

TRENDS IN LEGAL EDUCATION
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I am honoured to have been asked to address you this evening. I have been asked to say something about legal education in keeping with the Academy's focus this year on that topic as evidenced by its very successful conference, held in conjunction with the Australian Law Journal, in Sydney in August of this year to mark the 10th anniversary of the Australian Academy of Law, the 90th anniversary of the ALJ and the 30th anniversary of the Pearce Report on Australian Law School. I don't propose to speak in any detail about legal pedagogy, nor even very much about curricula. Much of that ground was covered at that conference and has been well articulated by the many academics who make the teaching of law their research focus. Rather, what I hope to do is offer an insight into how legal education might be, or has already, been required to innovate and change as a consequence of external influences on how legal services might be delivered in the future and as a consequence of societal pressures on many of the traditional features of the legal profession, including the way it educates future generations of practitioners. I propose to do this by reference to what is happening in Australia, the UK and the US and hope that those who have particular insights into other jurisdictions will forgive me for not covering the field.

Consulting firms the world over have been busy in recent years in attempting to identify so-called mega trends that are likely to have a significant impact on the world by 2030. Perhaps comfortingly, there is furious agreement amongst the consulting firms as to these mega-trends. They include:

1. Individual empowerment
2. Diffusion of power/globalization – a new world order as economic power shifts to Asia
3. Changing demographic patterns – an aging population means a shrinking workforce, chronic skills shortages and a fierce war for talent
4. Accelerating urbanization
5. Growing demand for food, water and energy or resource stress/climate change
6. Enabling technology.

Similar, although somewhat less ambitious, studies have been undertaken in relation to so-called mega trends that are likely to affect the legal profession. To some extent, those identified fall from the global trends and include:

1. New market opportunities – particularly in relation to class actions and health care, consequent upon changing demographics
2. The impact of technology on the sector including e-discovery, virtual law firms and automation through the use of AI
3. Increasing specialisation

4. Generational transformation – 4 generations working together spanning more than 50 years between youngest and oldest employees
5. The rise of the in-house counsel
6. Alternative legal service delivery models including legal process outsourcing
7. Alternative billing models

Before I outline my attempt to identify the mega trends in legal education in the three jurisdictions on which I have chosen to focus, let me give you some context.

In Australia, the profession as a whole comprises about 66 000 solicitors and, according to the most recently available Australian Bar Association statistics published in 2015, 6005 barristers who are members of a Bar Association. Overall numbers of barristers are put at about 8500. For a population of close to 25 million, that's roughly one solicitor for every 378 people. We now have 42 law schools. That is a consequence of the perception that law schools are cheap to run. They are of course relatively profitable if you do not object to annual first year intakes of 700 (as I am told will be the case at Sydney in 2018) or over 1000 at some of our closer institutions, and if you are comfortable with crammed lecture theatres or worse, entirely on-line instruction. But even so, law students pay the highest contribution to their law courses (about \$10 596 per annum for a full-time enrolment), and universities receive the lowest government contribution towards providing legal tuition (\$2 089 per annum per full-time student) – and that is regardless of the relative quality of tuition that each institution provides. And whilst it might just be possible to run an effective law school with a revenue contribution of about \$13 000 per student, it needs to be remembered that universities across the sector tax all fee centres, in our case to the tune of 57%. The Australian Financial Review reported in 2015 that Australian law schools collectively produce about 15,000 graduates annually. The Council of Australian Law Deans collectively determined that in fact, in 2015, our law schools produced only 7583 graduates with first degrees in law. (The discrepancy seems most likely attributable to counting graduates of university PLT courses and postgraduate students.) Statistics have not been collected regularly from law graduates about professional intentions and post-graduation outcomes but our best evidence suggest that somewhere between 60-70% of law students intend to practice. (ALSA National Advocacy Survey Results 2016).

