UNIVERSITY LEGAL EDUCATION AND THE SUPPLY OF LAW GRADUATES: A FRESH LOOK AT A LONGSTANDING ISSUE

MICHAEL MCNAMARA†

I INTRODUCTION

A recent spate of criticism has been directed at universities in relation to an alleged oversupply of law graduates. This issue is not new and arises from time to time,[1] however it was re-ignited in Australia earlier this year following unprecedented, unsolicited career advice to the general populace from the then Prime Minister, Mr Malcolm Turnbull. Mr Turnbull publicly commented that 'I think too many kids do law'[2] and recommended that only those wanting to become a barrister or solicitor should study law. His reasoning was backed by the rhetorical question 'why would you do dentistry if you don't want to be a dentist or medicine if you don't want to be a doctor?' [3] Mr Turnbull's comments, and ensuing protectionist concerns from commentators that accused universities of 'selfishly cashing in on young people's dreams of ivory towers that cannot be fulfilled', 'dumbing down the quality of learning' and 'making a law degree worthless',[4] are a

---

† Michael McNamara BA JD GDLP PhD is a Lecturer at Flinders University.

1 This issue arises in the literature periodically. For example, in recent times, see: Michael Douglas and Nicholas van Hattem, 'Australia's Law Graduate Glut' (2016) 41 *Alternative Law Journal* 118.

2 Louise Yaxley, *Don't study law unless you really want to be a lawyer, Malcolm Turnball says* (2 February 2018) ABC News Online <http://www.abc.net.au/news/2018-02-02/malcolm-turnbull-says-too-many-kids-do-law/9387508>.

3 Ibid.

4 Emma Ryan, *Frustration grows over unis 'cashing in' on law grad oversupply* (20 February 2018) Lawyers Weekly <https://www.lawyersweekly.com.au/sme-law/22768-frustration-grows-over-unis-cashing-in-on-law-gradoversupply?ut

simplistic response to a complicated issue. Some members of the legal academy were quick to respond to Mr Turnbull's comments, highlighting the multiple reasons for studying law and the 'range of other opportunities'[5] it opens up besides practising law. This article endorses those initial responses and delves deeper into the issue by: evaluating claims of an oversupply of law graduates based on available data; considering the extent of any unmet demand for legal services; and by providing a refreshed understanding of the stages of legal education, of which the university law degree is the first of three.[6]

Part II will position the issue of law graduate supply in the context of a wider debate regarding whether there are too many lawyers. This part will present and analyse existing publicly available data about law graduates and their destinations. It will then examine the issue from the perspective of unmet demand for legal services in the form of access to justice barriers, and disruptive legal technologies.

Part III argues that the law graduate supply argument needs to recalibrate towards a careful consideration of the three stages of legal education — university law degree, practical legal training, and supervised legal practice — including the purpose of each and the relevant players and stakeholders. This part will describe how concerns about the supply of new entrants is a recurring theme in the development of the modern legal profession, which can be traced to

---

m_source=LawyersWeekly&utm_campaign=20_02_18&utm_medium=email&utm_content=1>.

5 Melissa Coade, *Dean Responds to PM's advice on legal education* (5 February 2018) Lawyers Weekly <https://www.lawyersweekly.com.au/careers/22660 - dean-responds-to-pm-s-advice-on-legaleducation?utm_source=LawyersWeekly&utm_campaign=05_02_18&utm_medium=email&utm_content=1>. Also see: Rosalind Dixon, *Studying law is about much more than becoming a lawyer, Malcolm Turnbull* (2 February 2018) ABC News Online <http://www.abc.net.au/news/2018-02-02/prime-minister-malcolm-turnbull-unsw-study-law-hass-atar/9390698>.

6 The three stages of legal education before an aspiring lawyer can practise in her own right are: university law degree, practical legal training and supervised legal practice. See. Jeff Giddings and Michael McNamara, 'Preparing Future Generations of Lawyers for Legal Practice: What's Supervision Got to Do with It?' (2014) 37(3) *UNSW Law Journal* 1226.

the very origins of the precursors to the modern solicitor and barrister in the Middle Ages. This discussion will then consider how the legal profession came to rely on university legal education, partly because of its inability to maintain standards via the traditional apprenticeship mode of training, and partly because of a societal shift towards schooled societies and institutional learning.

Part IV then continues by examining each of the three stages of legal education in turn. This Part will argue that, irrespective of whether there actually is an oversupply of law graduates (or new entrants into the legal profession), the debate needs to scrutinise all relevant players and stakeholders, including university law departments, practical legal training providers, admission boards, law societies, and legal practitioners responsible for supervising junior practitioners. This discussion will conclude by proposing a coordinated response across the stages of legal education.

