

DEANING DOWN-UNDER

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I. INTRODUCTION

AUSTRALIA. Far enough away to be exotic, close enough in language and culture to be comprehensible—having enough in common though a shared legal heritage to allow for meaningful communication between our institutions. The editor’s invitation to contribute an Australian perspective to the Dean’s series of this Law Review was sufficiently intriguing to browse through the past issues and to discover a range of decanal musings, which were interesting and useful; a form of high level deans’ blog where intimate thoughts are widely disseminated. Nothing similar exists for Australian deans whose communications tend to be more formal and prosaic and which rarely dwell on the role of dean per se. This essay is intended to provide a brief overview of legal education in Australia and on the role of deans, particularly how the role may differ from that of United States’ deans. For those interested enough in our legal system, the doors of Aussie Law Schools are always open to visitors.

Like the United States, Australia is a federation, with seven states (New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania) and two mainland territories (the Northern Territory and the Australian Capital Territory, in which the federal capital, Canberra, is located). The responsibility for legal education is divided between state and federal governments. State and territory governments have the legislative responsibility for universities, but the federal government provides the bulk of the funding and influence (or control) over universities and students through tied grants for teaching, research funding, and through student loan schemes. State governments are primarily responsible for governance arrangements (appointment of university councils or senates) but contribute little by way of funding.

II. LEGAL EDUCATION

Australia’s population of around twenty million people is served by thirty-nine universities, twenty-nine of which have law schools, nine in New South Wales, five in Victoria, five in Western Australia, four in Queensland, two each in South Australia and the Australian Capital Territory and one each in Tasmania and the Northern Territory. All but two are in public universities (Bond University and Notre Dame University are privately funded but have access to some government

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funding).¹ Most are independent faculties within their universities, but a number are “schools” or disciplines within larger faculties of business, economics, management information sciences, and the like. Almost one million students are enrolled in higher education in Australia,² of whom approximately 170,000 are international students from over eighty countries.³

Unlike the United States, professional education in fields such as law, medicine, dentistry, and engineering is usually undertaken as an undergraduate degree, with students enrolling directly from high school. However, in 2008, the University of Melbourne will be moving to an exclusively graduate entry law degree, thus breaking away from the traditional Australian model of legal education. This will require all students to undertake a generalist degree, such as Arts or Sciences, before being able to enroll in a professional degree. Most law students tend to enroll in combined or double degrees, such as Law/Arts, Law/Commerce or Economics, and Law/Science; some ambitious students take combined degrees in medicine or engineering. The average length of the law course is around four years, and of the standard combined degrees, normally five years.

Over recent years, entry pathways into law have diversified. A number of law schools have introduced American-style graduate J.D. degrees for students who already hold an undergraduate degree and who wish to complete the degree in a shorter period of time (usually around two to three years while studying three semesters per year). “Straight” undergraduate law degrees are also available for those who already hold degrees. The choice of course will depend on fee levels (J.D. degrees are far more expensive than undergraduate degrees) and the speed with which the student wishes to complete.

Though it is dangerous to generalise, Australian law students are less likely to be vocationally oriented, because for most, the law degree is their first degree and they may have enrolled due to external pressures or expectations rather than personal choice. Up to 50% of graduates will not practise law five years after graduation. The law is increasingly regarded as a useful generalist degree and most Australian courses provide a large range of options in later years. An increasing number of these students are sitting for bar exams in the United States or in the United Kingdom, reflecting the globalisation of commercial and legal practices. In February 2007, the United States Conference of Chief Justices passed a resolution urging the Supreme Court of every state and territory to consider permitting Australian University law graduates who have been admitted

1. A list of the universities can be found at Council of Australian Law Deans, <http://www.cald.asn.au/schools.htm> (last visited Mar. 8, 2007).

2. See DEP'T OF EDUC. SCIENCE & TRAINING (DEST), HIGHER EDUCATION REPORT 2005, at 10, available at <http://www.dest.gov.au/NR/rdonlyres/5213D64C-C3BA-4D8A-B139-7906281D27AD/15276/HigherEd2005Full.pdf> (last visited Mar. 8, 2007).