The UK's population is around 66 million. According to the Solicitors Regulation Authority, as at October 2017, there are currently 142,515 practising solicitors. That is approximately one solicitor for every 463 people. If we include the 20,000 Chartered Legal Executives (cilex.org.uk), the proportion of those available to provide direct legal services decreases to one for every 406 people. In addition, the Bar Standards Board reports 16,045 barristers in practice. There are 95 law schools in the UK offering qualifying law degrees. In 2017, 22, 765 students commenced an undergraduate law degree (as an aside, 67.5% of them were female). In the year ended 31 July 2016 only 5728 new trainees were registered with the SRA. If we assume that student number have not increased greatly over the past 3 years, which the numbers do not suggest, only about 39% of commencing students can expect to receive a training contract on completion.

The US boasts around 1.3 million lawyers (as at 2014, Boston Globe May 9, 2014 Jeff Jacoby) in a population of approx. 323 million. That's one lawyer for every 248 people. In 2016, the

204 ABA accredited law schools graduated 35,749 students of whom 23, 928 (64.5%) secured jobs after passing the Bar exam. (Andy J Semotiuk Forbes Magazine, July 22, 2017).

So, against that background, let me attempt to identify what I see as the mega trends in legal education, which might be presumed to be reflective of and responsive to the global trends; namely those that have arisen as a consequence of external influences on how legal services might be delivered in the future and those that have arisen as a consequence of societal pressures on many of the traditional features of the legal profession, including the way it educates future generations of practitioners. They might include, I suggest:

1. Greater, more intrusive, regulation requiring law schools to continually modify educational programs in response to regulatory demands
2. The widening of access to the profession by broadening the pathways into the profession
3. The expansion of limited practice rights
4. A shift consequent upon the first two trends, back to the concept of the practice of law as a trade rather than a learned profession.
5. A focus on experiential learning and an increased emphasis on skills based learning
6. An increased emphasis on pro bono work whilst a student and a shifting of the burden of filling the gaps in access to justice from government to law schools and law students or very recent graduates
7. A focus on technology, including the development of IT and coding skills

So what is the evidence of these trends?

Increased regulation

In this country, a variety of entities have a stake in how legal education is delivered and the content of such education. These entities include TEQSA – the Tertiary Education Quality Standards Agency, the Law Admissions Consultative Committee (LACC), the various State and Territory Admission authorities, the Council of Chief Justices, the Law Societies and Bar Associations of each State and Territory and the Council of Australian Law Deans, and that's before we get to employers who seem to have very little voice in the content of any regulations.

In the UK, the range of stakeholders is no less expansive comprising, amongst others, the Legal Services Board, the Law Society and the Solicitors Regulation Authority, the Bar Council and the Bar Standards Board, the Chartered Institute of Legal Executives and the CILEX Regulation, the Quality Assurance Regulator for Higher Education, the Judiciary and the Committee of Heads of University Law Schools.

In the US, the profession as a whole, and law schools, are regulated by the American Bar Association and the American Law Institute. Other stakeholders necessarily include the Association of American Law Deans and the Bars of each State, which also have specific regulatory requirements and obligations.

The American Bar Association has had the longest direct involvement in the regulation of legal education having accredited law schools since 1923. The ABA Standards and Rules of Procedure for Approval of Law Schools comprise 7 chapters imposing standards relating to general purposes and practices, organisation and administration, program of legal education, faculty, admission and student services, library and information resources, facilities, equipment and technology.

In 2009, the Council of Australian Law Deans adopted a “light touch” set of similar standards for the accreditation of Australian law schools (I say that somewhat tongue in cheek as our law school’s application was requisitioned on the ground that there wasn’t an explicit statement of promotion of the rule of law on our website). These were amended subsequently and came into effect from 2013, setting standards in respect of fundamental issues, mission and objectives, the law course, assessment, academic staff, the law library or law collection, resources and infrastructure, courses and subject evaluation, the nexus between teaching and research, governance and administration, continuous renewal and improvement.