II AN OVERSUPPLY OF GRADUATES IN AN INDUSTRY WITH UNMET DEMAND

The law graduate supply issue is strongly linked with the longstanding contention that 'there are too many lawyers'. This sentiment has been closely analysed by legal profession scholars who dedicate conferences to this issue,[7] and has also entered the popular psyche by what appears to be a specific subset of lawyer jokes.[8] On this issue, Economides concluded that:

> Whether or not there are too many lawyers depends not so much on their numbers as what they do and whom they chose to serve. Lawyers serving the public interest have in the past been few in number but have had a disproportionate impact on society; conversely, many lawyers who have made a comfortable living in private or corporate practice by virtue of

[7] For example: Too Many Lawyers: Facts, Reasons, Consequences, and Solutions, International Institute for the Sociology of the Law Symposium/Conference, Onati, 19-20 April 2012; and W Reece Smith Jr, ' Are There Too Many Lawyers?' (1983) 6 *Canada-United States Law Journal* 98.

[8] M Galanter, *Lowering the Bar: Lawyer Jokes & Legal Culture* (2005).

> being relatively insulated from market pressures and propped up by restrictive practices may well find themselves threatened by the current liberalisation of the market for legal services.[9]

If this reasoning is applied to the law graduate supply debate, then 'what law graduates intend to do', 'whom they intended to serve', and 'whether they threaten a disruption to the market for legal services', are all relevant factors. More specifically, this article positions the 'oversupply' argument (section A below) against a competing argument that there is significant unmet demand for legal services (section B below).

A *The Oversupply Argument: Thinking about the Data*

Former Prime Minister Turnbull's career advice was not supported by any firm evidence, rather, it appears to be based on what is now an aged, popular, but unsupported myth. Melville has identified three recent oversupply crises beginning in the early 1980s and concluded that:

> the current concern over the overproduction of law graduates is hardly new, and that the profession becomes anxious about the over-production of lawyers during moments of severe economic stress. It also appears that during the economic recessions of the early 1980s and 1990s, the assertions that there were too many graduates relative to employment opportunities were inconsistent with the empirical evidence. The current anxiety concerning the overproduction of law graduates, however, appears to have some empirical basis. Employment opportunities for law graduates wanting a career in private legal practice have declined in recent years. *This does not mean, however, that law graduates are facing an employment crisis.*[10]

---

[9] Kim Economides, 'Measuring the (over-)supply of lawyers: inter-professional, international or regional comparisons? (Paper presented at: Too Many Lawyers: Facts, Reasons, Consequences, and Solutions, International Institute for the Sociology of the Law Conference/Symposium, Onati, 19-20 April 2012) 12.

[10] Angela Melville, 'It is the worst time in living history to be a law graduate: or is it? Does Australia have too many law graduates?' (2017) 52(2) *The Law Teacher* 203, 224 (emphasis added). Melville's work appears to be the most thorough recent empirical analysis of the issue. This article endorses Melville's work and offers a different perspective by: examining the nature of the unmet demand for legal services (section B below); tracing the origins of this oversupply issue to the development of the modern legal profession in the middle-ages (Part III); and

The current oversupply 'crisis' seems to have started with media reports of there being a 'glut'[11] of new lawyers. The alarm may have been set off again by a 2015 report that the number of law graduates had reached a nation-wide record high with '14,600 graduates entering a legal jobs market comprising just 66,000 solicitors'.[12] The basis of these statistics is not clear and has been contested by the Council of Australian Law School Deans (CALD) which has gone as far as publishing a fact sheet titled the 'Data Regarding the Law School Graduate Numbers and Outcomes' (CALD Factsheet).[13] The CALD Factsheet casts serious doubt on the accuracy of the raw numbers reported in the media[14] and reported that, in 2015, there were only 7,583 graduates nation-wide.[15] The CALD Fact sheet also challenged the assumption of a dire lack of employment opportunities for law graduates reporting that success in obtaining employment for law graduates was higher than the national average.

Furthermore, according to a report prepared by Ernst & Young for the College of Law, in 2013 there were approximately a total of 8,300 law graduates nation-wide, of which only 6,250 (75%) continue with PLT.[16] In that same year, 400 (6.4%) of that 6,250 did not complete their PLT.[17] In addition, in the same year approximately 3,300

---

most significantly, providing a detailed overview of the stages of legal education and positions the oversupply debate in the context of the legal education framework (Part IV).

11 Edmund Tadros, 'Graduate glut: 12,000 new lawyers each year', *The Sydney Morning Herald* (Online), 14 February 2014 <https://www.smh.com.au/business/graduate-glut-12000-new-lawyers-every-year-20140214-32qnm.html>.

12 Edmund Tadros and Katie Walsh, 'Too many law graduates and not enough jobs', *Australian Financial Review* (online) 22 October 2015 <http://www.afr.com/business/legal/too-many-law-graduates-and-not-enough-jobs-20151020-gkdbyx>.

13 Council of Australian Law Deans, *Resources* (2018) <https://cald.asn.au/wp-content/uploads/2017/11/Factsheet-Law_Students_in_Australia.pdf>.

14 In particular, the CALD Fact Sheet casts serious doubt on the record high number of 14,600 graduates: see Tadros and Walsh, above n 12.

