

**ASSOCIATION OF AMERICAN LAW SCHOOLS
ANNUAL CONFERENCE
ATLANTA GEORGIA**

3 January 2004

**ENRICHING LEGAL EDUCATION OPPORTUNITIES
FOR INTERNATIONAL STUDENTS
THE AUSTRALIAN EXPERIENCE**

**Professor David Barker
Dean, Faculty of Law
University of Technology, Sydney**

INTRODUCTION

Two years ago I gave a presentation at the 2002 AALS **Symposium on Continuing Progress in Internationalising Legal Education – 21st Century Global Challenges Paper** entitled “**Beyond Australia and the Pacific Rim: Challenges for the Internationalisation of Australian Legal Education**” – this can be referred to in the *Penn State International Law Review* – the Full 2002 Edition Vol 21 No. 1.

It is relevant when discussing the role of the international student within the Australian Legal Education Tertiary System to recognise the fact that for Australian Universities the foreign student population plays a major part in funding the country's tertiary education system. This has been described as “bringing in billions of dollars in fees, creating about 12,000 direct jobs and funding services, courses and facilities that would otherwise not be available locally – to put this international student market into perspective, approx 70,000 new foreign students select Australia as the country for their place of study each year – at my own institution – University of Technology, Sydney, out of a student population of 24,000, approx 4,000 of these will be international students.

Within the context of the Australian Tertiary Education Sector, there has also been a dramatic change in respect of the Federal Government's reform package on university funding which was approved by the Federal Parliament in the first week of December 2003. This will have a profound effect on the future funding of Australian Legal Education – in my capacity as Dean of Law at the University of Technology, Sydney and current Chair of the Council of Australian Law Deans, I wrote an article in the Friday 25th July 2003 Edition of the ***Australian Financial Review*** (equivalent

of the *Wall Street Journal*) which I hoped would draw attention to the continuing funding inequities of Australian legal education – I had expected that this would be regarded as the seminal approach to the topic – however I should have known better – the article was headed “Law students pay top dollar for small slice of pie”.

By way of a short explanation – Australia has a hybrid university sector which is partly regulated and partly deregulated – part public/part private – in 2005 all students will, as in the past, pay a contribution towards the cost of their University education – those who are public students pay towards what is described as a Higher Education Contribution Scheme – these are placed in various bands – law students will as before, be placed in the highest band (A\$6427), the same as dentistry, medicine and veterinary science – the only difference being that all these other disciplines will in 2005 attract an estimated commonwealth contribution of \$15,422 – whilst Law is the only discipline to be placed in the lowest cluster – of A\$1509, i.e. the Government is of the view that a law program can be operated at approx US\$1000 per annum. The government has also provided a discretion to levy an additional maximum student contribution set at 25 per cent higher than the estimated higher education contribution rate for 2005, resulting in a law student being expected to pay a total of approx A\$8000 – if past experience is any guide, about 30 per cent only of the total student contribution/government grant will be directly allocated to the Law Schools by their respective universities, e.g. A\$3000, the remainder being used to cross-subsidise courses in other disciplines such as humanities or social sciences, the balance being retained for general University expenses.

The situation will be exacerbated by the proposal that universities, if they choose, may generate additional income through an increase to the proportion of fee-paying places in any undergraduate course from 25 per cent to 35 per cent – the situation at present is that most university full-fee-paying undergraduate courses are those for law, so universities will see this as an opportunity to maximise their undergraduate fee-paying income – but again only approx A\$3000 will be returned to the Law School for operating costs in respect of these students.

In the light of this information, you will appreciate how important international students are to the maintenance of the fabric of the Australian Law School – as the Australian Vice-Chancellor’s Committee has itself stated, “it is not just a matter of funding”. In September 2001 they stated “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 crucial in preparing Australia to operate effectively internationally. An important element of this is the internationalisation of Australian students themselves. If Australia is to engage effectively internally and specifically in the Asia-Pacific region, Australian students need to have first hand study exposure 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.”