In addition to the CALD Standards, law schools who wish to produce graduates who are capable of seeking admission to practice are compelled to comply with new, additional Accreditation Standards for Australian Law Courses released in February of this year prescribed by the Law Admissions Consultative Committee (LACC). LACC is a committee constituted under the auspices of the Law Council of Australia, that consists of representatives of the Law Admitting Authority in each Australian jurisdiction, the Committee of Australian Law Deans, the Australasian Professional Legal Education Council and the Law Council of Australia. It is generally responsible to the Australian and New Zealand Council of Chief Justices, which appoints the Chairman of the Committee. LACC is not, however, a committee of the Council.

It is fair to observe that these standards have not been greeted with universal enthusiasm by the Council of Australian Law Deans.

Through these standards, LACC has reinforced the requirements that law schools teach each prescribed area of the Priestley 11 in a period equivalent to at least three years’ full time study of law. Further, LACC has introduced a requirement additional to the Priestley 11, namely the requirement to teach statutory interpretation in accordance with the LACC Statement on Statutory Interpretation. The standards also prescribe the minimum number of teaching hours for each prescribed area of knowledge, including statutory interpretation – namely 36.

In the UK, the content of a “qualifying law degree” is prescribed by the Solicitors Regulation Authority (SRA) and specifies 7 areas of law to be taken over 3 years full-time covering foundation areas of legal knowledge: contract, tort, criminal law, equity & trusts, EU law, property law, constitutional & administrative law.

However, consequent upon a report commissioned by the SRA, the legal profession in the UK is about to implement what was described in the SRA policy statement “Training for

Tomorrow” as the most far-reaching changes to legal education and training for over 40 years. The SRA’s objectives in proposing the reforms were:

- To focus the education and training system on ensuring that those who deliver legal services meet [the SRA’s] standards with less emphasis on the process by which high quality outcomes are achieved
- In doing this to increase flexibility for higher education institutions, vocational training providers and employers to come up with innovative and efficient ways of achieving the necessary outcomes
- To ensure that education and training systems can adapt over time to take account of changes in legal services markets
- To target [the SRA’s] activities as a regulator on protecting the public interest, including consumer interests, in a proportionate manner.

Broadening access and law as a trade

The SRA was expressly concerned to move to a process in which there is greater variety and choice. As such, the proposals, which were subsequently adopted, include:

- A widening of access to the profession and entry by those who are less likely to progress through more traditional pathways
- The development of integrated academic, vocational and “on the job” training courses
- The possibility for those working in various roles in legal service organisations (including as a paralegals) to demonstrate that they have on the job knowledge, skills and attributes to qualify as solicitors without going through the current tightly structured process
- Individual entities developing their own internal post-qualification professional development processes to satisfy continuing competence requirements
- More targeted post-qualification training

Currently, there are essentially 3 routes to becoming a solicitor in the UK:

1. The law graduate route
2. The non-law graduate route
3. The Trailblazer Solicitor Apprenticeship.

The Law Graduate route involves:

- A qualifying law degree
- A one-year full-time Legal Practice Course
- A period of recognised training incorporating the Professional Skills Course over two years – incorporating financial & business skills, advocacy and communication skills, client care and professional standards
- Admission to the roll of solicitors.

The non-law graduate route has the additional requirement of the common professional examination/Graduate Diploma in Law which is of one year’s duration.

The Trailblazer Solicitor Apprenticeship (so-called because it was developed by an employer panel as part of a government programme to reform and improve apprenticeships) was approved by the UK Department of Business, Innovation and Skills in late 2015. An apprenticeship will normally take 5-6 years to complete.

