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## Australian legal education a decade after the Pearce Report: A review of McInnis,C. and Maginson,S. Australian law schools after the 1987 Pearce Report

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## REPORT

# AUSTRALIAN LEGAL EDUCATION A DECADE AFTER THE PEARCE REPORT:

A Review of McInnis, C and Marginson, S,  
Australian law schools after the 1987 Pearce Report,  
AGPS, Canberra 1994, 503 pgs including  
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## INTRODUCTION

Significant cuts to higher education, a sustained growth in the number of law students, quality review rounds, the placing of law in the highest band of new HECS charges, internationalisation, pressures to teach legal skills, legal workshop/ practice issues, the challenges of adjusting law teaching to new technologies, a belief in the value of small group teaching in the face of financial pressures to increase already large student-staff ratios, moves by the profession to “accredit” law schools, the export of Australian legal education, the rapid growth of post-graduate legal education — these are just a few of the issues facing law schools today which make the McInnis and Marginson Report important reading, even though it is now getting rather long in the tooth. That so much has happened in the few years since the Pearce and the McInnis and Marginson reports evidences the frantic pace of change to which law schools and universities must continue to adjust. I deliberately use the word “adjust” because few law schools, if any, have had the time or resources to be proactive, to plan for change in an orderly,

coherent and strategic way. Perhaps in a world where the theory of chaos prevails, such strategic planning and visions must remain but illusions and dreams. At the same time, disciplinary reviews, such as the Pearce Report and the McInnis and Marginson post-Pearce evaluation are important, even indispensable, if legal education is to continue to advance and remain of a high quality. This review aims to summarise the major findings of McInnis and Marginson and to chronicle a few of the more significant changes which have occurred in the three years since its publication.

## MAJOR FINDINGS

The Pearce Report was the most comprehensive and significant investigation undertaken of Australian legal education. Although aspects of the Report were severely criticised by many legal academics,<sup>1</sup> most commentators would agree with Weisbrot's conclusion that "it is nevertheless true that the Pearce Report is the first important review, and comprehensive compilation of data on, Australian legal education, and will be the point of departure for all debate on legal education for some time."<sup>2</sup>

Seven years after the release of the Pearce Report, McInnis and Marginson<sup>3</sup> conducted a study which assessed its impact on Australian legal education. The general finding was that the impact of Pearce was considerable, although not greater than the revolutionary changes directly attributed to Labor Government reform of higher education.<sup>4</sup> The response to Pearce was most profound in those schools where the Report identified major weaknesses.<sup>5</sup> Among the other Pearce Report achievements noted by McInnis and Marginson were:

- recognition of the importance of the law library and discussion about library standards;
- encouragement of small group teaching, although this was undermined by high staff/student ratios;
- generation of critical reflection on course content and the role of skills teaching.<sup>6</sup>

McInnis and Marginson also highlight areas in which the Pearce Report was not successful:

- law schools continue to be underfunded and plagued by resource difficulties;
- its recommendation against a rapid expansion of law schools

was ignored;

- the increase in research activity owes more to the establishment of the Australian Research Council system than to the Pearce Report;
- the report failed to grasp the importance of diversity amongst law schools.<sup>7</sup> McInnis and Marginson conclude that on balance, the impact of Pearce was positive and that such discipline based reviews:

have a useful role to play in improving the work of individual schools, particularly in raising awareness about teaching, curriculum and scholarship, and in building a culture of reflection and self evaluation. Discipline reviews are less successful in securing external accountability although they are an important source of information about which to make judgments. ...The goal of discipline reviews is to improve the whole “map” of the discipline, not to sort out a pecking order. It is essential that such reviews are pursued cooperatively.<sup>8</sup>

## EXPLORING SOME POINTS ON THE LEGAL EDUCATION

### MAP: SOME CHALLENGES OF THE 1990S

McInnis and Marginson note that one of the major benefits of a disciplinary review is that it “maps” the discipline across the University system. Such has been the rate of change in the Australian tertiary sector, that the legal education map charted by Pearce, and extended by McInnis and Marginson, is no longer accurate in a number of respects. The remainder of this review article thus examines some of these forces of change in order to place the Pearce and McInnis and Marginson Reports in context and focus on issues presently facing those involved with Australian legal education.

### THE NUMBER OF LAW STUDENTS AND SCHOOLS

McInnis and Marginson conclude that the overall the growth of law student numbers was significantly higher than that experienced by other discipline areas. Between 1988 and 1992 law student numbers went up 60.7 per cent compared to 50.4 per cent in business, 49.3 per cent in health and 33.9 per cent in all fields.<sup>9</sup> McInnis and Marginson predicted that unless the government puts the brakes on, the number of law schools and students is likely to continue to expand.<sup>10</sup> This has in fact been the case.

One view of this expansion is that it is all out of proportion to

the likely demand for lawyers. Also, the need for the LLB degree to prepare students for the practice of law and the course content required as part of one's LLB degree creates a tension between the need to satisfy professional requirements and the desire for a broader, multi-purpose legal education. However, another view is that law is an excellent generalist degree "able to be exchanged across a wide range of jobs and careers".<sup>11</sup> Australian legal education thus increasingly reflects multiple visions: a good general education, training for government, business, politics, and so on. A law degree is able to be combined with almost any other discipline, and for a variety of purposes, only one of which involves the formal practice of law. Analyses based on the number of law students versus the number of practicing lawyers and consequent calls to reduce the number of law schools miss the point. In a real sense, the law degree of the 1990s is seen by students as offering a good general education which will be useful no matter what career path one happens to take.

