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Beyond Australia and the Pacific Rim: Challenges for the Internationalization of Australian Legal Education

David Barker*

I. Introduction

A recent article in the Australian Financial Review highlighted the critical role which Australia's foreign student population plays in the country's tertiary education system, "bringing in billions of dollars in fees, creating about 12,000 jobs and funding services courses and facilities that would otherwise not be available locally."¹

Within Australia itself the universities are engaged in keen competition, with each other as well as overseas institutions, to enroll approximately 70,000 new foreign students who select Australia as the country for their place of study each year. Externally, Australia faces extremely fierce competition. In 2000, for example, the British Government initiated a \$15 million campaign to promote UK education to retain domestic students and win additional ones from overseas.

The United States has mounted a concerted effort to win back the 40 percent market share it lost to Australia between 1990 and 2000. It is targeting key areas such as China, Thailand, India, Korea, and Taiwan. However, according to a recent discussion paper on international education circulated by the Australian Vice-Chancellors' Committee, it is not just a matter of funding. It was noted that:

While the importance of international education as an export earner is obvious and immediate, the longer term benefits of international education are more significant, though difficult to quantify. In particular, the internationalisation of universities is critical in

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1. Michael Cave, *The Battle for Wealthy Forum Students*, SYDNEY, Dec. 15, 2001, at 22.

preparing Australians and Australia to operate effectively internationally. An important element of this is the internationalisation of Australian students themselves. If Australia is to engage effectively internationally, and specifically in the Asia Pacific region, Australian students need to have first hand study experience overseas. International education has other less tangible but nonetheless important benefits to Australia. For example, the strategic importance of having business, community and political leaders in key overseas markets who have studied in Australia and regard it with affection is difficult to overstate. This was reinforced for those present at the recent very successful celebration in Malaysia of the 50th anniversary of the Colombo Plan. International experience for Australian students as part of their university study is also becoming a widespread objective. Australians are looking to gain international qualifications and increasingly looking to employment internationally.²

Australia is in a unique position with regard to its influence on the future internationalization of legal education, standing geographically as it does between South East Asia and the South Pacific, and serving as a bridge between the Common Law and Civil Systems. Australia is therefore well placed to initiate legal educational programs which integrate knowledge and advanced understanding of both these systems.

II. International Education: The Australian Network

There are various organizations involved in the development of Australian International legal education. These include the Federal Department of Foreign Affairs and Trade, the Federal Attorney General's Department, AUSAID, the Australian International Education Foundation (AIEF), AUSTRADE, IDP Education Australia, and the International Legal Services Advisory Council (ILSAC). The latter two entities, IDP Education Australia and ILSAC, are probably the two major organizations which are the most influential in the promotion of Australian international legal education.

A. *IDP Education Australia*

This organization was established in 1969 by the Australian Vice Chancellor's Committee to provide and promote international access to Australia's intellectual education and training resources. It does this

2. See AUSTRALIAN VICE-CHANCELLORS' COMMITTEE AVCC DISCUSSION PAPER ON INTERNATIONAL EDUCATION, Sep. 2001, available at http://www.avcc.edu.au/policies_activities/international_relations/international_news/index.htm (last visited Aug. 20, 2002).

through the creation and delivery of a range of services on a fee-for-service basis. IDP has the advantage of being globally positioned through its representatives in 60 offices across 38 countries. The services it provides include: Professional and Training Management; Student Advisory and Recruitment Services; Promotions; Publications; English Language Training and Testing Services; Conferences and Information Services; and, Research and Consultancies in International Education.

IDP's General Manager, Jandy Godfrey, has been quoted as saying that "[f]oreign student education has become big business and it is highly competitive . . . [t]his is about positioning ourselves for the future . . . [w]e are sitting at the bottom of the world and it takes a very deliberate effort to get people down here."³ It is estimated that Australian universities spend about \$250 million annually marketing Australian education overseas—that is about \$3,000 to recruit each student, an investment which, in turn, generates more than \$24,000 per student for the Australian economy. This \$250 million is spent on a broad marketing effort that incorporates advertising, large-scale road shows, promotional material, websites, and agency commissions (agents generate about 30 percent of Australian's foreign students).