But significant changes are about to take place. On 25 April 2017, the SRA announced that it would be introducing a new Solicitors Qualifying Exam with a likely implementation date of September 2020. Upon the introduction of the SQE, in order to be admitted as a solicitor, individuals will need:

- To hold a degree (not necessarily a law degree), apprenticeship or equivalent [the original consultation paper suggested no degree at all would be required]
- To have undertaken a substantial period of workplace training (18-24 months)
- To meet character and suitability requirements
- To pass the SEQ – a two stage test, the first of which tests a candidate’s ability to use and apply legal knowledge comprising 6 functioning legal knowledge assessments (essentially the 7 areas required of a qualifying law degree) and one practical legal skills assessment in legal research and writing, and the second of which tests legal skills in 5 practical skills areas – client interviewing, advocacy/persuasive oral communication, case matter analysis, legal research and written advice and legal drafting.

The SRA had been concerned that the existing system of multiple courses and examinations meant that neither the public nor law firms could have full confidence that qualifying solicitors are all meeting the same high standards. It was also said that the SQE would help widen access to the profession by helping to validate different routes to qualification including apprenticeships. It was also said that the SQE would get rid of the current problem where many would-be-solicitors have to take the Legal Practice Course gamble by paying large up-front costs, often up to £15,000 with no guarantee of a training contract.

What this will mean for legal education in the UK is quite profound. It will certainly impact on providers of the Legal Practice Course and the Professional Skills Course. And for universities, the impact could be almost as severe. Why would a student spend three years at university studying subject areas that have to be relearned and re-examined after graduation? Cram schools will no doubt spring up to teach to the test (which will comprise only multiple choice questions, and other computer based activities in respect of the skills components, as presently advised). Many students are therefore likely to choose to study alternative undergraduate degrees rather than acquire their primary degree in law. That however assumes that your average school leaver can make a thoroughly informed choice about which type of legal career they envisage for themselves. The Bar will still require a first class honours degree in law (usually a double first) – less informed students might make quite difficult choices at the very earliest stages of their legal careers.

In contrast to the UK routes to admission, there is nothing as complicated around pathways into law in the US. All students must seek admission to an ABA accredited law school offering a 3-year JD program consequent upon the successful completion of a 3-year undergraduate degree and a score on the standard Law Schools Admission Test (LSAT) sufficient for the particular school to which admission is sought. Graduates must then sit for

the relevant State Bar Exam as a precursor to entering the profession. The US has no equivalent requirement of a period of workplace training, nor of a graduate diploma of practical legal training as is required in this country.

Given that the two jurisdictions from which Australian regulators draw much of their inspiration for reform will both require qualifying exams for admission to the profession, it will come as no surprise that discussions are occurring in Australia around whether a national exam should also be introduced in this country. There might be several reasons why such an exam might be desirable:

1. We are a national jurisdiction, albeit with separate regulatory bodies in every State and Territory. The so-called National Uniform Admission Rules apply only to the “nation” in so far as it comprises NSW and Victoria
2. There are 42 law schools with vastly differing standards of entry, differing qualities of teaching and research capabilities, different student cohorts with differing ambitions for their future careers, different national and international ranking and so on. A national exam might be thought to be a way of assuring employers, and the public, that all schools are preparing students to an equivalent standard.
3. A national exam might break the homogeneity of our current law schools. If we moved to a national exam, there may no longer be a need to prescribe the Priestley 11; presumably any exam would test core competencies for practice. Hence, law schools that wish for example, to focus primarily on teaching law as a generalist degree, or to focus on preparing students primarily for government or international law roles, may have more flexibility to distinguish themselves from the morass and attract students whose aspirations align most closely with the particular school’s offering.

But whilst these might all be reasons in favour of a national exam, there are many reasons to oppose the introduction of such exam. Any proposal to introduce such an exam needs to be very clear about the purpose of such an exam. As Professor Charles Sampford and Professor Hugh Breaky observed at another recent conference on legal education, would such an exam:

1. Be primarily used the core bulwark against low standards of law schools and hence lawyers?
2. Be a method of standardising required knowledge?
3. Be strategically designed to fill specific gaps, particularly around ethics and integrity, augmenting and complementing what is done elsewhere?