While undergraduate law student numbers grew significantly over the last decade, the greatest growth rate of law students has been at post-graduate levels. By 1992 there were 1,279 Masters students compared to only 708 in 1988 (81 per cent increase).<sup>12</sup> Over the same period, the number of doctoral students in law went from 68 to 155 (128 per cent increase).<sup>13</sup> McInnis and Marginson conclude that most of the postgraduate legal education would be offered by the older law schools, the newer ones choosing to focus first on getting their LLBs well established.<sup>14</sup> In the last three years, however, many newer law schools have acted to establish both research centres and post-graduate programs which are based around staff expertise. Examples are the University of Canberra (corporate law), the University of the Northern Territory (Asian and Comparative Law) and Griffith University (Ethics).

### *Questions of Access and Equity*

McInnis and Marginson point out that the Pearce Report had little impact on making law schools more accessible to groups traditionally under represented among the educated elite.<sup>15</sup> Notwithstanding the fact that most law schools have changed entry profiles to admit a wider diversity of students, there is "no available evidence to indicated an associated change in the socio-economic

background of students.”<sup>16</sup> There is also the problem of access to legal education by underprivileged Australians, especially Aborigines,<sup>17</sup> migrants and lower socio-economic groups. Traditionally, law has attracted mainly students from the middle-upper class. This situation persists despite attempts by the Whitlam Labor government in 1974 to abolish tertiary fees and institute a student allowance scheme, a policy aimed at increasing working class participation in tertiary education.<sup>18</sup> Despite these politics, access by the lower socio-economic groups has not improved.<sup>19</sup> Indeed, the introduction of the Higher Education Contribution Scheme under which students pay fees, recent government decisions to charge LLB law students the highest rate, and government encouragement of universities to charge fees for post-graduate courses, including Legal Practice workshops, has exacerbated access concerns. A reexamination is required of these policies which have tended to perpetuate existing inequalities.

One area in which access to minority groups has been increased is the percentage of women studying law. Weisbrot reports that:

Women comprised only 11.4 per cent of Australian university law students in 1960, 22.1 per cent in 1974, 29.1 per cent in 1977, 33.3 per cent in 1980, and 41 per cent in 1984. This latter figure was precisely the same as for women in university studies generally, and was higher than most other professional faculties ... The figure in 1989 rose to 46.7 per cent, and the 1990s should see the first 50–50 division.<sup>20</sup>

Notwithstanding the greater participation rates of women in legal education, there appears to be a long way to go. The gains made by women in the legal profession, though significant, have not been quite as spectacular. Nor has the higher proportion of women in the legal profession altered the class composition of the profession. Indeed, women lawyers tend, even more than men, to come from families with high socio-economic status. They also tend, much more than men, to abandon the practice of law within their first five years of practice.<sup>21</sup>

## CHANGING CONCEPTS ABOUT THE TEACHING OF LAW

McInnis and Marginson note that the Pearce report identified the following trends in legal education curriculum and teaching:

the growth of the combined degree; the introduction of elective subjects; the use of small group teaching; attempts to introduce skills

training; the provision of coursework higher degrees; and specialised focus in teaching and research.<sup>22</sup>

In the years since McInnis and Marginson, various Commonwealth initiatives<sup>23</sup> have further encouraged Australian law schools to improve their teaching performance.<sup>24</sup> Led by the seminal work of legal educators such as Twining<sup>25</sup> and Birks<sup>26</sup> in the UK, Gold<sup>27</sup> in Canada, and Goldring,<sup>28</sup> Le Brun<sup>29</sup> and Johnstone<sup>30</sup> legal education has continued to develop. Such scholarship and research has also played a vital role in applying to legal education the vast body of literature on education covering such areas as: learning objectives, assessment, teaching strategies,<sup>31</sup> learning styles, skills teaching,<sup>32</sup> the use of technology in teaching,<sup>33</sup> evaluation and more.<sup>34</sup> The emphasis on teaching improvement has been further institutionalised through the efforts of such bodies as the Centre for Legal Education in New South Wales, the Committee of Australian Law Deans, the Australasian Law Teachers Association, Law Teaching Workshops, the Law Foundations in the various States, the development of a law clearing house, Uniserve-LAW, Government sponsored grants for teaching innovations, and so on. Other reforms which have endeavoured to improve university teaching are: the introduction of special teaching courses for university lecturers,<sup>35</sup> initiation of teaching excellence awards, establishment of specialised centres focusing on teaching excellence,<sup>36</sup> and promotion criteria and paths which recognise excellence in teaching.

While much has been accomplished, the significant cuts to Australian tertiary education, the placing of law in the highest HECS band and the continuing failure to recognise the true costs of legal education constitute threats which could see a return to large classes, declining number of electives, fewer tutorials, assessment by examination only and the adoption of a predominantly “chalk-and talk teaching methodology. Such a regression would also threaten the diversity of legal education, a strength in the Australian system which was endorsed by Pearce as well as McInnis and Marginson.<sup>37</sup>

Clearly, there is much more which must be done to improve the quality of teaching. For example, despite the growing number of post-graduate students enrolled in law, comparatively little has been written on that level of education. Education issues specific to pre-admission legal education and continuing legal education have

likewise largely been ignored. Issues of staff development and the proper role of performance appraisal<sup>38</sup> are other concerns, as is the continuing under-funding of legal education which is based upon a model of large lectures and standard tutorials.<sup>39</sup> Another problem is how to bridge the gulf between legal theory and practice; and a determination of the proper role of skills teaching in the undergraduate law program.<sup>40</sup>

Yet another challenge is to get educational institutions to work together to improve the quality of legal education. Institutional cooperation is required at all educational levels primary, secondary, tertiary and continuing education to account for and reflect the reality that education is a lifelong process. Universities should be able to build upon and in turn help support the work of secondary and primary schools in educating Australian citizens to live in the global village of the Twenty-First Century. Legal educators at pre and post admission levels need to cooperate with law schools in building upon the skills and curriculum content of undergraduate legal education.<sup>41</sup> Finally, legal firms and the profession should offer continuing legal education which provides the life-long learning and re-learning necessary for a rapidly changing and increasingly global reality.

