Executive Director’s Message

In response to members’ interests, B-HERT has increasingly become more directly involved in workforce issues, particularly in relation to employer needs and graduate capabilities. This issue is topical partly in response to prevailing skill shortages in many industries (I refer in particular to the dire situation in the agriculture industry that B-HERT is actively working to contribute some positive way forward (http://www.bhert.com/publications/reports/Rebuilding-the-Agricultural-Workforce-Report-Jan2012.pdf)) and partly in response to the growing complexity of work. In stark contrast to even one decade ago, employers now operate in a global marketplace that demand much more than technical skills. The information age that preoccupies anyone with a computer has also has created new experts in analytics that requires interpretation of the immense flow of knowledge that effectively merges the social sciences with technology. The results of these analyses need to be communicated and translated to customers, clients and the community that may be here in Australia or in any other country in the world.

The challenge for educators and practitioners is to maintain the standard of excellence in a rapidly changing environment that allows for both the democratisation of knowledge and the freedom to access it. Just as curriculum content is being revised to support the skills required in the global environment we now operate in, so too the delivery of education is now offered in a diverse and innovative ways. For example, many universities (including some of the best in the world) have made available free, high quality online downloadable training modules which can be accessed via PCs, tablets, smartphones. B-HERT News 30 focuses on the legal profession which, like so many professions, is responding, adapting and innovating as part of this international workplace our graduates are now entering. While both exciting and confronting, law schools are rising to the occasion in recognising their contribution is even more important as borders diminish and regulation becomes more complex.
Legal education and the preparation of law graduates for the world of work is an issue with many different aspects and some tensions arising as national regulatory authorities and state-based admission boards pull in different directions at times. Quality auditing by government and insistence on demonstrable graduate attributes, ‘internationalisation’ of Australian law degrees, the highly prescribed content of the existing curriculum, the move towards a national profession and the increasing trend to offer law degrees to graduates in other disciplines are all part of the changing landscape.

As with most professionals, law graduates are educated in a complex regulatory environment. There are a number of accreditation hoops which law schools must jump through, including the requirements of local law profession admitting authorities. At the same time there is much scrutiny of the quality of law degrees by professional educators and government regulators. Without coordination between various accrediting bodies and educators, attempts to improve the quality of legal education could increasingly be at odds with the views of professional bodies.

The context of change in higher education comes out of increased public sector accountability required on a national and international level. Increased accountability means more demand for data and greater value from the money spent on higher education. In the repositioning of higher education, students are becoming seen as consumers with the focus on choice and definable outcomes, not only for students but also for employers who are interested in future employee knowledge and skills.

In The Australian Higher Education on 30 March 2011 the article ‘Business takes a dim view of academe’ referred to ‘suede patch tenured academics’ failing to work to produce graduates with the sort of skills Australia needs. The article stated, among other things that there needs to be a broadening of curricula to produce people with essential attributes including good communication, ability to work in teams and other generic skills. In a concerted effort from law schools, the judiciary and the legal profession, a set of Threshold Learning Outcomes (TLOs) including these and other attributes were developed during 2010 for the LLB degree by Professors Sally Kift and Mark Israel under an Australian Learning and Teaching Council grant. http://www.altc.edu.au/standards The learning outcomes are part of the standards required for the Australian Qualifications Framework (AQF) Expectations for the outcomes and attributes of graduates is set out under the AQF which is a policy framework bringing all of Australia’s education and training qualifications into one comprehensive framework which underpins the Australian qualification system. http://www.aqf.edu.au/ The AQF will not allow law schools just to maintain content; a law degree is more that knowledge – it must include cognitive, creative & communication skills.

Also at the government level university law schools face scrutiny from the newly formed Tertiary Education Quality and Standards Agency (TEQSA) which is Australia’s regulatory and quality agency for higher education. Part of TEQSA’s brief is ensuring compliance with AQF Standards: “TEQSA’s primary aim is to ensure that students receive a high quality education at any Australian higher education provider” and this is done through setting standards and auditing quality. http://www.teqsa.gov.au/. One of the challenges for law schools is to incorporate these (audited) graduate outcomes into law degrees where highly prescribed content is required by admitting authorities which have less sympathy for graduate attributes other than ‘knowledge of the law’.