The fact that IDP operates through an independent board suggests the tenuous nature of IDP's links with the Universities and gives rise to the suggestion that IDP competes with its stakeholders, the Universities. However, the evidence would show that only in one or two isolated situations has there been direct IDP competition with the universities and these have been limited to instances where there has been competition for Australian Agency (AusAid) projects.⁴

B. International Legal Services Advisory Council (ILSAC)

The International Legal Services Advisory Council is a part-time advisory body established in 1990 by the Australian Government to help improve Australia's international performance in legal and related services. Their major objective has been to support an export development strategy for Australian legal services. The Advisory Council comprises representatives from Australian law firms, commercial dispute resolution centers, university law schools, and a representative of the Law Council of Australia. There are also representatives from government departments and agencies with interests in the international performance and activities of the Australian Legal

3. See Cave, *supra* note 1.

4. IDP EDUCATION AUSTRALIA - CELEBRATING 30 YEARS, CANBERRA, IDP AUSTRALIA (1999).

Services Sectors. The Council reports to the Commonwealth (i.e., Federal) Attorney-General and other Ministers. It operates through a small secretariat that is funded by the Federal Attorney-General's Department.⁵

III. The International English Language Testing System (IELTS)

Of profound concern to all Australian academic institutions enrolling non-English speaking students is the ability of these students to read, write, speak, and listen in English. The IELTS standard test was introduced in 1989, with the aim of providing an effective method to assess the increasing number of students studying across international boundaries whose first language was not English. Australian educators and administrators were among those concerned about the effectiveness of existing English tests and expressed a need for an improved test to measure the English proficiency of prospective students.

IELTS is owned jointly by The University of Cambridge Local Examinations Syndicate (UCLES), the British Council, and IDP Education Australia (through its subsidiary company IELTS Australia). The IELTS standard test is recognized as a language requirement for entry to institutes of further and higher education in Australia. IELTS tests all four language skills—listening, reading, writing, and speaking. Test candidates have the option of sitting for either the academic or the general training version of the test. The listening and speaking modules of the test are the same for both tests. The academic reading and writing modules assess whether a candidate is ready to study or train in English at the undergraduate or postgraduate level. A computer-based version (CBIELTS) was made available in the latter part of 2000. This will always be offered as an alternative, not as a substitute, to the traditional paper-based test.⁶

IV. Australian Legal Education

Australia has a varied system of legal education which has been well summarized in the following extract:

There are some 28 Law Schools in Australia, the number having doubled over the past decade. All are situated within universities located in the six States and two Territories within Australia. Virtually all law schools offer a combined degree program, in which the degree in Law (LLB) is undertaken together with another degree

5. INTERNATIONAL LEGAL SERVICES ADVISORY COUNCIL: THIRD TRIENNIAL REPORT, CANBERRA, ILSAC (1999).

6. *See id.*

over five years (for example, in Arts, Economics or Science). About half or so offer a straight LLB degree which is undertaken in four years. Many law schools also offer a coursework Masters degree in Law (LLM), often in an area of specialization. Recent surveys indicate that about half of the students who graduate enter private legal practice; the balance find employment in government, industry, commercial or other areas. The Australasian Law Teachers Association (ALTA) is the umbrella organization for all law teachers in Australia. There is also an Australasian Law Students' Association (ALSA). Both Associations hold an annual conference. The Australian legal system is based on the common law. Each State has its own court system ranging from local and magistrates' courts to a Supreme Court. In addition, there is a Federal Court and the High Court of Australia, which is the highest appellate court in the legal system. Admission to legal practice is dependent upon the completion of Practical Legal Training requirements following graduation with an LLB. A period of conditional admission is also required in most States for new practitioners during which they are required to work under the supervision of an experienced practitioner. Admission is regulated on a State by State basis, but considerable effort is being made to achieve uniformity of requirements across the various jurisdictions. Usually, the relevant admitting authority is the Supreme Court in each State. Practitioners from other common law systems may apply for admission but will be required to undertake study in relation to various aspects of Australian law, including constitutional law, property law and procedure.⁷

V. Studying Law in Australia 2001

The Council of Australian Law Deans (previously the Committee of Australian Law Deans), in co-operation with the Australian International Legal Services Advisory Committee, produces a comprehensive directory of undergraduate and postgraduate law courses at Australian universities, which is made available to students and academics overseas.⁸ This was seen as a logical step in encouraging greater interaction between Australia and the rest of the world in the study of law.

