in communication. Supervisors tend to interpret a lack of contact or a drop in the frequency of contact as a sign that the student

⁸⁸ Ibid 3.5.

⁸⁹ Ibid 4.4.

⁹⁰ Brew and Peseta, above n 74, 136–7.

⁹¹ See DEST Report, above n 13, 4.4.

is experiencing difficulties.⁹² Students should try to keep their supervisor(s) informed of any difficulties or issues as they arise in their candidature, whether personal or thesis-related. Such issues are, once again, best dealt with earlier rather than later. If a breakdown in communication does occur, or the relationship between student and supervisor becomes strained, the situation should be addressed urgently by all concerned. Many law faculties have some form of annual progress review or mid-point review for research students that will often represent an appropriate avenue for such difficulties to be raised and solutions advanced either independently of, or in conjunction with, supervisor(s).

4 *Different Styles and Approaches*

Integral to the student-supervisor relationship is mutual understanding of how each individual works. Students need to understand a supervisor's approach to supervision and supervisors need to understand how the individual student works best; how the student wants to approach their doctoral research; and how such approaches will translate in terms of the role of the supervisor. It is important for the student and supervisor to understand how compatible their respective expectations are in terms of issues such as: the approach the student wants to take in their research and writing; how much direction is to be given to the student by the supervisor; whether the student will work independently or require closer supervision; and whether the student will require the imposition of informal deadlines for regular submission of work. A lack of understanding between student and supervisor(s) can lead to unnecessary tension in the supervision relationship. As suggested by Brew and Peseta, critical reflection on the part of the supervisor regarding the functionality of the student-supervisor relationship will enrich this partnership.⁹³

5 *Responding to Supervisor Feedback*

Students sometimes are unsure about how to respond to feedback provided by their supervisor(s). A particularly difficult situation is when a student is provided with conflicting feedback or advice from different supervisors. These difficulties may be exacerbated by students not clearly understanding the respective role of the primary and associate supervisor.⁹⁴ Supervisors need to be mindful of such issues and consider the possible difficulties the student will face in trying to resolve potentially conflicting feedback. A meeting may be necessary where the student and all supervisors are in attendance in

⁹² Ibid 4.3.

⁹³ Brew and Peseta, above n 74.

⁹⁴ Ibid.

order to clarify points of contention. Students should feel comfortable asking supervisors for clarification when this is needed. The DEST report noted that ‘supervisor feedback can have a supportive function, but can cause frustration if it does not encompass deep, critical feedback.’⁹⁵

B *Formal Requirements*

There are a number of formal or technical requirements which need to be satisfied in completing a postgraduate research degree in law. Students should be familiar with what the formal requirements are of their particular degree program at their institution and plan accordingly so that unnecessary problems do not arise later in the process. Importantly, formal requirements can actually shape a thesis itself and thus must be taken seriously by postgraduate research students.

1 *Word Limits*

In planning a postgraduate dissertation, students should be clear about the word limit they must adhere to. For example, a 100,000 word limit is usual in the case of a PhD in law in Australia. Having to conform to this word limit will undoubtedly impact on: how the thesis is to be presented; the central arguments that are to be developed; what arguments are to be excluded; and what materials should be included to substantiate the thesis. It is much easier to plan a thesis with a view to adhering to the word limit from the outset. Having to severely cull the thesis prior to submission may be very difficult and if the need for such culling was not envisaged and has not been allowed for, this may compromise the integrity of the thesis, not to mention all the wasted time and effort. An excessively long thesis may also not be welcomed by examiners and, in some cases, may not be able to be submitted at all.

2 *The Examination Process*

There have been claims that the examination of PhD theses continues to be ‘shrouded in mystery’.⁹⁶ However, students should make every effort to understand the examination process that is followed at their institution. For example, students should know the extent to which they can be involved in nominating an examiner or excluding a specific examiner from examination of their thesis. Supervisors usually have a central role in making recommendations

⁹⁵ See DEST Report, above n 13, 4.5.

⁹⁶ See Sid Bourke, Jill Scevak and Robert Cantwell, *PhD Examination and Examiner Characteristics*, Australian Association for Research in Education <<http://www.aare.edu.au/01pap/bou01588.htm>> at 23 December 2009.

for the appointment of examiners and accordingly students should ensure they discuss with their supervisor(s) any concerns around the appointment of appropriate examiners. In Australian universities, examination of a PhD degree in law, for instance, generally involves submission of a dissertation, which is examined in most cases by three examiners; usually most if not all of whom will be external to the candidate's institution and may include an international examiner.⁹⁷ Examiners are usually chosen on the basis of their expertise, reputation in the field, experience in supervision and examination, and publication record.⁹⁸ Examiners should also be independent.