In the context of discussion about quality issues in legal education, the Council of Australian Law Deans (CALD) adopted a set of standards for Australian law schools in November 2009. A Standards Committee has been established to oversee the accreditation of law schools against the Standards. The work of the Standards Committee will enable assertions of quality to be made objectively and credibly against agreed criteria for measuring performance and it is hoped, will assist in building a bridge between the professional admission authorities and the government regulators. This is particularly relevant in the context of a national profession where modern pedagogy might be permitted to infiltrate the thinking of a national admission board.

In late 2011 it was announced that NSW will be the home for the new National Legal Services Board (the Board) and the National Legal Services Commissioner. New South Wales, Queensland, Victoria and the Northern Territory are participating in this national initiative covering 85% of practicing lawyers. The Board is responsible for the efficient, targeted and effective national regulation of the legal profession and the maintenance of professional
standards. This includes approving academic and practical legal training courses. State-based admitting authorities will continue to have a role in the administration of admission rules and regulations under the national system. The precise form of working interaction between the Board and interested parties has yet to emerge. CALD hopes to ensure that its Standards as determined by the Standards Committee play a major role in the national approval of law schools’ courses.

Despite the number of law graduates emerging from various law schools, the demand for legal services has grown at about the same rate as the increasing number of lawyers. In addition, despite the general downturn in the world economy, the demand for Australian legal services internationally has continued to grow. The International Legal Service Advisory Council (ILSAC) points to the continued expansion of Australia’s legal and related services market internationally and the fact that legal services are one of Australia’s biggest exports. Australia’s legal exports and international activity in the 2008-09 financial year, was $709.1 million, an increase of $34 million or 5% since the last biennial survey in 2006-07. The survey is available on: www.ilsac.gov.au/thirdsurvey.

Australian law graduates contribute to export income in the form of supplying services to overseas enterprises. Cross-border supply was the most favoured mode of service for all types of work except for energy and resources work which favoured commercial presence and arbitration work which favoured fly-in fly-out mode of service. "More mature markets seem to be able to tolerate a low level of commercial presence so work is done from Australia" according to the ILSAC survey. Employers look for graduates able to operate in the globalised environment and there is increasing evidence that the generic skills elaborated in the six law threshold learning outcomes are what is required for such lawyers. However, these generic skills are not necessarily what local admitting authorities consider to be important and there is increasingly evident a divide between admission bodies fearing a loss of ‘black letter law’ and content knowledge as compared with the development of generic skills, which are seen as optional but unnecessary.

Until the formation of a possible national admission board, the body for developing uniform national admission criteria is the Law Admissions Consultative Committee (LACC). LACC formulated the minimum academic study requirements for legal practice in 1992.
‘Priestley 11’ compulsory core (named after the Chair of LACC at the time) has served well and there is no serious attempt to dislodge this content. Rather, it is incorporating skills, attitudes and attributes alongside the content which is the focus of recent developments. Recently LACC has attempted to reflect on some developments in theories of legal education, recognising that the discipline-specific TLOs for law could have profound consequences for universities and law schools and has attempted to advise admitting authorities on exploring ways in which any discipline-specific TLOs for law might be integrated with, or complement, the existing 11 academic requirements for admission.

Another recent and significant development in Australian legal education over the last 10 years has been the adoption of the "juris doctor" (JD) degree, a graduate entry professional law degree leading to practice in the style of the US graduate degree from which it is derived. Half of all Australian law schools now offer this popular program and it is a significant pathway for graduates into the legal profession. The Universities of Melbourne and from 2013, Western Australia, will only offer the JD degree and therefore all their law students will already be university graduates. Increasingly, other law schools are finding that young professionals are returning to law school to study a JD. The legal profession generally welcomes the entry of JD graduates as being more prepared for work and with better overall skills and maturity. Indeed, law schools must provide postgraduate outcomes for JD graduates as under the AQF the JD is an ‘advanced masters level degree leading to professional practice’ and JD graduates will have to demonstrate ‘advanced and integrated’ outcomes including ‘contemporary developments in law and professional practice’.