15 CALD, above n 13.

16 College of Law, 'Submission in Relation to Proposed Admission Laws to the National Uniform Law Legal Services Council Admissions Committee' (30 January 2015), Attachment H.

17 Ibid.

solicitors exited legal practice,[18] of which a significant number is likely to be from the pool of junior practitioners who have high attrition rates linked to inefficient guidance and supervision by senior lawyers.[19] The PLT stage of legal education is considered in more detail in Part IV(B) below. However, it is relevant to foreshadow that there are limited barriers to entering PLT, and the PLT sector is currently able to service demand. In other words, any law graduate who wants to enrol in a PLT course, can if they choose to do so.

Earlier data also confirms that across the nation a sizeable portion of law graduates do not enter traditional legal practice. The proportion of law graduates starting work in law firms dropped from 49.1% in 2005 to 43.7% in 2010.[20] In contrast, the proportion of law graduates taking jobs in industry or commerce jumped from 13.5% to 20.1% in the same five-year period.[21] There is also some New South Wales specific data confirming these nation-wide trends.

The Law Society of New South Wales has recommended collection of more data to confirm the number of 'graduates emerging from: i. universities in NSW over the past 10 years who have completed a law degree accredited by the Legal Profession Admission Board. ii. practical legal training courses in NSW.'[22] Douglas and van Hattem seem to have interpreted this particular recommendation as meaning that 'there is no measure of how many graduates want a career in legal practice but are unable to find work.'[23] While more detailed and

---

18 Ibid.

19 Colin James, 'Lawyer Dissatisfaction, Emotional Intelligence and Clinical Education' (2008) 18 *Legal Education Review* 123. In addition, see Part IV section C below.

20 Nicole Berkovic, 'Fewer Law Graduates are Choosing Practice as a Career', *The Australian* (online) 1 July 2011 <https://www.theaustr alian.com.au/business/legal-affairs/fewer-law-graduates-are-choosing-practice-as-a-career/news-story/03552d1a9a5f1c85dd15f1145e2e208d?sv=95a9d2c40ca3d9327d8681cb14fbaade>.

21 Ibid.

22 Law Society of NSW, *Future Prospects of Law Graduates – Report and Recommendations* (2015) 6.

23 Michael Douglas and Nicholas van Hattem 'Australia's Law Graduate Glut' (2016) 41 *Alternative Law Journal* 118, 120.

precise data would be useful, there is some existing data to get a sense of broad trends in NSW. In 2016, approximately 79.2% of university law students in New South Wales intended to complete practical legal training and of these only 71% intended to practice law.[24] It is unclear why slightly more than 8% of law students intended to complete practical legal training but not actually enter legal practice when the sole purpose of this stage of training is to prepare for admission and practice.[25] Irrespective, this data indicates that even before completing their law degree nearly 30% of university law students do not intend to practise law, and view their studies as a means to another career.

This brief statistical analysis is consistent with Melville's finding that the oversupply crisis is not an oversupply of law graduates per se. Rather, from the perspective of legal practitioners in private practice, there are many more law graduates than that particular subset of the legal profession feels it needs. In addition, there seems to be a clear grouping of students who have no intention of ever entering legal practice, as demonstrated by those students who do not continue on to PLT. In this regard, it is not a matter of all law graduates choosing alternative careers because of a lack of jobs in private law firms. There are likely to be other reasons why a particular student chooses to complete some or all stages of legal education. In this regard, there is a tendency for media reports (and the ensuing commentary) to conflate university law students with aspiring legal practitioners. When considering supply in terms of the needs of the legal profession, it seems it would be more appropriate to focus attention to the number of PLT graduates instead of university law degree graduates. In addition, while additional data confirming the intentions and expectations of law students at different points in their study would be useful, the 'oversupply' argument is one just side of the equation, and should be considered in light of unmet demand for legal services.

[24] Law Society of NSW, above n 22, 8.

[25] The practical legal training stage of legal education is discussed in greater detail in Part IV(B) below.

B *The Unmet Demand Argument*

Even if PLT graduates were correctly treated as the relevant object of quantification (instead of university law graduates) the oversupply argument, on its own, is still flawed. This is because it neglects structural issues in the legal services sector. In the context of the law graduate supply debate, Coper has asked '…what of unmet legal needs? Have we tried hard enough as a society to match the robust supply of legal expertise to the unmet demand for legal services?'[26] Coper's rhetorical question is a reminder that the raw numbers need to be considered in light of a continuing failure to meet demand for legal services in a cost-effective way. Although there may well be too many aspiring legal practitioners and not enough entry level positions, there are two possible reasons for this. One is that there is simply insufficient demand for legal services, in which case there is no overall benefit to society in having any more than a certain number of law graduates. The other is that there is a failure to capitalise on the knowledge and skills of these graduates efficiently enough to meet demand.

This section will provide an overview of current access to justice barriers in Australia, as well as a brief summary of how disruptive technologies have emerged as an alternative to traditional legal services delivery. These factors together indicate that any perceived oversupply of aspiring legal practitioners is more likely a result of the legal profession's inability to efficiently accommodate higher numbers of aspiring new entrants, as opposed to any actual shortage of demand for legal knowledge and know-how. In other words, this section argues that the answer to Coper's question is 'no'.