3. See AUSTRAL. EDUC. INT'L, INTERNATIONAL STUDENT ENROLMENTS IN AUSTRALIA BY COUNTRY AND MAJOR SECTOR, 2005 AND 2006, http://aei.dest.gov.au/AEI/MIP/Statistics/StudentEnrolmentAndVisaStatistics/2006/2006_TableF_pdf.pdf (last visited Mar. 8, 2007).

to practise in Australia without having to undertake further study.⁴ Currently, five U.S. states automatically recognize Australian law degrees for these purposes.⁵

Most law schools offer a wide range of courses: undergraduate, graduate and post-graduate diplomas, post-graduate coursework and research masters, and research degrees such as the S.J.D. and the Ph.D. Some offer practical legal training courses as well.

Entry into the legal profession is controlled by state professional authorities. In most states, the profession is notionally divided between solicitors and barristers (court advocates), more akin to the British structure. The profession accredits law degrees, which must include a minimum of eleven “areas of knowledge” for admission. These topics include civil procedure, evidence and professional conduct, criminal law and procedure, torts, contracts, property (real and personal), equity, administrative law, federal and state constitutional law, and company law. To practice, however, students must also undertake a year’s practical legal training under supervision (articles) or complete a practical legal training course of around five to six months, followed by a period of restricted legal practice. Mutual recognition rules allow members that are admitted in one jurisdiction to practice in another. In most jurisdictions, practice as a barrister will require further training provided by the Bar for up to a year.⁶

III. DEANS’ WORK

When I took up the Deanship of the Law School at Monash University at the beginning of 2004 (the Australian academic year runs from March to October), I had already had a year’s experience as Dean of Faculty of Arts at Melbourne University and over a decade’s experience in faculty and university administration, so the task of managing was not new; running a law school was. However, my predecessor had (thoughtfully, thoughtlessly?) left behind a small work entitled *Law Deanship Manual* published by the AALS in 1993 (no later editions discovered). Here, I thought, was the key—the job made easy. Just follow the instructions and presto: a great law school with happy staff, luminous students, pots of money, supportive and generous alumni, and an embrace profession. Well, almost.

A closer reading of the Manual revealed that though we law deans have much in common, there are distinct differences between our respective tasks in the United States and Australia. We are a diverse group of institutions ranging in size from a few hundred students to over 2,500, in age from over 150 years to a year or so, in location from capital city to rural areas and in mode of teaching, from campus-based to distance education. We all face the same general challenges of multiple roles and constituencies and the joys of working within a

4. The Honorable Warren Truss MP, *US Chief Justices Urge Better Access for Australian Lawyers* (Mar. 1, 2007), https://www.trademinister.gov.au/releases/2007/wtt017_07.-joint.html.

5. *Id.*

6. On the study of law generally in Australia, see COUNCIL OF AUSTRAL. LAW DEANS, *STUDYING LAW IN AUSTRALIA 2006* (Sept. 2005), <http://www.cald.asn.au/docs/SLIA%202006.pdf>.

larger institution, which tends to see our discipline as highly prestigious yet inexpensive to run (only one of those statements is true). Funding, for almost all deans is a major challenge, not only within the University (internecine competition is endemic), but outside.

The Australian tertiary funding system is a hybrid. About a decade ago, federal funding provided about 90% of University resources, but the advent of a Liberal/National Party (conservatively-oriented) government in 1996 saw a shift in funding from the federal government to students and external support. Universities are largely funded on a per capita student basis (excluding research funding and various other forms of specific support) divided into various “bands” notionally based on the cost of educating students in the arts, sciences, or various professions. The funding for each band may vary from around \$A14,000 per annum for a medical student down to around \$A1,600 per annum for a law student. Students are required to contribute through an income-contingent deferred loan scheme known as “HELP” (Higher Education Loan Program), which can be over \$A8,000 per annum for law students. Students are not required to repay the loan until their income reaches around \$A36,000. The federal government pays the universities in advance and recoups the loans through the taxation system.

An increasing number of students enrolled in universities and declining federal funding (in per capita terms) have seen staff-student ratios deteriorate across the board, from about 1:14 a decade ago to around 1:20 today. Law school ratios are higher with around 1:20 to 1:25 on average. Though the situation varies between institutions, in many of the larger universities, the federal contribution now provides less than 40% of total funds. However, the degree of control is more commensurate with 100% funding and the compliance burden on tertiary institutions appears to vary inversely with the amount of money provided. The observation that universities have moved from being state funded to state supported to state located is becoming as true in Australia as it is in the United States.

The need to diversify funding sources has resulted in increasing enrolments of full-fee paying undergraduate students (universities can enroll a certain proportion of students at a higher fee, once they have met government enrolment targets and profiles) and vigorous recruitment of international students, who are not subject to limits or fee regulation. Graduate courses are also not as closely regulated, resulting in an increase in the number and scope of these courses.