Law schools constantly reflect on the question “What should legal education look like?” prompted by internal course accreditation processes, external regulatory forces such as TEQSA, the AQF and the development of the TLOs over the past two years. This reflection takes place in the context of the requirements of our society for law graduates who can serve Australian social, economic and trade and the expectations of employers of law graduates. The emerging national legal profession will be a critical aspect of the evolving conversation around the constitution of an Australian legal education.

As part of our strong commitment to building the capability of people working in the new tertiary sector, the TDC is proud to support B-HERT to strengthen relationships between vocational education and training, business and higher education.

For information about the TDC professional learning programs and consulting services please visit the TDC website.

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In-house Counsel: From a small start to a power-house profession

There was a time when most businesses didn't have an in-house legal department. The few lawyers that practiced in-house were considered lesser professionals by their private practice peers. However, over time, the case for an in-house legal department has been demonstrated. In-house counsel, are close to the business, understand the organisation's needs and work to deliver good commercial outcomes.

The role

In general, in-house lawyers come from private practice, where they have honed their legal skills and expertise. Their focus is on the law and the matters they handle for their clients. While legal skill and expertise are important for in-house counsel, their success in the role rests not only in this, but in their ability to work with business colleagues to deliver the organisation's goals.

Today's legal department is an essential part of the c-suite for successful businesses. In-house counsel, are trusted advisors, demonstrating their knowledge of their organisation's business through timely and commercially savvy legal advice and practice. The functional elements of the role will depend on the size and type of organisation, but usually include managing legal matters (i.e. costs, litigation and external providers), managing business legal risk (i.e. IP protection, compliance programs and assessing legal risk) and providing commercial legal advice (i.e. for marketing programs, new ventures, acquisitions etc.).

Organisations expect more from in-house counsel than just the day-to-day legal duties. It is commonplace for the most senior lawyer, General Counsel, to be involved at an executive management level.

It is also commonplace for the General Counsel to have other roles/responsibilities, such as Company Secretary, Chief Risk Officer or Compliance Officer. Increasingly General Counsel are heading up multi-functional departments, these may include non-law based functions such as Human Resources or Corporate Affairs.

Performing these varied responsibilities in harmony with the business' needs is the challenge for in-house lawyers. Little in legal training prepares in-house counsel for the commercial acumen, influencing and negotiation skills, and cross-functional understanding needed to perform the role.

In addition to this, in-house counsel must maintain the high professional standards required as an officer of the Court. Lawyers rely on professional privilege to provide frank and fearless legal advice to their client. The Australian courts determine profession privilege by the degree of independence and dominant purpose of the communication.

In 2005, Deloitte's Global Survey showed less than a quarter of general counsel believed they had greater influence in their organisation than their external firm. In 2010 that figure was over 70%. Today, the figure is even higher.

Top tips for success

1. Know your organisation: Each organisation is different. Some embrace their legal department; others see it as an obstacle. The cultural dynamics will determine not only how you are treated but it will also determine how your advice received. Understanding the culture means you can develop strategies for being heard and adding value to the business.

2. Know your business and industry: Your colleagues are likely to be intimate with how the business operates and the issues within the industry. It is important for in-house counsel to also be across these things – not just so that you can communicate internally, but to ensure your advice is relevant.

3. Never compromise your ethics: High standards must be maintained and at times it may be challenging to manage the dual responsibilities.

4. Focus on value, not cost: The legal department has traditionally been seen as a cost centre. However, more and more, in-house counsel are showing the value they provide to their organisation through risk mitigation, better matter management and contributions to commercial outcomes. In-house counsel need to be across developments in practice management and embrace change.

5. Don't operate in isolation: the role of in-house can be lonely, especially as most legal departments contain one-person or a very small team. In-house lawyers worldwide have benefited from building relationships with other in-house lawyers, sharing knowledge and supporting each other. Reaching out to peers can be a constructive way to deal with the strains and challenges of the role.