1 *Access to Justice Barriers*

Access to justice pervades the wider debate about whether there are too many lawyers.[27] Thornton argues that:

[26] Michael Coper, 'Does Australia Have too Many Law Schools' (2016) 90 *Australian Law Journal* 777, 779.

[27] See Douglas and van Hatten, above n 23.

> While traditional legal practice does not appear to be propitious for law graduates, I nevertheless do not endorse the popular mantra that there are 'too many lawyers' or the view that the problem would be resolved by closing down a number of law schools and placing a cap on law school admissions. Indeed, the evidence suggests that there is a shortage of lawyers in Australia in regional, rural and remote ('RRR') areas. It is also well known that a large proportion of ordinary citizens cannot afford access to lawyers, which suggests that opportunities for innovation exist.[28]

In the context of the issue of law graduate supply, it is necessary to examine the areas, and extent of, 'unmet legal need'[29] and the extent to which law graduates could potentially be matched to these areas of need. The Productivity Commission identified the types of legal problems for which there was the highest unmet need. The top ten areas of unmet legal demand are set out in Table 1 below.[30]

Table 1 – Unmet Legal Demand	
Problem Type	**Share of Unmet Legal Need**
Consumer	28.6%
Government	13.2%
Crime	10.1%
Housing	8.6%
Employment	8.5%
Rights	7.6%
Credit/Debt	6.7%
Family	6.1%
Money	4.1%
Health	2.6%

[28] See Margaret Thornton 'Deregulation, Debt and the Discipline of the Law' (2014) 39(4) *Alternative Law Journal* 213, 216.

[29] Unmet legal need is the terminology used by the Productivity Commission in its 2014 Access to Justice Arrangements Inquiry Report. It defines 'unmet legal need' as 'legal need that has either gone unaddressed or has been addressed based on inappropriate advice'. See Productivity Commission of Australia, 'Access to Justice Arrangements' (Inquiry Report No 72, 5 September 2014) Volume 1, 86.

[30] Ibid 106.

In addition, 'most unmet need in these areas results from respondents taking action to resolve a problem by consulting an inappropriate adviser.'[31] This type of unmet legal need involves approaching a third party non-lawyer, who does not have any relevant experience, for assistance with a particular legal issue.[32] Not only is there significant unmet legal demand in these areas, but often these legal issues are frequently handled at the first instance by what the Productivity Commission defined as 'appropriate' non-lawyer advisers, which are set out in Table 2 below and arranged by problem type.[33]

Table 2 – Non-lawyer Advisors	
Problem Type	**Advisor**
Consumer	Ombudsmen and Departments of Fair Trading
Government	Government (including ombudsman)
Crime	Police
Housing	Government (including ombudsman)
Employment	Unions, Supervisors, Employment Agencies
Rights	Educational institutions, and teachers in the case of bullying
Credit/Debt	Financial advisors
Family	Family Relationship Services / Relevant Child Welfare Authority
Money	Financial advisors
Health	Doctors

[31] Ibid.

[32] For example, a friend or family member, or any other type of lay agent that the Productivity Commission did not consider to be an appropriate advisor (See Table 2). In addition, this type of unmet demand does not include circumstances where that third party simply referred the matter to an appropriate legal practitioner.

[33] Ibid 102.

The Productivity Commission's analysis estimated that approximately 15% of the population have some form of unmet legal need, and the following groups were more likely than the general population to have unmet legal need:[34]

- Women
- Recipients of means-tested government welfare payments
- Indigenous Australians
- Persons with a disability
- The unemployed
- Persons from a non-English speaking background

Similarly, persons living in regional, rural and remote areas have diverse legal needs and barriers to accessing justice. The probable reasons for this include a 'lack of justice infrastructure and the scarcity of legal services' in these areas.[35]

Affordability is probably the main systematic barrier to accessing justice and 'many Australians cannot afford a lawyer for anything beyond the simplest legal issues.'[36] It remains true that 'the difficulties experienced by middle-income earners in accessing the justice system [are] a longstanding failure.'[37] However, increasing scrutiny on the traditional delivery of legal services combined with a buzz of innovation and disruption, perhaps provide cause for cautious hope and optimism. These developments, and their relevance to this article, are discussed in the next section.

---

34 Ibid 107.

35 See Helen McCowan and Richard Coverdale, 'Access to Justice in Rural and Regional Areas' in Trish Mundy, Amanda Kennedy and Jennifer Nielsen (eds), *The Place of Practice: Lawyering Rural and Regional Australia* (Federation Press, 2017) ch 7..

36 Community Law Australia, 'Unaffordable and Out of Reach: The Problem of Access to the Australian Legal System' (Report, July 2012).