Whichever form such an exam ultimately took, there would be significant implications for legal education providers of all types.

Limited practice rights

It should be noted, however, in the UK context, that when considering the need to broaden the base of entrants to the profession, not all lawyers in the UK are solicitors or barristers. Chartered Legal Executives are regulated lawyers who are able to undertake the work that may be undertaken by a solicitor under the supervision of a partner. However, chartered legal executives are specialised in one area in accordance with the training requirements of the Chartered Institute. These include civil litigation contract, civil litigation tort, company

and partnership law, conveyancing, criminal litigation, employment law, family law and wills & probate. Both law graduates and non-law graduates can qualify through the Institute as a Chartered Legal Executive. There is no need to secure a training contract or pupillage, as is required to become a solicitor or a barrister, in order to become a charter legal executive. The possibility of qualifying as a lawyer through the Chartered Institute of Legal Executives will remain unaffected by the SQE given that such lawyers are not solicitors.

Some attempt to replicate this model was posited in Australia by the Productivity Commission in its 2014 Access to Justice Arrangements Report in which it was proposed that “limited licences” be contemplated to permit non-legal professionals to perform some legal tasks, particularly in the area of family law. The rationale is said to be the significant potential to improve accessibility to legal services.

The concept of limited licences has been in place in the US since at least 2012, when Washington State became the first to permit legal “technicians” to hold limited licences to perform specified tasks. Several other jurisdictions have followed suit.

Experiential learning

In the US, amendments to the ABA accreditation standards have led to what has been described as a “pivotal moment in the history of legal education”. These amendments are not so much concerned with admission to the profession or alternative routes to qualification; rather they are concerned with the content of law degrees and the opportunities provided to students by law schools. The amendments place new responsibilities on law schools to better prepare students for practice. Revised Standard 302 required law schools to establish “learning outcomes” that, “at a minimum, include competency” in three sets of listed capacities and skills as well as “other professional skills needed for competent and ethical participation as a member of the legal profession”. Interpretation 302-1 states that law schools may determine which “other” skills to teach, and lists a range of skills that include: “interviewing, counselling, negotiation, fact development and analysis, trial practice, document drafting, conflict resolution, organisation and management of legal work, collaboration, cultural competency, and self-evaluation”. The revised standards also require law students to “satisfactorily complete...one or more experiential course(s) totalling at least six credit hours. These latter standards came into effect in the 2016/2017 academic year.

These might be seen as the minimum requirements set by the ABA. In 2014, the Board of Trustees of the State Bar of California, the bar with the largest [population of lawyers], adopted new training requirements mandating as from 2017, a precondition of licensing that bar applicants complete fifteen units of practice-based, experiential coursework during law school or an apprenticeship.

Krantz and Milleman, in a recent paper published in the Nebraska Law Review, observe that many law schools will not have to make substantial revisions to their curricula to satisfy the new accreditation standards, but note that some are taking more ambitious steps. These include:

- Broadening and diversifying what is taught in the first year, for example by introducing a Problem Solving Workshop (as is done for all first year students at Harvard Law School)
- Using skills based course materials that are produced by commercial publishers
- Constructing case studies based on real cases
- Paying actors to play standardised client roles similar to programs that are used in some medical schools
- In-house clinics/practicums.

These new standards, and the methods by which they might be implemented by various law schools in the US, need to be seen in the context of the pressure that has been building to reduce law school to 2 years, or 4 semesters, as a way of reducing law student debt and, because, it is said, there is limited value in what the third year provides. It is almost impossible to conceive of how a law school could comply with the experiential and core competency requirements that have been added to the ABA accreditation standards within a 4-semester degree. On the other hand, even if the third year survives, what seems clear is that there will be very little attention given to substantive legal content. US law schools already use the third year for a combination of simulated or real-practice experiences, problem based electives, skills immersion courses, study abroad or interns with federal agencies.