Trends for the future

Turn cost pressure into value adding

The GFC lead organisations to examine their spend – all the low hanging fruit has been saved and now procurement is looking for new ways to add value to the business. To date procurement specialists have not been
very successful in the legal space because of the nature of legal advice. However, in-house counsel needs to take ownership of the process of driving value to get the best result and shift thinking from cost to value.

**Diversity in the role**

The role of in-house counsel has expanded to include related functions and is predicted to continue to incorporate non-legal functions too. Already 40% of General Counsel’s play the dual role of Company Secretary. Increasingly, in-house counsel is being asked to manage diverse teams which can include HR, operations, compliance, risk and government/corporate affairs.

**Range of roles, but more CEO reporting**

There is no one size fits all in legal department size, structure or reporting lines. While there are some well-known large legal teams, there are many sole counsel and small teams. Depending on the organisation, the General Counsel may report to the CEO, CFO, COO or other officer. The legal department can be centralised or decentralised based on the need. Equally, specialisation may be insourced or outsourced.

What this means is that there will continue to be a variety of in-house roles, including legal specialists, large department leaders, sole counsel generalists, Greenfields operators and small team managers.

Along with the diversity of roles, will be an increasing tendency for the General Counsel to report to the CEO. Results from the ACLA/CLANZ 2010 Legal Department Benchmarking Report show that already 59% of Australian respondents reported directly to the chief executive.

**Employment contracts**

Employment contracts are an important measure to protect privilege and provide in-house counsel with the ability to best exercise frank legal advice. Increasingly in-house counsel’s employment contracts incorporate independence, including defining the primary responsibility, appropriate reporting lines, transparent remuneration and protection from termination when exercising independence.

**In-house Counsel Project Managers**

The most pressing issue facing in-house counsel today is managing workload. As the department is expected to increasingly provide value to the business, in-house counsel are increasing managing legal matters as project managers – scoping the work, determining what can be done internally, what should be outsourced and where, managing external parties to deliver on time and

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on budget, managing internal stakeholders and undertaking post matter review.

With this project management approach in-house counsel are finding new ways to deliver value to their organisations and changing the relationships with legal service providers.

**Outsourcing for value**

A new trend to emerge has also been the wider set of provider’s in-house counsel now works with to deliver value for their organisations. These include; full service firms, boutique firms, specialist software solutions and legal process outsourcing (LPOs).

The 2010 ACLA/CLANZ Legal Department Benchmarking Report showed 32% of respondents forecast an increase in the use of specialist and boutique firms and only 5% indicated a decrease in usage.

**More than legal expertise**

What makes in-house lawyers unique is that they are the nexus between legal and business. For in-house counsel knowledge of black letter law is important, and now equally important, is the ability to influence the business and be an integral part of the organisation’s decision-making process.

In this new environment there is an increasing focus on in-house lawyers obtaining broader skills, from effective communication, to influencing skills, or learning how to ‘sell the service’.

**Technology**

We are in a rapidly changing technology space, where it is said that most technologies become obsolete within 5 to 7 years.

With each technology development and new application comes new risks and opportunities for organisations. In-house counsel are increasingly being asked to assess privacy, security, business ventures and marketing opportunities, in this new landscape where consumer expectations and technological capabilities are not always completely understood.

And with this technical trend set to continue, in-house counsel needs to be ready to provide valuable advice to the organisation.

**Regulation**

In recent years there has been a growing regulatory focus from governments and with this comes challenges for the in-house lawyer. The rate of regulatory change is expected to continue over coming years too, meaning there is no let-up in sight. Organisations will continue to look to their in-house counsel to be across all regulatory developments and advise what is needed. However, with the pace of change, in-house counsel will need to look to new ways of staying ahead of that change and ensure compliance.

**Propensity to litigate**

A relatively new trend is the increasing propensity for litigation. While Australia is not on the same scale as we see in America, there has been an increasing willingness for litigation, including class actions. This trend not only impacts in-house counsel with potential litigation matters to manage, but on mitigation as well.

**Continuous change**

One thing is certain – the profession and role will continue to evolve. There will be more diversity for in-house counsel and opportunities to progress into other leadership roles in the organisation.