37 John Doyle, Former Chief Justice of South Australia, as quoted in Community Law Australia, above n 36, 5.

2 *Innovation and Disruptive Legal Technologies*

The law graduate supply debate is now taking place in circumstances where there is widespread discussion about the future of legal services and the legal profession. Innovation and technology are increasingly seen as a panacea of sorts for the expensive legal system.

One way that community lawyers are seeking to innovate is by offering unbundled legal services for disadvantaged clients.[38] This involves providing discrete services for certain clients where full representation is not possible because of the cost. However, this type of legal service delivery is hindered to a certain extent because 'there is currently a lag behind limited scope legal service activity in the consideration of lawyers' professional responsibilities.'[39] This means that professional convention, which manifests as professional responsibility obligations, operate such that practitioners offering a different service are potentially exposed to disciplinary action or liability for failing to run a matter as expected if a client could afford full representation. Essentially, this provides a disincentive for tailoring representation to a client based on their financial situation and based on what is reasonable in particular circumstances.[40]

Beyond tailoring legal work according to client needs rather than professional convention, disruptive legal technologies are driving changes directed at increasing efficiency, and the legal profession is now serious about embracing these opportunities.[41] Susskind has identified 13 disruptive technologies.[42] These disruptive technologies

---

[38] LawRight, *Submission to the National Legal Reform Taskforce on Unbundling* (23 July 2010) available at <http://www.lawright.org.au/cms/page.asp?ID=60742>.

[39] Ibid 7.

[40] This is also an issue being pressed by savvy commercial clients, not because they can't afford legal services, but simply because they want better value for money. See the Law Society of New South Wales' Commission of Inquiry on the Future of Law and Innovation in the Profession in 2017 ('FLIP Report'), ch 1.

[41] Ibid ch 2.

[42] Richard Susskind, *Tomorrow's Lawyers: An Introduction to Your Future* (Oxford University Press, 2013), 40. These are: Automated Document Assembly, Relentless Connectivity, Electronic Legal Market Place, E-Learning, Online

impact the work that is, or could be done by, entry level lawyers, and there are competing arguments regarding this development. The traditional format for delivery of legal services provides a series of routine and repetitive tasks, which can be given to law graduates or junior lawyers to 'cut their teeth'. The pessimists argue that new technologies and innovations now deprive junior lawyers of work,[43] and on this reasoning innovation and technology exacerbate the alleged oversupply problem. The optimists, however, point to growing opportunities for tech-savvy law graduates and suggest 'law itself, in the future, will be the concern of youth and technology'.[44] The truth may lie somewhere in the middle. As technology disrupts an industry, some opportunities will cease to exist, while new ones open up.

The real issue appears to be how the legal profession responds to these changes. There are already signs that non-lawyers are using disruptive legal technologies to meet the demand that is unmet by the legal profession, and moving very close to, or perhaps even moving into, the protected territory of legal practice.[45] The legal technology / online legal information sector is already under the watchful eye of a legal profession wishing to 'investigate bringing legal information within the regulatory fold'.[46] Although the contemporary practice environment has the buzz of innovation and technology, the underlying trend is not new. The legal profession has a track record of limiting the supply of new entrants regardless of the societal demand for legal services, and even as new types of legal work emerge. This has been a feature in the development of the legal profession at least since the origins of the modern solicitor and barrister. Part III now explores this occurrence further, and then identifies that the difference

Legal Guidance, legal open-sourcing, closed legal communities, workflow and project management, embedded legal knowledge; online dispute resolution; intelligent legal search, big data and AI-based problem-solving.

43 Jane Croft, 'Artificial intelligence closes in on the work of junior lawyers' *Financial Times* (online), 4 May 2017 <https://www.ft.com/content/f809870c-26a1-11e7-8691-d5f7e0cd0a16>.

44 Bob Murray, 'The End of Junior Lawyers' Lawyers Weekly, 22 November 2016.

45 Emma Beames; 'Technology-based legal document generation services and the regulation of legal practice in Australia' (2017) (42)4 *Alternative Law Journal* 297.

46 See FLIP Report, above n 40, 104.

in the present debate is that legal education occurs as a staged-process with multiple stakeholders.

III CONTROLLING SUPPLY, SHARED RESPONSIBILITY AND THE STAGES OF LEGAL EDUCATION

A *Controlling Supply and Shifting Demands*

The legal profession has long sought to guard itself from market forces by 'controlling supply' (limiting the supply of new entrants).[47] This can be justified based on ensuring quality, but is arguably also an attempt to reduce competition or protect the status of an existing group.[48] Either way, the actual demand for legal services is influenced by a number of factors including innovation and new areas of work.[49] The actual demand for legal services is not the same as the demand perceived by a subset of existing members of the legal profession, some of whom may have limited themselves to a certain kind of work. The genesis of the current established branches of the legal profession — the solicitor and barrister — both serve as useful examples to illustrate this point.