Within the context of this statement, I would note that previously for international students, their main focus of interest was the LLM (Master of Laws) – although this is still of interest, the trend in Australia is for a considerable number of potential international postgraduate students who want to undertake studies which will qualify them as a legal practitioner both in Australia and, as a consequence, in their home jurisdiction.

With regard to the latter, the Council of Australian Law Deans (CALD) has worked in close co-operation with the Federal Attorney General’s Department through its Secretariat – the International Legal Services Advisory Council (ILSAC) – to work towards recognition by foreign jurisdictions of Australian legal qualifications for admission as legal practitioners in their home jurisdictions. Part of this has been developed within the context of the WTO and individually negotiated Free Trade Agreements with the participating countries – not only involving close cooperation between the Attorney General’s Department and particularly, the Attorney Generals themselves, previously Daryl Williams and now Phillip Ruddock, but also the Federal Minister of Trade, Mark Vaile, the outcome has been that it is now fully expected that Malaysia will have great recognition in respect of all accredited law degrees in Australia for the purpose of recognition of practice in their jurisdiction. Previously there had been only 14 of the 28/29 Australian Law Schools recognised for this purpose. For Singapore, the latest Free Trade Agreement has increased recognition from 8 to 10 Law Schools whilst mutual recognition is on the agenda for the current negotiation in respect of the Free Trade Agreement between the USA & Australia.

With regard to qualifications for professional practice, the Australian government provides a bridging loan scheme for overseas trained professionals in [BOTPLS] – which is an interest-free loan facility for overseas trained professionals who are

seeking to work in regulated or self-regulated professions in Australia. At UTS, overseas lawyers from common law jurisdictions can undertake a Graduate Diploma in Australian Law which will enable them to satisfy the academic requirements for admission as a legal practitioner of the Supreme Court of NSW – depending on the circumstances, an overseas applicant may be required to undertake a course in practical legal training (PLT).

The other strand to be considered is that relating to those international students who continue to undertake a traditional postgraduate program – I would again emphasise that students are far more focussed than previously with regard to the outcomes of obtaining such a qualification.

For those students who wish to firstly enrol in subjects about Australian society and culture whilst tailoring a program to their own interests and level of English language competio. At UTS we provide an Advanced Diploma in Australian Language and Culture (ADALC) through the University's English Language Study Skills Assistance (ELSSA) Centre.

For those Masters candidates with legal qualifications from countries with civil law or dual civil and common law legal system, there is a requirement that they complete the subject, "Principles of Common Law". The most popular Masters Program from the international student's aspect are those involving intellectual property – the Master of Industrial Property is recognised by the Professional Standards Board of Trade Marks and Patent Attorneys as fulfilling the education requirements necessary for registration as a Registered Trade Mark and Patent Attorney whilst the Graduate Certificate is recognised by the Board as fulfilling the requirements to be registered as a Trade Mark attorney.

The other postgraduate coursework Masters program of particular interest to international students is that of Master of International Trade Law/Graduate Certificate in International Trade Law which is a response to those international students who are either legal practitioner or who come from a wide range of other professionals who wish to extend their expertise and knowledge in the expanding area of international trade law – the NSW Branch of the International Law Association has encouraged the Faculty to develop this program which embraces topics such as the multilateral liberalisation of trade in goods and services: GATT 994 & WTO, the role of regional trading blocs NAFTA, ASEAN, EU.

Within the area of research, besides the conventional research programs by thesis of the Ph.D and the LLM, the UTS Doctor of Juridical Science (SJD) program was the first professional doctorate of its in Australia. This is attractive to international students because it not only helps them to build up their knowledge of Australian Law whilst undertaking the coursework component, it helps them to develop their Doctoral topic during this time, and also counters the isolation experienced by many international Ph.D candidates by providing this combination of coursework and research, thus allowing them to benefit from contact with other postgraduate candidates and other academic staff of the Faculty.

In closing, I would mention that the Faculty offers a wide diversity of 80 postgraduate elective subjects – these are timetabled over a two year period and consequently not all subjects listed are offered in any one year.