Change can be daunting. As in-house counsel embrace change they will reap the professional and personal rewards for doing so. ■
Educating Lawyers for a Complex World

Law graduates entering the legal profession today are entering a profession that has both important continuities with, but also significant differences to, the legal profession of days gone by. This generation of law students has no illusions about the need to be highly competitive in order to simply join the profession in the first place. Graduates need to combine a strong understanding of law with a range of work skills and a dedication to lifelong learning if they are to succeed. The days when a law degree was a guarantee of a good job are over. Employers are increasingly interested in the quality of the degree, the quality and experience of the students, and the capacity of their potential employees to work across jurisdictional and cultural boundaries.

There have always been Australian lawyers who have been engaged with law on an international scale (appeals to the Privy Council, for example, were a part of life for Australia’s top advocates well before modern talk of globalisation) but the scale, pace and complexity of internationalisation has certainly increased in the last couple of decades and is likely to continue to do so. Many of our former students now work in large international law firms in places such as London, New York, Beijing and Hong Kong. Others are employed by international organisations, including the United Nations, the Red Cross and the World Trade Organisation. Those based in large law firms in Australia will be regularly involved in large transnational deals and even those who work in smaller firms with a focus on Australian law will find that the clients who walk through the doors come from a wide variety of cultural, linguistic and religious backgrounds and might have little or no understanding of the Australian legal system.

Law schools cannot possibly teach the law of every country or the full range of cultural or religious norms and practices that students might encounter in the course of their working life. However, law schools do need to inculcate students with a good understanding of both the international legal system and ensure that students are capable of working with people of different cultural backgrounds. Some of this learning happens in the everyday classroom interaction at Melbourne. We require all students to work in syndicate groups to develop teamwork skills with people from a range of different backgrounds. Students are regularly exposed to the international or comparative law dimension of the subjects that they select, and the Asian Law Centre, the Centre for Comparative Constitutional Studies and many of our other research centres have developed a range of optional subjects that allow students to make a more detailed examination of the legal systems of our regional neighbours.

In addition to the traditional (and still important) exchange programs, Melbourne students have the opportunity to study at the Centre for Transnational Legal Studies in London. Melbourne is the only Australian partner of the coalition of leading international law schools that sends teachers and students to teach or study with their contemporaries from 20 leading law schools from around the world. Being taught by people from a range of different legal systems about approaches to transnational law gives students a cosmopolitan and sophisticated set of analytical tools to understand international deals. Studying with students from around the world creates transnational professional networks and potentially friendships that last a lifetime. For our very best students, there is also the option of undertaking a degree with one of our three leading international partners – the University of Oxford, New York University, and the Chinese University of Hong Kong. These degrees allow students to complete the Melbourne Juris Doctor (JD) and a masters’ degree from one of these universities in less time than it would take to complete each degree separately. It provides a strong signal to our students that we encourage them to continue their education beyond Australia’s boundaries.

These formal opportunities are an important manifestation of our commitment to internationalisation of our curriculum. But there are also some wonderful informal opportunities driven by our student body that have developed over the years. In one notable example, a small group of law students who got together to learn Chinese has grown into a group of over 100 students teaching one another Chinese, including legally focused Chinese, for free. When law schools exhibit a commitment to internationalisation in their curriculum and research, then students pick up on this message and implement it outside the curriculum in a range of innovative ways.

In addition to the need to be capable of working across national boundaries, another difference in modern legal practice that is only likely to increase over the next decade is the pressure being put on larger law firms to outsource some of the more basic legal work, such as discovery, to providers in developing countries that are able to complete it more cheaply. Smaller firms
are increasingly in competition with on-line providers of direct legal services to clients. The legal profession, long protected from the chill winds of international competition, now faces a much more competitive environment and clients who are focused on value for money.