## RESOURCES FOR TEACHING

McInnis and Marginson point out that the Pearce report “placed a major emphasis on the question of resources”.<sup>42</sup> This was in recognition that funding “was likely to be a major component of any strategy to secure significant improvements in teaching, research and professional preparation”.<sup>43</sup> As Goldring notes, “modern legal education, if it is to be better than what we had in the past, requires computers, different teaching methods, clinical programs and so on”.<sup>44</sup> Unfortunately, in the years since Pearce and McInnis and Marginson, in Australia and elsewhere, economic rationalism has resulted in minimalist government policies which have left law schools struggling to maintain, less more improve, existing educational standards.<sup>45</sup> Funding formulas for law continue to be based on this 19th century view of legal education.

At the very time when law teaching has demanded dramatically increased resources, Commonwealth assistance to Universities has shown a dramatic decline. The Australian government’s strategy



has instead been to encourage universities to look to their own devices with the result that non-federal university income in some universities represents a significant portion of the university's total budget.<sup>46</sup> In many cases, these extra monies are generated from overseas students. Unfortunately, jurisdictional restraints and diverse legal systems mean that Australian law schools have attracted comparatively few of such students.

While inadequate resources is a problem shared by law schools in most countries, the interesting issue is what Australian legal educators are doing about this crisis. One response is to have a united front to highlight the problem. The Committee of Australian Law Deans has outlined the minimum desirable standard of funding and facilities to be provided to Australian law schools. This standard, which has won the endorsement of the Law Council of Australia include the following:

- an overall staff/student ratio no higher than 1:15;
- the provision of funds to provide proper remuneration and incentives sufficient to attract and retain qualified academic staff;
- a recognition that a clinical and skills component in legal education necessitates a staff/student ratio no higher than 1:8;
- the provision of an adequate building and infrastructure to permit a full range of education activities such as meeting clinical programming and small group teaching;
- the provision of both adequate support equipment including computer access for both teaching and information retrieval, as well as adequate support staff.

The above goals, laudable as they are, will amount to no more than a wish-list without some type of infra-structure to back them up. In at least two respects, some small movement has occurred in this direction. First is the adoption of Australasian Universities Law Library Standards. To this end the Committee of Australian Law Deans (CALD) has approved a position statement which elaborates the need for law library standards.<sup>47</sup> These standards<sup>48</sup> are based upon best practice in North America, especially Canada and reaffirms the special importance of the law library.

Another important aspect about libraries is the rapid growth of information technology. It is important that universities develop information strategies covering both traditional and electronic based systems. It is also increasingly difficult if not impossible for

universities to develop a comprehensive collection on every subject. There is a need for specialisation and the development of coherent strategies by which material can be made available beyond institutional boundaries. Libraries will have to work out ways to collaborate with each other and providing services not only to immediate patrons but also for those accessing the library from a distance. Given the knowledge explosion and the emphasis on individual learning and research, the learner support role of the library will take on an even greater importance.<sup>49</sup> Finally, given Australia's increasing role in international and regional developments and the trend toward interdisciplinary research, law libraries and collections have a long way to go before they come close to matching international best practice as compared to the libraries in the best Canadian and US law schools.<sup>50</sup>

As to resources generally, the government is likely to continue providing financial support for Australian law schools for some time yet; but the level of funding is likely to deteriorate as general economic and social problems increase. The Centre for Legal Education has developed its own framework for analysis for the resource implications of quality legal education and this has helped law schools argue their case for increased funding.<sup>51</sup> Nevertheless, it is unlikely that university administrations will provide adequate resources to the law schools. As Goldring reminds us,

[T]here will be increased shortages of virtually all the resources which modern, effective law schools will need. Economically "dry" governments will not increase resources for legal education.<sup>52</sup>

Australian law schools will have to develop strategies for additional funding. Extra funding will be required for purposes like staffing and salaries; procurement of faculty infrastructure; research; and curriculum development. The future survival of high quality law teaching and research will depend heavily on the resourcefulness of the law schools themselves.<sup>53</sup>

One important source of funding for many law schools is the provision of legal education to full-fee paying overseas students, especially post-graduates. Presently the number of overseas students studying law at Australian universities remains small,<sup>54</sup> and as a percentage of all international students studying in Australia the number is decreasing.<sup>55</sup> Nevertheless, the full potential overseas students offer to Australian law schools has not been fully explored<sup>56</sup> and it has been estimated that demand for

legal education will remain high for some time given the shortage of law faculties in the Asian region.<sup>57</sup> Another important development is the University Mobility in Asia and the Pacific (UMAP) program which involves over 600 university exchange agreements. Inter-institutional developments such as the Asia Pacific Economic Law Forum<sup>58</sup> and institutional developments such as the establishment of an Asian Law Centre at the University of Melbourne and the Centre at the University of the Northern Territory are also notable. A number of law schools have also offered short-course programs to overseas markets. For example, the University of Wollongong in 1994 offered two 10-week courses in Marine and Maritime Law to qualified lawyers working at senior levels in different areas of Indonesian Government.<sup>59</sup> The students included judges and lawyers from the Indonesian police, armed services, Justice Department and other government agencies. There are, however, a number of constraints to the realisation of the full benefits overseas students will bring to Australian law schools.<sup>60</sup> Among the most important constraints are:

- The undergraduate market is limited mainly to common law oriented jurisdictions, such as Malaysia and Singapore, and (to a limited extent) the Pacific Island countries. Moreover, many developing countries are beginning to build their own educational infra-structures and provide legal education in their own countries rather than have some of their brightest people and precious currency go out of the country.
- The refusal by some of these jurisdictions (especially Malaysia and Singapore) to recognise the law degrees of most Australian law schools for professional admission purposes.
- The content of the LLB syllabus is basically Australian and does not meet the needs, requirements and expectations of overseas students. Australian law is less influential in the region than US and UK law; and UK law degrees are more likely to be accepted for admission purposes.
- Australia is facing increasing competition from Europe, United States, New Zealand and Canada who are also keen to export education.
- The requirement that students who undertake courses in law have a high standard of English as well as discipline-specific vocabulary.
- Resource constraints facing Australian law schools prevent the

development of innovative programs that reflect the special needs and circumstances of foreign law students.