The modern 'solicitor' emerged as a result of the legal profession controlling supply in circumstances where there was unmet need for legal services in a particular area. The precursor to the modern solicitor was the 'attorney'. The role of attorney gradually developed in Norman England from 'lay friends casually assisting in suits' to a 'professional class' around the reign of Edward I (1272-1307)[50] and the number of attorneys swelled in the 14th century.[51] By 1402, the

47 Richard Abel, *The Legal Profession in England and Wales* (1986, Blackwell) ch 2 & 10. Also see Melville above n 10, for a more recent discussion of this issue.
48 Abel, above n 47, 15-17.
49 Ibid 19-21.
50 Edmund B V Christian, *A Short History of Solicitors* (Reeves & Turner, 1896) 9.
51 Ibid 16-17.

House of Commons petitioned the King 'on account of the great number of attorneys',[52] resulting in a statute that was the first of many attempts to regulate and control the supply of lawyers. Despite continuing concerns of an oversupply of attorneys, the courts of equity 'enforced its favourite plan of limiting the number of practitioners.'[53] So extreme were these restrictions, that beyond the six attorneys officially allowed to operate in the courts of equity, an underclass of 'solicitors', who operated in a regulatory blind spot with no legally defined position, emerged.[54] The profession's control on supply of new entrants, so far as the courts of equity are concerned, was unrealistic given the increasing litigation in that court. Solicitors became so critical to the operation of court processes, they eventually received official recognition from parliament. The functions of attorney and solicitor merged over time, and the title of 'solicitor' became preferred in some jurisdictions.[55] From its humble beginnings as an unregulated underclass of clerks in the courts of equity, the solicitor is the name given to the dominant branch of the legal profession in England, and in all Australian jurisdictions.

The other established branch of the legal profession, the barrister, has similarly humble origins. A professional group specialising in pleading a cause, known as 'serjeants-at-law', emerged towards the end of the 13th century.[56] By the 14th century 'the serjeants had become an exclusive group occupying, with the judges (who were appointed from their number), a position at the apex of the profession'.[57] The serjeants also carried with them an entourage of apprentices, and the senior apprentices eventually became known as barristers with informal rights of audience.[58] The serjeants continued to enjoy a monopoly in the Court of Common Pleas, but eventually the serjeants' 'disdain … for some emerging opportunities' led to the emergence of the barrister.[59]

---

52 Ibid 18.
53 Ibid 71.
54 Ibid 70.
55 Abel, above n 47, 142.
56 Julian Disney et al, *Lawyers* (Lawbook, 1986) 5.
57 Ibid, 6-7.
58 Ibid 8.
59 Ibid 9.

This brief historical exegesis highlights that both branches of the modern profession initially emerged from underclasses of practitioners, in circumstances where the existing professional classes were unable or unwilling to meet the demand for legal services of the day. In the context of the current debate about the number of law graduates, much of the concern has come from legal practitioners working in traditional firms in private practice. However, given the decreasing significance of this traditional legal practice setting as a destination for law graduates, their voice should not be misinterpreted as representative of the entire sector. This is especially so given the present unmet demand for legal services.[60] In this regard, there is a feeling of history repeating itself, and there is fertile ground for new areas of work to emerge, and even for new professional groups to appear. There is, however, one factor that is significantly different now from when the precursors to the modern solicitor and barrister were emerging; that is the new status quo of 'schooled societies'.

B *Schooled Societies, Shared Responsibility and the Stages of Legal Education*

In the past century, there has been a shift from occupational learning occurring entirely in the context of work, to schools, colleges and universities.[61] Obtaining skills or learning in the circumstances of work is an ancient aspect of human society. In the context of modern schooled societies, learning in practice settings:

> has often been addressed by positioning workplace settings as settings in which to refine and exemplify what has been learnt in the academy and the learning being informal and the outcomes concrete. However, now these settings are consistently being used within educational programs preparing doctors, lawyers, nurses, physiotherapists, trade workers, aged care workers, and so on. [62]

The new status quo is joint responsibility where professional training spans formal education providers (universities and colleges)

---

[60] See Part II(B)(1) above.

[61] Stephen Billett, *Mimetic Learning at Work: Learning in the Circumstances of Practice* (Springer, 2014), 7-8.

[62] Ibid.

and practitioners in their day-to-day work. Developments in legal education have taken place as part of this wider societal change. For the legal profession, part of the reason for the initial rise of institutional legal education in England was a failure on behalf of the profession to find time for training and supervising new entrants, and this led to the demise of traditional apprenticeship based forms of training.[63] In Australia, the legal profession has been even 'less active in providing legal education' and 'universities have had to deal with both theoretical and practical instruction'.[64] According to Lamb and Littrich, the rise of the university law school as the dominant mode of legal education in Australia 'became a source of ambivalence and tension'[65] between legal academics and legal practitioners. This tension never fully resolved itself and remains in what Weir describes as a 'dissonance'[66] between academics and practitioners. Weir considers that this dissonance is caused partly by a 'perceived differing set of goals'.[67]

Weisbrot has also commented on the relationship and described it as 'even less healthy'[68] than a mere tension. In a similar vein, Giddings has reported on a situation where clinicians (i.e. law faculty members focussing on clinical legal education) are treated as second-class citizens by other law school faculty members, in a world where legal practice is not first priority.[69] These authors have adequately described the extent of this 'tension'. However, relevant to the present discussion, that tension is a by-product of the multiple objectives of university legal education, only one of which is the preparation of law students for legal practice.