Law schools must recognise that they have to provide high level skills and legal analytical capacity in order to compete in this environment. There is a danger that law schools that simply focus on ‘practical legal skills’ without ensuring that these skills are based on a strong foundation of knowledge of legal principal and analysis will produce lawyers whose skills can be replicated far more cheaply by overseas competitors. In recent years, Melbourne Law School has begun to teach law at the graduate level (the juris doctor rather than the bachelor of laws) and one of the benefits of this change has been to allow us to teach law at a high level of intellectual sophistication appropriate for graduates and also appropriate for the developing needs of the graduate market. It also permits a more integrated approach to the curriculum that illuminates for students the links between different areas of the law and the way that they can come together to assist in resolving complicated, real world problems. Lawyers with these high level skills and understanding are more likely to be employable in an internationally competitive market.

Finally, lawyers and law schools are recognising that formal legal education is not something that finishes as soon as a graduate enters legal practice. The law has never been static but there has been an increase in the pace of legal change, particularly in areas that are directly impacted by developments in technology, medical science, financial markets and other rapidly moving areas. Lawyers need to be capable of absorbing and responding to that change. They also need to be effective in promoting change at times when the law is no longer serving (or never has served) the social purpose for which it was established. This requires a commitment to lifelong learning that goes beyond simply showing up at a few Continuing Legal Education seminars to fulfil the (wisely) imposed requirements for practising lawyers. It requires a personal commitment to keeping up-to-date in a field, high quality legal research skills, and knowledge of how the law applies in jurisdictions other than the one in which they practice. Many lawyers are now also choosing to undertake further specialist study after their original law degree by enrolling for a graduate diploma or masters’ degree once they have begun to establish themselves in a specialist area. At Melbourne Law School, masters’ students can select from over 160 subjects taught by leading experts from the profession and the academy. Bearing in mind the importance of internationalisation, over 50 of these teachers are from other countries and this allows students to rapidly develop a strong understanding of legal developments in other parts of the world.

It is important, however, not to be so beguiled by the new that we lose sight of the important ways in which the law school of today needs to adhere to some of the fundamental principles of the past. Legal ethics and personal integrity are essential for those who wish for both respect and success in the law. For all that those outside the law may joke about lawyers’ ethics being an oxymoron, a reputation for honesty, integrity and ethical behaviour is no less important now than it was when Melbourne Law School was established over 150 years ago. The lawyers and judges who come to speak to our students regularly return to the theme of ethical behaviour and honesty as critical to the profession and as an essential personal commitment for all lawyers. However much change the legal profession has experienced in recent decades and whatever innovations law schools have developed to respond to those changes, we have a responsibility for ensuring that these on-going ethical principles remain at the core of legal education.
Lawyers vs Robots: The future of the legal profession and its implications for legal education

A recent article published on the MSNBC website identified nine jobs that humans may lose to robots.1 Lawyer was one of them.

This was based on an earlier article in the New York Times about legal software which, the article said, could analyse documents at least as well as a lawyer at a fraction of the cost.2 Even if all, the article represented was a filler on a quiet news day, it gives us food for thought. Who and what is the lawyer of the future? What will our role be in ten, twenty, fifty years from now? It is an issue that the Future Focus Committee of the Law Institute of Victoria [LIV] has had on its agenda for some time.

Even a decade from now, the legal environment will be vastly different from today. We are facing a globalisation of legal products and services and witnessing the growth of multinational “mega” firms and the outsourcing of legal work to lower cost jurisdictions in Asia.

The likelihood is that we will see greater change in how we practise law in the next ten years, than in the last two hundred put together.

As the environment changes, so too will those who inhabit it – whether we like it or not. Lawyers aren’t well known for their ability to adapt and change, but this is the thing we must do if we are to stay relevant and useful to the community. If we don’t, we risk becoming redundant to a robot.

The question for the profession is how we are best able to help our clients in this fast-moving information age. How best to prepare for the future? We need to differentiate and re-package our unique skills.

The obvious place to begin preparing for the future is building on the way we train our lawyers.

Right now, there seems to be a disconnect between what the universities are producing and what law firms and their clients need from the newly admitted lawyer.

University legal education has traditionally been based on the teaching of substantive law based on the so-called “Priestley 11”, developed by the Law Admissions Consultative Committee [LACC] in April, 1992. The 11 subjects are those suggested by the LACC as a minimum in the academic education of a lawyer. Is this enough for the modern lawyer?