- Lack of knowledge about overseas markets and how to tap into them.

Legal educators will need to direct more research effort at the whole question of the impact of overseas law students on Australian law, and the development of programs that will make Australia competitive with the United Kingdom, Canada and the United States. Whilst admitting the economic potential overseas students may offer to Australian law schools, it is important to stress that for legal educators the focus must first and foremost be educational and one which builds on the cultural diversity and other attributes which overseas students bring to the university — benefits which also inure to the benefit of the wider community. As to the future of overseas students in Australia, one would predict that there will be a decline in undergraduate numbers in favour of fee based post-graduate education and vocational education. Also, markets are likely to shift away from countries such as Malaysia, which aims to be a future exporter of education, and towards the export of education to such countries as India, Vietnam and Indonesia.<sup>61</sup> There are also a number other potential funding sources which have been adopted in varying degrees by most law schools.<sup>62</sup> These sources include: external research grants; charging of tuition fees;<sup>63</sup> consultancies; establishing service courses; financial support from alumni associations, and private foundations. Of these sources, fee-based postgraduate courses appear to be the most common. However, as of 1998 Universities will be able to offer additional (up to 25 per cent of quota) full fee paying places to Australian students. This will likely benefit those institutions which are most marketable, but there will be a fear that such additional numbers may come at the expense of quality.

If notwithstanding the above measures, the resource situation continues to deteriorate, law schools will be compelled to consider a number of other alternatives to overcome their funding problems. These include: (a) the sharing of teaching staff by law schools, especially those in close proximity with one another; (b) restricting postgraduate teaching to selected law schools; (c) specialisation in certain subdisciplines, and (d) the sharing of library and other infrastructure resources.

This emphasis on resources, found in the Pearce Report and

echoed by McInnis and Marginson, is likely to remain a central, though not exclusive preoccupation of law schools throughout the 1990s.

### LAW TEACHING AS A CAREER

Reflecting the relative decline in law school resources, and despite the Pearce recommendation of an ideal student staff ratio of 15 to 1, McInnis and Marginson found that the majority of Australian law schools have experienced an increased number of students per academic staff since 1987. For example, between 1987 and 1992, the University of Adelaide Law School went from 16.6 to 21.8 students per staff; Australian National University from 22.9 to 26.3; and the University of NSW from 11.8 to 16.4.<sup>64</sup>

To be successful quality programs must be integrated with human resource policies. Ultimately, a law school is only as good as the people who comprise its community of academics, support staff and students. Law schools must attract the best and the brightest of graduates. The vast majority of staff today will also possess post-graduate qualifications, including a growing number who hold a PhD. One major concern in regard to the underfunding of legal education is that it will cease to attract quality staff. There will be little incentive for further study if academic salaries are permitted to lag seriously behind those of the legal profession and judiciary.

Even when academic salaries are only slightly behind those of the profession, the conditions of academic life have been attractive. The opportunity to think, research, write and teach can be very rewarding. Any diminution in these conditions of employment thus have the capacity to act as a significant disincentive to those who would seek to work in academia. It is the authors impression, and that of many of my colleagues, that academic life is becoming increasingly stressful. There would appear to be several causes for this: growing number of students; shortage of resources; explosion of knowledge; heavier teaching loads; tensions between teaching and research, and a university environment which (in responses to quality audits and other demands) requires a growing amount of paperwork and other administrative duties. Similarly, notions of the student as “customer” and university teachers as “suppliers of a service” tend to undermine traditional teacher-student relationships.

While universities must have a flexible and highly qualified workforce, this will not be achieved if under-resourcing means staff are overworked, morale is low and departments are not well managed.

## LEGAL RESEARCH

McInnis and Marginson report that the quantity of legal research has risen since the Pearce Report in 1987.<sup>65</sup> At the same time, they found that in the years following Pearce, the overall funding of such research had been reduced by 25.9 per cent.<sup>66</sup> While law schools have received a larger share of external funding from the Australian Research Council,<sup>67</sup> internal university grants have in fact been cut back.<sup>68</sup> Other conclusions which McInnis and Marginson drew about research were:

- the Pearce Reports dualism “between research within law and research from outside law” (doctrinal versus inter- disciplinary research) is not as absolute as portrayed by Pearce. A “broader epistemological framework might have enabled the mapping of relations between law and other fields of knowledge, contributing to the formation of new knowledge on the disciplinary boundaries”.<sup>69</sup>
- Most law schools had picked up on the Pearce Reports recommendation for more research training for new academics.<sup>70</sup>
- Most law schools had followed the Pearce recommendation to develop guidelines governing commercial research and consultancy.<sup>71</sup>

In the area of research a continuing problem for law academics is that granting bodies, governments and university administrations have failed to appreciate the special nature of legal research.<sup>72</sup> Instead such bodies have tried to force the realities of legal research into a “scientific” mould and have come up with the not surprising conclusion that much of what the law academic does is not “research. There is a serious misconception that legal research, rather than discover new truths, merely reviews and synthesises the past legal rules. Indeed, the whole culture of legal research is markedly different from that which exists in regard to the pure sciences.”<sup>73</sup>

Of course dollar figures do not consider the equally important matter of the quality of legal research — an area which merits

investigation. McInnis and Marginson note that the Pearce Report “did not conclusively define ‘quality’ in legal research”.<sup>74</sup> At the same time, they found that in two senses, there was an increase in the quality of legal research. The first is one which sees quality as a “managed formal processes which require formal evaluation.”<sup>75</sup> McInnis and Marginson found that most law schools now regularly report their research and have strategic research plans. Secondly, the majority of law academics are now engaged in legal research with the result that there is more of a research culture in Australian law schools.<sup>76</sup> Since McInnis and Marginson, the quality review rounds and pressures on law schools to attract competitive funding have no doubt given even further emphasis to legal research.