Students should also know how long the examination process is likely to take — in most law faculties in Australia students will be advised of the outcome of the examination in three to six months from the time of submission. Students should also understand what outcomes are possible on examination. The University of Sydney, for example, in its PhD examiner's report requires each examiner to make one of the following recommendations on examination:

1. The candidate be awarded the degree of Doctor of Philosophy without further conditions
2. Award be made subject to minor corrections of the thesis to the satisfaction of the University
3. Award be made subject to the making of emendations or the fulfillment of other conditions as outlined in the examiner's report
4. The candidate not be awarded the degree of Doctor of Philosophy, but be permitted to resubmit a revised thesis for examination following a further period of study
5. The candidate not be awarded the degree of Doctor of Philosophy⁹⁹

A doctoral thesis can only be resubmitted once. An examiner is required to state the grounds on which they have made their recommendation relative to the content and presentation of the thesis, particularly in relation to the requirements pertaining to originality and suitability for publication.

Students should consider the potential impact of the different possible outcomes on their situation; for example, if a student has commenced full-time work after submission of their thesis, how will they manage extensive emendations or even resubmission of it. From a psychological and/or emotional perspective, it may be difficult for a student to re-engage with their thesis in order to complete

⁹⁷ Ibid. In some overseas jurisdictions, the PhD in law is also examined by an oral examination, the PhD viva, in which the candidate defends the outcome of their research work, usually before two or three academic experts in the field. This form of examination of a PhD in law is not common in Australia.

⁹⁸ Ibid.

⁹⁹ See University of Sydney, *Degree of Doctor of Philosophy Examiner's Report on Thesis*, above n 32.

emendations or undertake work required for resubmission after having had a break; particularly, if they expected their dissertation to be passed with minimal emendations. Fortunately, an experienced supervisor will usually provide their student with a good indication of what the outcome of their examination is likely to be. Students who are advised that they are not ready to submit their thesis should carefully consider whether or not to proceed with submission against the advice of their supervisor(s). Students sometimes submit contrary to their supervisor's advice due to time imperatives but may be better advised to seek an extension in their submission deadline or make other appropriate arrangements rather than submitting prematurely.

V CONCLUSION

Increases in student numbers and the proliferation of research degree programs, alongside other temporal and structural developments in the current higher education arena, has enhanced the visibility of postgraduate research in law in Australian law schools. The increase in the numbers of postgraduate research students in Australian law schools, in particular, might be thought to reflect something of a 'coming of age' of legal academia.¹⁰⁰ Arguably, this is to be celebrated. As postgraduate research work in law has become increasingly common in Australian law schools, however, the urgency of the challenges facing individuals completing degrees and institutions seeking to support law research students has increased. The issues for students and faculties canvassed in this article relate to the intellectual challenges of research in law, the personal aspects of the postgraduate research experience and the supervision process and relationship. Law faculties, supervisors and students need to reflect on the nature of postgraduate research in law, the purpose of and rationale for undertaking a postgraduate research degree in law, and the unique and multifaceted challenges that must be met in developing and successfully completing a postgraduate research project.

In relation to the overall purpose or purposes of higher degree research in law, it may be that the time is right for a consideration or a reconsideration of what these overall purposes might be. For instance, in relation to the PhD in particular, while, traditionally, across a range of disciplines, a doctoral thesis has been regarded as an apprenticeship in academia, the professional nature of legal education, the historical absence of PhDs even in the legal academy and the movement of students completing law postgraduate research

¹⁰⁰ See Hutchinson, above n 9, 5–6. In the context of criminology, Lucia Zedner has suggested that a discipline might mark its own maturity when it comes to mainly employ its own PhDs: see Lucia Zedner, 'Pre-Crime and Post-Criminology?' (2007) 11(2) *Theoretical Criminology* 261, 268.

degrees into fields other than academia, suggests that the ongoing relevance of this animating idea for postgraduate legal research is open to question.¹⁰¹ Further, the relatively rapid rise to prominence of SJDs and other law research degrees invites a discussion of the aims and value of these programs, over and above a consideration of the particular capacities or interests of a prospective or commencing research student. If the proliferation and increased popularity of postgraduate research degrees in law is to be both a positive and sustainable development in legal education, this discussion should be robust and wide-ranging, taking into account the range of particular concerns considered in this article as well as broader structural and temporal considerations canvassed by way of introduction. It is hoped that this article may contribute to such a discussion by placing the students' experience at the centre of the debate.

¹⁰¹ The DEST report into the doctoral education experience identified a lack of support for career development for students as a cause for concern: see DEST Report, above n 13, 8.3. For a sophisticated set of discussions about doctoral research in Australian universities, see the special edition on doctoral degrees in the knowledge economy of *Higher Education Research and Development* 21(2).