Through the Future Focus Committee, the LIV has embarked on a survey of recent law graduates and a separate survey of employers. The survey questions are based on the new Threshold Learning Outcomes [TLOs] for legal education recently proposed by the Australian Learning and Teaching Council [ALTC] and endorsed by the Council of Australian Law Deans. The TLOs focus on the following attributes – knowledge, ethics and professional responsibility, thinking skills, research skills and communication and collaboration.

It is anticipated that the results of the survey will help legal education stakeholders to identify any issues in legal education, with a view to developing solutions to bridge those gaps.

In the meantime, it is a resource that when reported on later this year, will no doubt prompt a robust discussion among legal education stakeholders.

Once the results of the survey are analysed, the LIV plans to establish a Law Graduate of the Future Forum with representation from universities, students, employers and education service providers to discuss the outcomes of the surveys, the TLOs and the actual and perceived gaps in legal education.

Early feedback tells us that both sets of respondents generally have no issue with the level of legal knowledge of the recent graduates and their understanding of ethics and professional responsibility. Scores on the research skills of the graduates was mixed. Interestingly, the area where employers ranked graduates higher than the graduates themselves was teamwork.

However, an area of real concern was thinking skills. This TLO is concerned with a graduate’s ability to identify and articulate legal issues, apply legal reasoning and research legal issues, engage in critical analysis and think creatively.

The survey asked respondents to rank a graduate’s ability in these areas from 1 (being least) to 5 (being most). The survey results show almost 41 per cent of employers rate graduates’ ability to think creatively in approaching legal issues and generating appropriate responses at 1 or 2, and only 6 per cent gave a mark of 5. Only 31 per cent of graduates, on the other hand, ranked themselves at 1 or 2, while some 21 per cent gave

2 http://www.nytimes.com/2011/03/05/science/05legal.html?_r=1
themselves a score of 5. Clearly there is a gap between the perceptions of graduates and their employers.

Thinking skills are critical to the practice of law. It is what differentiates us from robots: namely the ability to tailor solutions to unique client problems. In Richard Susskind’s landmark book *The End of Lawyers? Rethinking the Nature of Legal Services* [2008], Susskind predicted significant new pressures on the legal marketplace and, in turn, great change in the world of legal services. He suggested that there would be 5 types of lawyer in the future. Of these, among the most desirable would be the "expert trusted adviser"; the "purveyor of bespoke legal services".

So how do we bridge the gap and get to be the trusted adviser? The thinking skills required relate to the ability to recognise and address the multitude of legal issues that arise in "real life" legal practice. Survey comments from employers and graduates alike reflect a concern that there are insufficient practical skills taught in university courses.

One employer said “recent graduates seem to exhibit an inability to think laterally or to understand how to find out about issues that are not readily identifiable or that they have been directed to look at”. Another said “One day I would like to see practical and skill components on an equal footing with academic components in undergraduate law degrees.”

This was echoed in feedback from the graduates. One said “It should be mandatory for law students to undertake on-the-job training each year of their law degree”. Another observed that university “was good for learning how to find the answers to questions, but not as good at helping us learn how to identify the question”.

Of course, a university legal education is not just about preparing graduates for legal practice. Indeed, given the number of law graduates coming out of Australian universities, it is extremely unlikely that all of them would find jobs in the legal profession. However, university should prepare law graduates for working life and, in this, thinking skills are extremely important whether or not applied in a legal context.

It is clearly time to reconsider the focus of the Priestley 11 on substantive law, and instead look at the learning outcomes and the potential for adding a practical element to the list of pre-admission requirements to aid a graduate’s working life.

We also need to make sure that the law continues to attract the best and brightest graduates. The learning pathways of law students and where they lead graduates is a constant theme for the

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Project:
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Honourable Mention:
Macquarie Group Foundation

Project:
Various initiatives at the University of NSW including the Centre for Social Impact, and Macquarie Group Foundation Chair

Honourable Mention:
Olga Tennison

Project:
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