Law schools are becoming increasingly dependent upon external funding sources for a variety of activities that they might wish to undertake. Foundations, law firms, business and other potential sources are all going to take account of a given school’s research productivity as one factor in deciding whether funding should be given. Fourthly, as academic salaries fall further behind, more and more academics are being forced to seek consultancy work with government agencies, independent statutory authorities, law reform commissions, and so on. The research profile of a school as whole and its individual staff members is a factor that will influence the awarding of such work. The establishment of research centres in strategic areas is crucial to meet these challenges.<sup>77</sup> Increasingly research centres will be created which transcend institutional and even national boundaries. For example, on the inter-institution level, several Australian law schools have joined formed a joint partnership which focuses on research in environmental law. Internationally, Australian law schools are already actively seeking research partnerships with counterparts in other countries, especially in Asia.

Looking to the next few years, five features are likely to dominate Australian legal research: (a) more emphasis will be on group and, as far as possible, interdisciplinary and empirical research; (b) there will be emphasis on linkages with industry; (c) there will be a move away from general and uncoordinated research to institutional specialisation and key research centres; (d) there will be an increased emphasis on the provision of research training and university-wide research infrastructure; and (e) law school leaders will, more than ever before, need to demonstrate the

managerial skills necessary to compete and account for the expenditure of research funds. This will require every law school to identify its research focus and direct its resources to achieving excellence in those areas.<sup>78</sup>

## TWO IMPORTANT ISSUES NOT DEALT WITH BY MCINNIS AND MARGINSON

### *Challenge of Technology*

An issue which was virtually untouched by Pearce or McInnis and Marginson is that of the impact of information technology on the teaching and research mission of law schools. Information technology has become an integral part of Australian culture. Given the rate of change and data/information/ knowledge explosion, the impact of developments in information technology on Australian society and culture will likely be even more pronounced in the years ahead. Students coming into universities will increasingly have some background and experience in information technology.<sup>79</sup> They will have the expectation that such technology will be an integral part of what they learn and how they learn. Modern technology also appears certain to extend greatly the walls of the traditional classroom. Satellite technology already exists to enable lectures to be transmitted around the world. The use of electronic mail and the Internet also have the potential to revolutionise legal teaching.

The choices regarding information technology impact upon almost every aspect of education: staffing, budget, equipment, curriculum offerings, teaching methodologies, and staff development. Each year educational institutions at all levels must face the problem of how to come to grips with constantly changing technology while at the same time confronting tight or decreasing budgets and competing demands on curricula. To cope with these pressures all institutions are developing some policy guidelines to light their way. It also means that law academics, as teachers and researchers, should contribute to public debate and policy formation on information technology issues and that we should be active in conducting research regarding the impact of technology on our way of life. For example, there is a danger that by placing undue emphasis on the use of technology in large group teaching



will tend to promote more large group teaching. While technology may enhance large group teaching, the greatest gains are to be found in using technology to enhance teacher-student, student-student, and teacher-teacher contact. The highest goal is to promote greater student involvement and meaningful interaction; and learning by doing, as opposed to mere electronic page turning.

Another important element of information technology policy is the realisation that institutions cannot go it alone. Policies should include ways to promote inter-institutional cooperation. This cooperation is especially important in disciplines such as law which traditionally have been under funded. No law school today can ignore the revolution which is beginning to transform scholarly communications and even the profession itself.<sup>80</sup> For example, with the advent of commercial and public CD ROMs and such huge databases as Lexis-Nexis and Westlaw, it is possible for every staff member to access from their desktop to a ten storey law library which include access to primary materials, over 100 full text legal journals, legal records, newspapers and a wide variety of key secondary materials. The legal material on the Internet has also greatly expanded. While law schools have had to invest considerable sums in infrastructure, hardware and software, there has also been the need to maintain an increasingly expensive traditional paper-based system. This need to bridge both paper and electronic based systems has further strained already insufficient resources. One response has been for some Universities to collaborate and pool resources, including software and hardware, as well as to rationalise acquisitions so that certain universities develop specialist collections which can then be shared with and made accessible nationally. However, much more sharing and inter-institutional cooperation is required.

Upon leaving University information technology will be an integral part of the worlds in which our graduates will work. Legal educators must be prepared and able to educate tomorrow's lawyers who will work in law offices which will operate in a dramatically different environment than that which exists in the majority of today's organisations. Also sophisticated computer software and artificial legal intelligence will threaten those in the legal profession who depend upon performing routine tasks such as much conveyancing. It is not that the knowledge acquired by the lawyer will become devalued; only that the type of knowledge that

makes a lawyer valuable is changing. In the future, work that focuses primarily on routine transactions will face stiff competition from software programs that can do it faster, cheaper. As Paul Saffo of the Institute of the Future points out: “There is a lot less knowledge in knowledge work than we realise, and a lot of heavy lifting computers can do. It will free up people to think, and also cause a lot of pain. It’s already happening with lawyers.”<sup>81</sup> Thus, in the future there will be a premium, at all levels (undergraduate, pre and post admission), on legal education which provides students with higher order, critical thinking skills. All of this means that educational institutions must enable students to use such information technology fully; that we should explore how such technology can enhance students’ learning.