As the Honourable Sir Lawrence Street (the former Chief Justice of the New South Wales Supreme Court) states in his foreword to the directory, "Australian higher education has benefited significantly from the contribution of students, academic staff and researchers from the

7. DIRECTORY OF COMMONWEALTH LAW SCHOOLS, 1999/2000 3 (John Hatchard ed., 1999).

8. COUNCIL OF AUSTRALIAN LAW DEANS, STUDYING LAW IN AUSTRALIA 2001 (2000).

Asia Pacific Region and beyond . . . Australia has never been more conscious of a source of shared destiny with the cultures and economies of the region of which we are part.”⁹

With regard to postgraduate study, most law schools have an active postgraduate program. “Masters Degrees (L.L.M.), normally require a Bachelors Degree in Law with Honours, plus 1 or 2 years full-time study involving a thesis or coursework, or a combination of both. Masters degrees by coursework usually permit the candidate to select a range of subjects over a number of topics. Graduate diplomas, on the other hand, usually focus on 1 or 2 topics in great detail. Most universities with law schools offer Masters degrees in law by research; some also offer Masters degrees by coursework, or by a combination of coursework and research.

Other postgraduate degrees are the Doctor of Philosophy (Ph.D.), Doctor of Laws (L.L.D.) or Doctor of Juridical Science (S.J.D.). These degrees normally require at least 3 years of full-time research culminating in the submission of a thesis. Depending on the topic investigated and the skills of the candidate, he/she might be required to do some further study in research methods or in a related interdisciplinary field before completing candidature for this qualification.

In Australia it is common for practitioners to take a Graduate Diploma or Masters degree by coursework. The degrees of Ph.D. and S.J.D. are usually undertaken by lawyers who teach in law schools or in other university faculties.¹⁰

VI. The University of Technology, Sydney (UTS), Faculty of Law

The Faculty of Law, University of Technology, Sydney (UTS) is a medium sized Australian Law school consisting of 2000 students, and 50 academic and 18 administrative staff members. It is one of nine faculties within UTS. The University is one of Australia’s largest institutions of higher education with more than 24,000 undergraduate and postgraduate students taught across 300 courses.

A unique feature of the Law Faculty is that, currently, it is the only Australian Law School which has a Legal Practice major as an integral part of the Undergraduate Program. This allows for a smooth progression into a Graduate Diploma in Legal Practice, so that on completion of their studies, students may be granted admission as legal practitioners by the New South Wales Supreme Court.

The Faculty, together with the University of New South Wales Faculty of Law, jointly operates the Australasian Legal Information

9. *See id.* at vi.

10. *See id.* at 10.

Institute (AustLII) which provides access to Australian legal material via the Internet. It now has seven gigabytes of Australian and regional legal databases and a world law facility which enables access to thousands of web sites for law across the world.

AustLII is one of Australia's most popular web sites and claims to be one of the largest free legal information data bases in the world, with over 1.5 million 'hits' (pages accessed) per week, and an estimated 20,000 users per day.¹¹ It also operates a project DIAL (Development of the Internet for Asian Law) which is funded by the Asian Development Bank (ADB). DIAL is a free catalogue and search facility of legal materials on the Internet from countries throughout the world. Whilst DIAL does not add legal materials to the Internet, it does provide better access to existing information.¹²

In November 2001, at its Law via the Internet Conference, AustLII launched WorldLII, which incorporated the Legal Information Institutes of Australia, Canada (CanLII), Britain and Ireland (BAILII), the Pacific (PacLII), and Hong Kong (HKLII); South Africa (WITS) is expected to join in the near future.