---

63 Giddings and McNamara, above n 6, 1227-1228.

64 David Weisbrot, *Australian Lawyers* (Longman Cheshire, 1990), 122.

65 Ainslie Lamb and John Littrich, *Lawyers in Australia* (Federation Press, 2nd ed, 2011), 25.

66 M J Weir, 'The Dissonance Between Law School Academics and Practitioners - The Why the How the Where to Now' (1993) 9 *Queensland University of Technology Law Journal* 143.

67 Ibid 148.

68 Weisbrot, above n 64, 146.

69 Jeff Giddings, *Promoting Justice Through Clinical Legal Education* (Justice Press, 2013) 157-158.

Overall, it seems that both legal academics and legal practitioners have shared responsibility for training and supervising the professional development of aspiring practitioners. However, neither seems able to focus exclusively on this particular task. Legal academics need to balance their teaching commitments with other university-based activities, notably research, while legal practitioners must find time away from the demands of clients and practice management issues in order to find time for aspiring practitioners. Arguably, a lack of awareness or appreciation of the professional commitments of each other lies at the heart of the issue. This 'tension' was a major factor in the recommendations of the Martin Report[70] in the mid-1960s, setting in course the current system of legal education in Australia, which comprises the following three stages:

- Stage 1 - University Law Degree (Law Degree)
- Stage 2 - Practical Legal Training (PLT)
- Stage 3 - Supervised Legal Practice (SLP)[71]

To speak vaguely of an 'oversupply' of law graduates is pointless without qualification about the stage of legal education or the reason for which students choose to complete each stage. This article argues that the law graduate supply debate needs to be carefully moderated by a meaningful understanding of each stage of legal education. Part IV below begins that process.

IV A CLOSER LOOK AT THE STAGES OF LEGAL EDUCATION

A *University Law Degree*

The academic stage or the university law degree ('Law Degree')[72] is the first step towards a range of careers including legal practice. In

[70] Committee on the Future of Tertiary Education in Australia, 'The Future of Tertiary Education in Australia' (Report, Parliament of Australia, 1964) ('*Martin Report*'), vol 2 ch 11.

[71] Giddings and McNamara, above n 6.

[72] This includes the full range of options students have to complete a law degree in Australia including the typical, mainstream undergraduate four-year Bachelor of

Australia, the 'dissonance'[73] between academics and practitioners is grounded on two extreme views about this stage of legal education. One is that university legal education should focus on academic endeavours grounded in a classical, liberal legal education. The other is that university legal education should be guided by vocational directives and serve as a 'wading pool' for aspiring practitioners. Like most debates with extreme views, the truth lies somewhere in the middle. The Law Degree serves the dual purpose of providing a meaningful and challenging academic launch pad for a range of careers, but it is also the foundational stage of tertiary education for aspiring legal practitioners. Consequently, this article argues that the debate about the number of university law graduates should not be conflated with the debate about the number of lawyers. In addition, members of the practising profession (past or present) should not be concerned with or seek to influence, either directly or indirectly, the number of university law graduates. This argument is supported by two main reasons.

Firstly, the legal academy has long held itself out as a protector of the rule of law and fostering these principles is a matter that transcends the needs of aspiring legal practitioners. The connection between university legal education and the rule of law is well covered in the existing literature.[74] In this sense, the study of the law is unique. There is no corresponding, permeating notion underpinning society that is directly relevant to the initial training in other professions. There is no 'rule of dentistry' and for this reason alone it seems absurd to compare a decision to study law to a decision to study dentistry.[75] Similarly such comparisons fail to acknowledge that institutionalised legal

Laws (LLB), and the increasingly popular postgraduate three year Juris Doctor (JD).

73 Weir, above 66.

74 For an overview see Roger Burridge and Julian Webb, 'The Values of Common Law Legal Education: Rethinking Rules, Responsibilities, Relationships and Roles in the Law School' (2009) 10(1) *Legal Ethics* 72. For a discussion about the extent to which this connection is under threat, see John Flood 'The Rule of Law and Legal Education: Do they still connect?' in C May, A Winchester & C Gardner (eds), *Research Handbook on the Rule of Law* (Edward Elgar, 2017) ch 17.

75 As was central to Former Prime Minister Turnbull's remarks earlier this year. Yaxley, above n 2.

education is split into two clear stages (the second stage that is PLT and is discussed in Section B below) whereas institutionalised training for other professions, such as dentistry, are contained within a single university degree.