### *Internationalisation and Regional Emphasis*

Another challenge which received little or no attention in the Pearce Report or in McInnis and Marginson is internationalisation. The globalisation of business, internationalisation of trade and the increasing prevalence of multi-cultural interdisciplinary teams are beginning to redefine the nature of work. In the not too distant future, legal teams working in different places, at different times and from different cultures will become commonplace. As business, people and data cross national borders and look to foreign markets, Australian law firms have had to modify their practice to accommodate such demands. Indeed, many Australian firms themselves have established offices or linkages with counterparts in other countries, especially in the Asian region. As the internationalisation trend continues, Australian lawyers and business people are going to have increasing contacts with their counterparts in the Asian region than has been previously the case.<sup>82</sup> Barriers to legal practice are also likely to be reduced, giving foreign lawyers access to and the right to compete in the market for legal services. Most law graduates will be affected to some extent by international aspects of law.<sup>83</sup> Many law graduates will become involved in international trade in some aspect of their careers.<sup>84</sup> Australian law graduates will have to be less parochial and more international in their legal outlook. Students will have to be more aware of other legal systems and have a greater understanding of international law (both public and private),

comparative law and be more knowledgeable about and sensitive to other cultures. Australian law and lawyers will need to be sensitive to the cultures of the Asian countries. Law schools have the responsibility in creating the foundation for these changes through teaching and research. For example, new emphasis will need to be placed on the teaching of commercial law related subjects in the wider regional context and a focus on comparative law.<sup>85</sup>

Perhaps the time for asking why “internationalise” is past and that the focus should be on the best strategies and plans to achieve an international focus.<sup>86</sup> In conducting such planning, it must be realised that internationalisation is a multi-faceted process involving curriculum reform; resource allocation; research; linkages with other institutions; postgraduate education; executive continuing education programs; scholarships; overseas exchanges of students and staff; faculty development; and so on. Because the impact of internationalisation is so wide-spread, there should be a coherent, well thought out institutional strategy which accounts for long term as well as short term needs and goals. Different institutions, building on existing strengths and taking into account their particular geographic, economic, political, cultural and institutional contexts will meet the challenges of internationalisation in different ways. While strategies should be institution specific, there is much to be learned from the successes and failures of programs elsewhere.

## CONCLUSION

Australian law schools face many challenges, including, how to: adjust to the problems of a increasing numbers of law students and declining educational resources; pursue multiple and sometimes conflicting purposes of legal education; cope with the forces of internationalisation; keep up to date with the rapid changes brought about by technology; find adequate resources for legal education; ensure that the legal education offered is of a high quality; enhance equity and access to legal education for all levels of society; adjust legal education to meet the needs of a multi-cultural society; move from large group teaching relying on lectures to small group teaching founded on principles of adult learning; and provide sound educational leadership for law schools in the midst of the corporatisation of our universities. While the answers to these

problems remain unclear, what is not in doubt is that if Australian legal education is to improve, law schools must continue to generate and share in a culture of critical self evaluation, review and improvement. To this end, the Pearce Report and the McInnis and Marginson follow-up have made an important contribution.

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- Legal Education in the Twenty-First Century: A Time of Challenge, in P Birks ed, *What are Law Schools For?: Pressing Problems in the Law* (Oxford: Oxford University Press, 1996) vol 2, ch 3 at 17 (with M Tsamenyi);
- Internationalisation and its Impact Upon the Teaching of Legal Skills' Australasian Professional Legal Education Council International Conference: Skills Development for Tomorrow's Lawyers: Needs and Strategies, Sydney, 4–8 September 1996, vol 1 at 71–94;
- The role of information technology (IT) in university teaching (1995) 6(2) *J Law & Info Sci* 131 (with S Johnston et al);
- An Australian Perspective on the Promises and Pitfalls of Law School Accreditation, in P Birks ed, *Reviewing Legal Education* (Oxford: Oxford University Press, 1994) ch 5 at 47.

© 1997. (1997) 8 *Legal Educ Rev* 213.

<sup>1</sup> The Pearce Report has been described as: “trendy”, “mediocre”, and lacking “perception, sensibility, intellectual grasp or analytical force”, exhibiting a “deeply conservative bias”. See D Weisbrot, *Australian Lawyers* (Melbourne: Longman Cheshire, 1990) 129.

<sup>2</sup> *Id.*

<sup>3</sup> C McInnis, & S Marginson, *Australian Law Schools After the 1987 Pearce Report* (Canberra: Government Printing Office, 1994) vii.

<sup>4</sup> *Id.*

<sup>5</sup> For example, at the University of Tasmania, where the author had taught previously, the Pearce Report encouraged the university to give additional funds to help remedy weaknesses identified in the Report.

<sup>6</sup> McInnis, & Marginson, *supra* note 3, at vii.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at viii.

<sup>9</sup> *Id.* at 15.

<sup>10</sup> *Id.* at 233.

<sup>11</sup> *Id.* at 235.

<sup>12</sup> *Id.* at 14.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 175.

<sup>15</sup> *Id.* at 206.

<sup>16</sup> *Id.*

<sup>17</sup> For example, a special initiative to facilitate legal education for Aboriginal Torres Strait Islanders has been designed by James Cook University. Also, regional joint initiatives for Aboriginal pre-law students have been undertaken by Murdoch, Western Australia and the University of the Northern Territory.

<sup>18</sup> Weisbrot, *supra* note 1, at 233; D Weisbrot, Recent Statistical Trends in Australian Legal Education (1990–91) 2 *Legal Educ Rev* 218, at 227–242. See generally, KA Ziegert, Social Structure, Educational Attainment and Admission to Law School (1992) 3 *Legal Educ Rev* 155–234.