VII. Emerging Internationalization of Legal Practice and Education

In Volume 73 of the *Australian Law Journal* (1999), Eugene Clark and Sam Blay discuss the implications of the globalization of legal practice for the changes which must be made to existing legal education in order to ensure that students are adequately skilled to become global lawyers. They state that "legal education must not only aim at the intellectual nurturing of the student but also at equipping him or her to be vocationally relevant and professionally functional in the global context."¹³ Their assertion is that "[v]ocational relevance and global functionalism pose some of the most crucial challenges to legal educators in the new age of globalization."¹⁴

In their review of the Australian Law School Curricula and its vocational relevance they ask whether it is feasible for the legal educator to train lawyers whose background enables them to practice trans-jurisdictionally. They state that:

If the content of our curricula are to be relevant in a world increasingly becoming internationalized, we need to reconfigure units in our curricula to include the core subjects that are essential for

11. AustLII may be accessed at <http://www.austlii.edu.au>.

12. DIAL may be accessed at <http://www.austlii.edu.au/dial/>.

13. Eugene Clark and Sam Blay, *The Internationalisation of Legal Practice and Education*, in *THE AUSTRALIAN LAW JOURNAL*, VOL 73 793 (1999).

14. *Id.*

practice in all jurisdictions. Thus the starkness of the over-generalized unit of comparative law, for instance, would need to give way to more defined and focused subjects such as comparative tort law and comparative corporations law. Curriculum offerings at undergraduate, pre- and post-admission levels should reflect these international trends. In an overcrowded law curriculum, how can such international developments be accommodated? Arguably, each law subject must account for three aspects of internationalization:

- a) evolution of municipal law to account for the new realities of globalization;
- a) comparison of specific areas of law in different legal systems; and
- b) the extent to which global developments are driving us towards harmonization and a convergence of legal systems, and in some cases, perhaps an international system of governance?¹⁵

VIII. Internationalization at UTS¹⁶

The Faculty of Law is obviously influenced by the policy of internationalization, a rapidly emerging focus of the University's intellectual, cultural, and economic development. UTS is well placed to portray itself—to its intellectual, social, and financial advantage—as a leading international university. Located in the center of cosmopolitan Sydney, with its Broadway and Haymarket campuses next to Chinatown and Darling Harbour—Sydney's historical entrepot—its students and staff are already culturally diverse by any measure. They come from a variety of backgrounds, with over ninety languages spoken as their first language. Just under half of all students were born overseas, and just under 40 percent have a first language other than English.¹⁷ One in five of the academic staff and in excess of one in four of the administrative and support staff speak a first language other than English.¹⁸

15. *Id.*

16. See INTERNATIONALISATION AND CULTURAL DIVERSITY: THE UTS ADVANTAGE, THE REPORT OF THE INTERNATIONAL ACADEMIC MATTERS WORKING GROUP TO THE UTS ACADEMIC BOARD (2002).

17. The figures are not distorted by aggregating Australia-based and international students: more than a third of Australia-based students were born overseas.

18. See UTS EQUITY & DIVERSITY UNIT, ANNUAL REPORT TO THE DIRECTOR OF EQUAL OPPORTUNITY IN PUBLIC EMPLOYMENT (2000); see also TSUI, REGISTRAR'S DIVISION, UTS, MANAGEMENT INFORMATION REPORTS: REPORT ON STUDY DIVERSITY (2000).

This policy is reflected through the more than 200 agreements of various kinds that UTS shares with offshore (overseas) higher education institutions and its extensive range of international programs and initiatives. The number of international students at UTS has grown dramatically during the last five years so that there are now almost 4,000 students enrolled here.¹⁹ This figure remains modest in comparison to some other Australian universities—UTS has the 10th largest aggregate load of on-shore international students and the 19th largest proportion of on-shore international students in total student load.²⁰ Nonetheless, international students are now more than 12 percent of the student body, and they have provided the University with a much-needed financial life-line while offering significant pedagogical and cultural benefits.

UTS's ever-increasing number of international students is drawn from more than 40 countries, and especially from Malaysia, Indonesia, and South-East Asia. A growing number of students from the People's Republic of China, India, and the United States are also choosing UTS as their study destination, as are students from as far away as Ghana, Cuba and Finland.