Unlike the US, no requirements as to experiential learning, professional skills nor pro bono service are contained within the academic requirements for a law degree in Australia nor in the UK. Professional skills have traditionally been the focus of postgraduate training, originally through articles of clerkship or traineeships and, more recently, through postgraduate diplomas in practical legal training.

This reflects to some extent the general view of many law schools, both in Australia and the UK, that they are providing a general set of skills that are not necessarily going to be used in legal practice given the statistics that only about half of students enrolled in law school intend to practice. Consequently, the task of teaching professional skills, namely lawyers' skills, problem solving, work management & business skills, trust and office accounting within the compulsory practice areas of civil litigation, commercial and corporate practice and property law practice, generally falls to be delivered by PLT providers in the variety of guises they take coupled with minimum workplace experience which varies depending on the number of hours of programmed training offered by the particular provider.

Nevertheless, Australian law schools in particular have, for many years, included skills development in the curriculum (legal writing, advocacy, negotiation most notably) and have been embedding experiential learning into the curriculum including through clinical legal placements, (such as those within the 11 community legal centres who have partnered with the UQ Pro Bono Centre which last year won a *National Teaching Award for Programs that Enhance Student Learning*), internships in a variety of government, industry and legal entities, and capstone courses that simulate legal practice. The fact that many Australian law schools offer a 4 year honours level LLB, rather than the minimum 3-year degree prescribed by accrediting bodies, gives Australian law schools an advantage over their US and UK counterparts, an advantage that is further enhanced by the dual degree offerings so

popular in Australia that permit students between 5 and 6 years at university in which to incorporate professional development activities and experiences into their academic training.

Pro Bono

Let me say a little more about the reliance of law schools on pro bono service to meet the experiential learning needs of students and, indeed the requirements of the profession.

In the US, a further new addition to the ABA accreditation standards is 303(b)(2) which specifies that law schools shall provide substantial opportunities for “student participation in pro bono legal service”. The interpretation of this standard essentially requires law schools to provide opportunities for students to provide at least 50 hours of pro bono service during the course of their degree.

Australia and the UK do not yet have a specified requirement for students to undertake pro bono service in the course of their degree or prior to formal admission but it seems likely this will come. It is being discussed in some quarters.

The incorporation of the provision of pro bono service into law school curricula is overwhelmingly seen as a positive experience, both for the students who gain valuable practical experience and for those in the community who are unable to access legal services. However, there is a danger that, particularly where prescribed numbers of hours of pro bono service is mandated by regulators, and even where it is merely highly encouraged, that responsibility for the gap in access to justice is being unfairly shifted on to under-resourced law schools and unpaid students or very recent graduates.

There are two matters that I think should cause us to take some care. The first is whether impecunious clients are being offered second-class legal services in circumstances where there may not be adequate resources to ensure proper supervision of students or recent graduates.

The second relates to the risk of exploiting the students or recent graduates. In *the Lawworks Annual Pro Bono Awards Lecture* delivered on 5 December 2016, Sir Terence Etherton, Master of the Rolls, drew attention to what he described as two features of the justice system in the UK: an over-supply of law graduates who are qualified and willing to practice, and secondly, the increase in litigants-in-person as a consequence of the withdrawal of legal aid. He posited a suggestion that entry into practice of these law graduates could be facilitated by registering them as trainees with a university or pro bono advice centre, who could be supervised by the lawyers who are already providing such services, so that they could provide legal advice and assistance to litigants in person.