<sup>19</sup> See J Goldring, Admission to Law Schools in Australia (1977) 20 *Vestes* 61; J

- Goldring, Admissions Policy, in Law Council of Australia Foundation, *Legal Education in Australia* (Melbourne: Law Council of Australia Foundation, 1987) vol 1, 471.
- <sup>20</sup> Weisbrot, Recent Statistical Trends, *supra* note 18, at 230.
- <sup>21</sup> M Thornton, *Dissonance and Distrust: Women in the Legal Profession* (Melbourne: Oxford University Press, 1996). See also Weisbrot, *supra* note 18, at 230, citing M Hetherton, *Victoria's Lawyers — Second Report* (Melbourne: Victoria Law Foundation, 1981) 116; KA Ziegert, *Students in Law School: Some Data on the Accumulation of Advantage* (unpublished) (Sydney: Sydney University, Department of Jurisprudence, 1983) 9.
- <sup>22</sup> McInnis, & Marginson, *supra* note 3, at 170.
- <sup>23</sup> See Senate Standing Committee on Employment, Education and Training Report, *Priorities for Reform in Higher Education* (Canberra: AGPS, 1990) 1. For a US example, see, RJ Light, *The Harvard Assessment Seminars: Explorations with Students and Faculty about Teaching, Learning and Student Life* (First and Second Reports) (New Haven, Mass: Harvard University, Graduate School of Education and Kennedy School of Government, 1990 & 1992).
- <sup>24</sup> Sydney University Learning to Don Mantle of Top Teacher (1993) November 18–24 *Campus Rev* at 11.
- <sup>25</sup> W Twining, *The Hamlyn Lectures Blackstone's Tower: The English Law School* (London: Sweet & Sons/Sweet & Maxwell, 1994).
- <sup>26</sup> P Birks ed, *Reviewing Legal Education* (Oxford: Oxford University Press, 1994).
- <sup>27</sup> N Gold, The Theory and Practice of Quality in Law Teaching and Learning, in R Piotrowicz ed, *Proceedings of the 49th Australasian Law Teachers Association Conference* (Hobart: University of Tasmania Law Press, 1995) 135; N Gold, K Mackie, & W Twining, *Learning Lawyers Skills* (London: Butterworths, 1989).
- <sup>28</sup> J Goldring, The Role of University Law Schools in Professional Formation in Law (1987) 4 *1 Prof 6 Legal Educ* 64; J Goldring, Developing the Law School Curriculum: Factors Affecting the Design of a Law School Curriculum, paper presented to the Law Council of Australia Legal Education Conference, Bond University, 13–16 February 1991.
- <sup>29</sup> See for example, M Le Brun, & R Johnstone, *The Quiet (R)evolution: Improving Student Learning in Law* (Sydney: Law Book Company, 1994).
- <sup>30</sup> *Id.*
- <sup>31</sup> P Boyle, Quality in Teaching and Learning: Guidance from Research, in R Piotrowicz ed, *Proceedings of the 49th Australasian Law Teachers Association Conference* (Hobart: University of Tasmania Law Press, 1995) 150.
- <sup>32</sup> T Hutchinson, Taking Up the Discourse: Theory of Praxis, in R Piotrowicz ed, *Proceedings of the 49th Australasian Law Teachers Association Conference* (Hobart: University of Tasmania Law Press) 1264.
- <sup>33</sup> D Laurillard, *Rethinking University Teaching* (London: Routledge, 1993); D Considine, & J Goldring, Developing a Learning Package for Student Centred Learning, in R Piotrowicz ed, *Proceedings of the 49th Australasian Law Teachers Association Conference* (Hobart: University of Tasmania Law Press, 1995) 1278.
- <sup>34</sup> P Ramsden, *Learning to Teach in Higher Education* (London: Routledge, 1992).
- <sup>35</sup> Teaching Survey: A Special Campus Review Report (1995) Jan 1924 *Campus Rev* 13. (For example, staff at Griffith University, University of Canberra and the Australian National University may undertake a University Teaching and Learning course).
- <sup>36</sup> Examples are the Centre for the Enhancement of Learning, Teaching and Scholarship (CELTS) set up at the University of Canberra and the Centre for Educational Development and Academic Methods established by the Australian National University
- <sup>37</sup> McInnis, & Marginson, *supra* note 3, at 170–172.
- <sup>38</sup> See A Schofield, *Developments in Performance Appraisal in Commonwealth Universities* (Bulletin of Current Documentation No 117) (London: Association of Commonwealth Universities, 1995) 12.
- <sup>39</sup> See J Goldring, Teaching — the Real Casualty of Mass Higher Ed? (1995)