Many new international students enter UTS programs after successfully completing either an English language course through the University's Insearch Language Centre or a pre-university program at the Insearch Institute of Commerce. In addition to the international students who study on-campus in Australia, UTS has a growing number of offshore undergraduate and post-graduate courses which are delivered either through twinning programs or joint agreements with local colleges.

Through its Institute for International Studies, UTS has introduced a unique combined-degree program which offers local students the opportunity to combine their professional degree (from a choice of 30 undergraduate programs) with a degree in international studies.²¹ Students from the Faculty of Law form one of the largest groups of students undertaking this program. "The program, which aims to increase Australian students' awareness and understanding of other cultures, is extremely popular among local students and has attracted national attention for its innovation within the Australian higher education sector. The program is also available to international students

19. UTS, ENROLMENTS BY FACULTY—INTERNATIONAL STUDENTS (1999-2001), available at <http://www.miu.uts.edu.au/reports/enrol/ffpos.htm> (last visited Aug. 20, 2002).

20. COMMONWEALTH DEPARTMENT OF EDUCATION, TRAINING AND YOUTH AFFAIRS, STUDENTS 2000: SELECTED HIGHER EDUCATION STATISTICS, available at <http://www.detya.gov.au/highered/statistics/tables/students2000.htm> (last visited Aug. 20, 2002).

21. *Australian Excellence in Education*, EDGECLIFF NSW FOCUS, 1998, at 85.

interested in formally studying Australia and the Pacific region in addition to their professional degree."²²

IX. UTS Faculty of Law: Postgraduate Programs

In its promotion of international legal education, the Faculty of Law works in close cooperation with other units of the University. These include the International Programs Office which is responsible for the international aspects of postgraduate programs, and the University Graduate School, which is concerned with the quality control of all of the University's Postgraduate Courses, whether by research or coursework.

The UTS Law Faculty has always been recognized for its innovative approach towards postgraduate studies, particularly with regard to its introduction of the Doctor of Juridical Science (the first in Australia), and its coursework programs for non-lawyers, including a Master and Graduate Certificate in Dispute Resolution and a Master and Graduate Diploma in Legal Studies. The latter qualifications represent the recognition by the Faculty of Law that there are a number of non-lawyers who wish to undertake legal study in order to function more effectively in their chosen profession. These programs are intended to provide candidates with a sound theoretical background, as well as practical skills, so that they can identify the legal ramifications of issues that they may encounter in their professional capacity. These are not professional legal qualifications, but are designed for non-law graduates who wish to have a more detailed understanding of the legal issues raised in their specific area of practice or interest.

X. Faculty of Law, Postgraduate Studies: International Aspect

The Faculty of Law at UTS has always been aware that the traditional format of a common law L.L.M. may not be appropriate for candidates from civil law countries. Accordingly, the Faculty offers a graduate program for civil lawyers who wish to gain an understanding of the research skills, methodologies, general concepts, and doctrines of the common law, particularly those which are applicable to international and transnational business transactions.

This involves the students completing a subject entitled Advanced Comparative Law for Civil Lawyers, a co/pre-requisite for all other L.L.M. (by coursework) subjects for students with civil legal qualifications. This subject is offered twice-yearly in the (Australian) Summer Program over a three to five week intensive study period. The topics covered in this subject include sources of the common law; the

22. *Id.*

development of the common law in England and its reception in Australia; courts and lawyers in Australia; legal research in the common law; contract law in the common law; Australian public law; and aspects of the law regulating business transactions in Australia.

XI. Indonesia / Australia Specialized Training Project

Since 1988, the UTS Law Faculty has offered specialized training in intellectual property rights to engineers, scientists, and others from non-legal backgrounds, as well as trained lawyers. These intellectual property rights courses at UTS have always attracted international attention, with students from the Pacific Region and Europe regularly enrolling in the Faculty's postgraduate programs. It was because of this international reputation within the area of intellectual property rights, that the UTS Faculty of Law was offered the opportunity to conduct twelve week intensive training programs in Intellectual Property Rights to groups of between 25 to 45 professionals from Indonesia as part of the Indonesia / Australia Specialized Training Project.