There are a number of flaws with such a proposal. First, there may be many reasons why such graduates were unable to obtain a training contract or pupillage in the first place, not least of which might be the unavailability of any ongoing position for the trainee, but which might also, and I say this not unkindly, include questions of suitability or aptitude for legal practice. Secondly, university and other pro bono advice centres often find it difficult to

absorb any additional students or trainees, despite the desire to provide greater levels of service to the community, simply because there are not enough qualified staff to properly supervise a large team of inexperienced lawyers, and no funding for additional senior staff. Thirdly, there is no capacity in the system to pay trainees within a university or other pro bono advice centre. So a student who has already incurred somewhere in the order of £100,000 or AUD60,000 for their academic and vocational training is then be asked to work for free.

Technology

Turning to, some might say, the obsession with technology and its all-pervasive intrusion into our personal and professional lives.

Again, from a regulatory perspective, the importance of understanding and harnessing technology is beginning to be recognised as a basic practice competency for lawyers. In 2012, the ABA modified comment 8 to rule 1.1 to require lawyers to “keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology”. Since then more than 20 US state jurisdictions have adopted an “ethical duty of technology competence”. US law schools have acknowledged the changing landscape and, as at 2015, 7 US law schools were participating in a national technology project called Access to Justice Clinical Course Project through which each school creates a new course to teach core technical competencies using A2J Author, a self-help assistance software package, whilst simultaneously developing self-help resources for legal aid organisations. Many other law schools are involved in a wide variety of technology project, many of which have improving access to justice as their core focus.

Several law school clinics also introduce students to delivering virtual legal services to clients online. There are virtual law offices and virtual law practices. They also introduce students to technology-assisted review, also known as predictive coding, used as the basis for e-discovery. Practising lawyers need to be familiar with various types of e-discovery software and be familiar with the process in order to assess how to choose which software package is best and in order to explain the predictive coding to a court which is being asked to accept the validity of the discovery process

More recently of course, the worldwide phenomenon that is digital transformation, is also being picked up by many Australian law schools. Law school Hackathons have become particularly prominent over the past 2 or 3 years with law students working alongside students from other disciplines to come up with new and innovative ideas for delivering legal services, many of them directed at improving access to justice. Some law schools have gone further and, like UTS, have introduced new technology focussed majors within the law degree. A close examination of the curriculum of such majors reveal little more than a re-packaging of existing courses on law and technology, privacy law, aspects of IT law and the like but attempts are being made to provide law students with a basic understanding of the types of technological development that might impact on practice. In our law school, for example, we have developed a “Law, Science and Technology Initiative” which involves research clusters, reading groups involving both undergraduate (particularly those doing a

dual degree in science and law) and postgraduate students, and a suite of courses and seminars. Calls for all law students to be taught to code, I suggest, are misguided.

Conclusion

What I hope has become obvious after this survey of what I see as the current and emerging trends in legal education is that those at the frontline of legal education, namely law schools, have decreasing autonomy over the way in which law is taught. We are increasingly dictated to by our own universities' bureaucracies, by multiple regulators whose impact is felt at various stages along the educational pathway, and we are becoming increasingly hostage to consumerism, be that from the perspective of the student or from that of the end user of legal services.

In other words, the concept of legal training, as was described by Chief Justice Kiefel at the opening of the renovated West Wing of our Law School, as an invaluable intellectual discipline of a special kind, namely one whereby learning the law and the methods of solving legal problems develop analytical skills, an understanding of the written word and its interpretation, is in danger of disappearing. We are at risk of losing our character as a true profession as little by little, bits of what lawyers have traditionally done are chipped off under the pretext of making legal services more accessible. Should this continue to happen, a two-tiered system of justice will emerge, and that will not be a system of justice of which we can be proud.

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In the William and Mary Commencement Address on 11 May 2014, the late Justice Anton Scalia observed:

Most of all, it is good to be learned in the law because that is what makes you members of a profession rather than a trade. It is a goal worthy to be achieved...for itself. To say you are a lawyer is to say you are learned in the law. And, to return to the point, you can't do that in two years.

If we are aware of the trends, we can perhaps act early enough to reverse those that will not serve our nation well.