- March 16–22 *Campus Review* 10.
- <sup>40</sup> See for example, J Wade, Legal Skills Training: Some Thoughts on Terminology and Ongoing Challenges (1994) 5(2) *Legal Educ Rev* 173; LA McCrimmon, Trial Advocacy Training in Law School: An Australian Perspective (1994) 5(1) *Legal Educ Rev*, 1.
- <sup>41</sup> See J Goldring, Babies and Bathwater: Tradition or Progress in Legal scholarship and Legal Education (1987) 17 *UWA L Rev* 216 (arguing that the practical and technical must have a place in the law school curriculum).
- <sup>42</sup> McInnis, & Marginson, *supra* note 3, at 249.
- <sup>43</sup> *Id.*
- <sup>44</sup> J Goldring, Finding Resources for Law Schools, paper presented at the 46th annual Conference of the Australasian Law teachers Association, The University of Western Australia, Perth, 11–14 July 1991, at 14.
- <sup>45</sup> McInnis, & Marginson, *supra* note 3, at 213–15.
- <sup>46</sup> G Maslen, Uni Public Funding Slums in Five Years (1995) 6–12 July *Campus Rev* 3.
- <sup>47</sup> See S Smith, Law Libraries Lagging: Deans Move to Ensure Book Stocks Bolstered (1995) 20–26 July *Campus Rev* 1–2.
- <sup>48</sup> See J Goldring, Law Libraries, Law Teaching and Legal Research, a position paper prepared for and adopted by the Committee of Law Deans and approved at its meeting in Darwin, 23 June 1995.
- <sup>49</sup> See J Fielden, “Libraries in the Spotlight” (April 1995) ABCD, No 118, at 8–9; See also S O’Connor, Follett out of Ross: University Libraries Under Review in the United Kingdom and Australia (1994) 9 *British J Acad Librarianship* 1–2.
- <sup>50</sup> McInnis, & Marginson, *supra* note 3, at 200–301.
- <sup>51</sup> Centre for Legal Education, *The Cost of Legal Education in Australia: The Achievement of Quality Legal Education: A Framework for Analysis* (Sydney: Centre for Legal Education, 1994).
- <sup>52</sup> Goldring, *supra* note 44, at 17.
- <sup>53</sup> *Id.*
- <sup>54</sup> The market is essentially limited to the common law based jurisdictions of Singapore, Malaysia and the Pacific Islands. Up-to-date statistics are not yet available. A recent survey by the International Legal Services Advisory Committee, although inaccurate in a number of respects revealed that there are a total of 622 overseas students studying law in Australian law schools in 1991 of whom 40 per cent were from Malaysia; 58 per cent from Asia and 12 per cent from the Pacific. In the same year, there were 123 overseas students enrolled as postgraduates in law in Australia.
- <sup>55</sup> Department of Employment, Education and Training, *Overview of Opportunities for the Internationalisation of Australian Legal Services* (Canberra: Department of Employment, Education and Training, 1995). Students undertaking legal studies in Australia comprised 1.8 per cent of the total number of overseas students in 1990; down to 1.3 per cent in 1994.
- <sup>56</sup> International Legal Services Advisory Council, *International Legal Education and Training: Directions, Issues and Opportunities* (Canberra: Department of Employment, Education and Training, 1995); See also International Legal Services Advisory Council, *Australia in Asia: Legal Education Challenges and Opportunities* (Canberra: Department of Employment, Education and Training, 1992).
- <sup>57</sup> *International Legal Education and Training: Directions, Issues and Opportunities*, *id.*
- <sup>58</sup> This is a consortium formed by the University of Canberra Law School, Queensland University of Technology, the National University of Singapore, and the Hong Kong Polytechnic.
- <sup>59</sup> J Goldring, H Gamble, & M Tsamenyi, Legal Education and Training Delivery to Non-Traditional Markets, paper presented to International Legal Services Advisory Council, 1995.
- <sup>60</sup> For a detailed discussion, see E Clark, & BM Tsamenyi, Australian Perspectives on Foreign Students and Legal Education, paper presented to the Conference on Emerging Educational Challenges for Law in Commonwealth Asia and

Australasia: The Implications for Legal Education, University of Hong Kong, 12–14 April 1992.

<sup>61</sup> *Id.*

<sup>62</sup> Goldring, *supra* note 44, at 13–17; Weisbrot, Recent Statistical Trends, *supra* note 18, at 247.

<sup>63</sup> There is probably some demand for full fee paying undergraduate law students. The success of Bond University Law School is a pointer to the likely trend. But as Goldring is quick to point out the consequence of making all law schools dependent on tuition fees is to heighten problems of access and equity. Goldring, Finding Resources, *supra* note 43, at 17.

<sup>64</sup> McInnis, & Marginson, *supra* note 3, at 214.

<sup>65</sup> *Id.* at 182–83.

<sup>66</sup> *Id.* at 186–87.

<sup>67</sup> *Id.* at 183–84. Total ARC funds received by the pre-1987 schools increased from \$151,351 in 1987 to \$387,391 in 1992 (155.9 per cent increase in constant price terms).

<sup>68</sup> *Id.* 184. Internal university grants fell by two-thirds, from \$501,224 in 1987 to only \$166,585 in constant price terms in 1992.

<sup>69</sup> *Id.* at 181.

<sup>70</sup> *Id.* at 187.

<sup>71</sup> *Id.* at 188.

<sup>72</sup> The most recent DEETYA guidelines for research are a case in point. Law Reform Commission Reports, for example, don't seem to fit any category. And, a refereed article counts as much as an edited book. This reflects the scientific research model where books are discounted and the most recent journal articles carry the greatest weight.

<sup>73</sup> I Moses, & P Ramsden, Academics and Academic Work in Colleges of Advanced Education and Universities, paper presented at the Conference: 25 Years After the Martin Report, University of New England, 3 February 1991.

<sup>74</sup> McInnis & Marginson, *supra* note 3, at 183.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> Examples of such Centres are the Natural Resources Law Centre (Wollongong); National Corporate Law and Policy Research Centre (Canberra); and Asian Law Research Centre (Melbourne).

<sup>78</sup> For an excellent discussion of legal research issues see McInnis, & Marginson, *supra* note 3, ch 18.

<sup>79</sup> See H Collins, The Place of Computers in Legal Education, in P Birks ed, *supra* note 26, ch 6.

<sup>80</sup> P Metz, The View from a University Library (1995) *Change* 29.

<sup>81</sup> *Forbes* 22 May 1995, at 240.

<sup>82</sup> This is already happening. Major Australian law firms have substantial presence in the Asian region.

<sup>83</sup> One can already see major changes being made in Australian law in order to meet our commitments under various international conventions such as the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).

<sup>84</sup> There is another view that international trade will be concentrated in fewer and fewer large firms.

<sup>85</sup> Australian law schools have recognised these trends and have taken steps to respond via the introduction of courses in Asian legal systems and in the recruitment of staff.

<sup>86</sup> See ST Cavusgil ed, *Internationalizing Business Education: Meeting the Challenge* (East Lansing, Mich: Michigan State University Press, 1993).