Probably the major difference between United States and Australian law deans exists in the area of fundraising. Few faculties have their own foundations and income from donations, bequests, or from the university-wide foundations would form only a very small part of any Australian law faculty’s budget. Capital campaigns are rare, if they occur at all. Buildings are usually funded from University budgets with private funding assisting in special areas such as libraries or moot court rooms.

I was startled to read in the Manual that American deans could be expected to spend between 10-20% of their time to 60-70% on fundraising alone. Very few Australian deans would spend more than a miniscule proportion of their time on

Winter 2007]

DEANING DOWN-UNDER

621

development activities. A small number would have development offices or officers, but most would rely on the university-wide activities.

In June 2005, I attended the ABA Development Conference for Deans and Development Officers of Law Schools at Jackson Hole, Wyoming. This was an astonishing experience, not because of the size of the audience (around 340 people), but also because of the amount and sophistication of the information concerning development activities and practices, which confirmed how far Australian law schools lagged in this respect. I was also overwhelmed by the generosity of spirit and willingness to share information by my American counterparts. I believe that I was the only Australian at the conference. My own University has recently appointed a Canadian “Advancement” professional to lead the University’s campaign to emulate the successes of U.S. and, more recently, Canadian universities in obtaining support from alumni, corporations, and foundations.

IV. PROFESSIONAL ORGANISATIONS

The Council of Australian Law Deans (“CALD”) is probably the closest equivalent to the AALS. The Council is an unincorporated association which has amongst its objectives:

- Consultation on matters of mutual concern to members or their institutions and, where appropriate, the adoption of common policies;
- The furtherance of legal education in Australia;
- The encouragement of legal research;
- The promotion of cooperation between law schools;
- The maintenance of close relations between law schools and the legal profession; and
- The collection, exchange and publication of information and statistics about the functions and needs of law schools.⁷

The deans of all the law schools in Australia are members of the Council, and they meet together three or four times each year at different locations; around 70% attendance of deans (or their delegates) appears to be the norm.⁸ The Council is sparsely funded and supports only a part-time administrative officer. The Chair is an honorary appointment. The Council has little political influence, but serves as a useful forum for the sharing of ideas and discussion of common problems confronting legal education.

The Council produces an annual publication, *Studying Law in Australia*, which is distributed internationally as a marketing tool on behalf of all law schools; it has published papers on topics, such as the funding of law schools, uniform admission rules, grading practices, policies on honours courses and others. The

7. Council of Australian Law Deans, <http://www.cald.asn.au/index.htm> (last visited Mar. 1, 2007).

8. See generally *id.*

Council was recently interested in accreditation and external monitoring of law school standards, uniform admission rules, admission to practice and academic misconduct issues, political interference and research funding, recognition of overseas of Australian law degrees, visitors programs, and the internationalization of legal education.

The Australasian Law Teachers Association (“ALTA”) is a professional body which represents the interests of law teachers in Australia, New Zealand, Papua New Guinea, and the Pacific Islands. It seeks to advance legal education and the interests of law teachers throughout Australasia, and especially focuses on the encouragement of legal research and the dissemination of its results.⁹ It currently has nearly 900 members. It holds an annual conference and publishes a bi-annual newsletter and a journal, *The Legal Education Review*.

V. CONCLUSION

American and Australian law deans probably have more in common than they have differences. Whether public or private, we all work within a university framework with all the benefits and disadvantages that this arrangement has. Internal structures, administrative arrangements, and decanal duties will vary widely depending on the size of the organisation and whether it is independent school or part of a larger administrative grouping. Where the school is independent, the dean will usually be accountable to the Vice-Chancellor or President. Where it is not, the position may be designated “Head of School” or something similar and report to the dean.

We are all involved the day-to-day tasks of staff management, curriculum planning, staff (faculty) selection, committee memberships both within the university and with external and professional bodies, and the longer term tasks of strategic planning, defending, and protecting the school’s interests in a variety of forums. Some deans continue to teach and research, while for others, being a dean is a full-time occupation. We probably spend less time than American deans with our alumni and more with our students, and we probably spend less on fundraising and more on international travel for the purposes of recruitment. What we all probably do not have enough time to do is to reflect on the task of being a law dean. Perhaps a deans’ blog is not such a bad idea after all.

9. See ALTA—Australasian Law Teachers Association, <http://www.alta.edu.au> (last visited Mar. 1, 2007).