These programs have consisted of 180 hours of class contact sessions timetabled over 3 months. An additional 20 hours of class contact have involved research, problem solving, and computer skills. By December 1999, four cohorts of students successfully completed the program and an additional cohort returned to successfully undertake an advanced program. The aim of the program has been to provide a course of practical relevance to participants who will be involved in the acquisition, administration, management, and enforcement of Intellectual Property Rights in Indonesia.

It has not been the intention of those coordinating the program to try to teach the minutiae of either Australian or Indonesian intellectual property law as in conventional programs for post-graduate lawyers seeking to specialize in litigation. Rather, the objective has been to emphasize the basic structures of intellectual property and to concentrate on perspectives of practical administration, implementation, and enforcement of the law. Those teaching the program have, therefore, attempted to address the development of the law and the existing international treaty framework, and to explain the workings and shortcomings of the current rules. It is important to provide a structure and an underlying theme in programs of this nature, otherwise they can disintegrate into a series of unrelated specialized topics. Students who are not already specialists in the field, and who do not have a strong grasp of the basic structures and issues, will not obtain much benefit from a course which concentrates upon juridical detail or doctrinal legal theory.

XII. Master of Laws / Master of Legal Studies (Chinese International)

As a result of the successful presentation of various short courses taught to a number of delegations from Shanghai, Beijing, and other Chinese mainland cities and provinces, the Law Faculty, in 1999, decided to proceed with the accreditation of both a Master of Laws (L.L.M.) and a Master of Legal Studies (M.L.S.) Program. These are taught in Mandarin and are available to international and Australian students. The introduction of these new programs was intended to (1) establish the UTS Faculty of Law as a significant and reliable provider of higher education in law to international students from the Peoples Republic of China; and (2) meet the Faculty's commitment to internationalization of its programs and to facilitate expansion into course delivery in other languages.

The Law Faculty was aided by the fact that the Faculty of Business had, for the previous three years, conducted an M.B.A. (Mandarin International) Program. This meant that the Law Faculty was able to take advantage of a UTS library collection that already had some holdings and translated materials in Chinese engendered from income derived from those programs. The Library also operates the CJK Online System. This provides retrieval and display of information resources in Chinese, Japanese, and Korean using the vernacular script in these languages. This program has now been expanded into an offshore program to be taught in collaboration with Beijing Management College of Politics and Law (BMCPL). It is expected that this program, which commences in January 2002, will be extended into other major Chinese cities over the course of next year.

XIII. Expansion of the Faculty's International Short Course Program

During 2001, the Faculty has continued to expand its Chinese Short Course Program in Sydney with the provision of an additional 10 short courses varying from International Trade Law for the International Business Management Institute (MFTEC), to a Water Resources Corruption Prevention Course. In November, the Faculty extended its provision of such short courses by teaching a Vietnamese Prosecutors Delegation in their native language and under the auspices of the United Nations.

XIV. Conclusion

This paper has attempted to highlight how internationalization has affected Australian legal education. This process has already begun, but as two leading commentators have observed, "[t]he internationalization

of law will continue at an even faster pace, thus minimizing the parochial attitudes which some would say have characterized legal education until late."²³ It was in order to combat such attitudes that the UTS Law Faculty has developed the initiatives outlined in this paper.

The spirit of co-operation, for example between the Law and Business Faculties at UTS, illustrates the increasing trend of cross-disciplinary studies. This promises to increase in the coming century as borders between disciplines, like those between countries, become more and more readily crossed and re-crossed. The UTS Law Faculty's commitment to the process of internationalization, and to bridging the gap between common law and civil law systems, will provide students with a sound educational base. This will be of paramount importance in the coming era of progressive internationalization or, at the least, rationalization of the legal system. There is no doubt that internationalization of law is one of the major challenges to which Australian legal educators will continually need to respond over the course of the next few years.

23. M. LeBRUN & R. JOHNSTONE, *THE QUIET REVOLUTION* (1994).