Secondly, in a heavily regulated society, law and legal processes underpin a wide range of activities in a way that other areas of study, such as the oral cavity, do not. Although more 'empirical rigour'[76] is needed to better understand the situation, it is well accepted that there are a wide variety of destinations for law graduates 'outside law' including 'accounting and advisory', 'banking and financial services', 'construction and property services', 'consulting' and 'the public sector'.[77] In addition to being a path to a range of jobs that benefit from knowledge about the law and legal processes, there are emerging job opportunities that are neither traditional legal practice, nor are they strictly 'outside the law'. The way in which professions seek to control supply means that they are not always able to serve the needs of the community,[78] and we are currently facing this situation.[79] The Law Degree is an appropriate breeding ground for socially minded, innovative solutions to access to justice issues that the legal profession has been unable to manage, despite the abundance of legally literate graduates. Law schools have the potential to become innovative 'justice incubators' and can achieve this via a renewed focus on clinical legal education programs and by embracing emerging study areas such as legal futures, legal technology, the digital economy, innovation and enterprise.

Clinical legal education (CLE) is a mode of education, as opposed to a stage of education. Despite not forming part of formal accreditation requirements, CLE is now widespread at the Law Degree stage of legal education. Importantly, CLE should not be simply bundled together with university wide imperatives directed at work-

[76] See Law Society of NSW, above n 22.

[77] GradAustralia 'The Law Guide 2018-2018: You Complete Guide to Careers with a Law Degree' (GradAustralia, 2018) available at https://gradaustralia.com.au/sites/gradaustralia.com.au/files/Law%20guide%202018-19.pdf

[78] See Part III(A) above.

[79] See Part II(B) above.

integrated learning (WIL). Nor should it be conflated with PLT. Evans et al describe the similarities and differences between CLE, WIL learning and PLT as follows:

> CLE is similar to practical legal training (PLT) courses, work-integrated learning (WIL) and service learning in several respects. All of these approaches expose students to practical aspects of legal workplaces. Each approach also reinforces for students that a knowledge of legal theory is insufficient for legal practice and that their 'law school' impressions of what it is like to actually practise law will be expanded by time and a variety of experiences.
>
> But there are some subtle differences between CLE and PLT or WIL. CLE is an approach to integrating and strengthening the academic phase of legal education in the interests of students and clients. Its emphasis on meeting the diverse and complex needs (legal, emotional, systemic and therapeutic) of real clients, either individuals or organisations, places it well beyond the vocational focus of PLT and WIL, which can limit themselves to a 'how to' approach to practising law. CLE avoids any default concentration on apparently value-neutral practical skills and is intended to develop a critical and analytical consciousness of law.[80]

CLE can contribute to a range of objectives, one of which is linking legal education with legal practice. Beyond this CLE programs can also positively contribute to universities and their students by promoting social justice,[81] linking student learning with engagement and research activities,[82] and making multiple contributions to general professional development.[83]

The Law Degree is also the appropriate forum for developing technological expertise and an innovative mindset to tackle societal problems that are grounded in or connected to the law and legal

---

80 Adrian Evans et al, 'Best Practices: Australian Clinical Legal Education' (Report, Australian Government Office for Teaching and Learning, 2012), 4-5.

81 Fran Quigley, 'Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics' (1995) 2 *Clinical Law Review* 37, 50.

82 Jeff Giddings, 'Promoting Justice Through Clinical Legal Education (Federation Press, 2013) ch 3.

83 Ibid.

processes. The University of Technology Sydney (UTS) now offers, an Australian first, a legal futures and technology major as part of its law degree.[84] This type of preparation for the 'future' has the potential to be much more than preparing students for the future demands of law firms who embrace legal technology. Rather, this type of learning equips students for new careers, beyond the purview of legal practice, in a diverse range of applied legal technology jobs, many of which may not exist currently.

There are already signs that non-legal practitioners are combining legal and technological expertise to compete with legal practitioners[85] and this should be welcomed as a natural evolution and innovation in the delivery of legal services (just like the emergence of the modern solicitor and barrister) rather than as a cause for concern. Without a wave of legally and technologically literate graduates, who either join existing law firms with fresh ideas, compete with legal practitioners by operating outside the purview of legal practice, or completely disrupt legal services with innovation, the legal profession risks stagnating. Either way, the solicitor and barrister may suffer a similar fate as the 'attorney' and 'serjeants at law'.[86]

The Law Degree is a foundational stage of legal education and needs to cater for all student types and all career possibilities, including those strictly inside the law, those clearly outside the law, and those who choose to walk the tightrope between innovation and disruption in the legal services sector. A Law Degree should also be for anyone with an interest in the rule of law, social justice, and any career that benefits from an understanding of law, the legal system and legal processes. Given this, counting law graduate numbers in isolation may be an irrelevant task. When it comes to preparing students who aspire to fill roles clearly inside the existing legal profession, then the 'number game' becomes more relevant. For this number game, later stages of legal education deserve greater scrutiny,

---

[84] University of Technology Sydney, *New Legal Futures and Technology Major* (21 June 2017) <https://www.uts.edu.au/future-students/law/course-experience/new-legal-futures-and-technology-major>.

[85] See Beames above n 45; FLIP Report, above n 40, ch10.

[86] See above at Part III(A).

first of which is the PLT stage of education, which is discussed immediately below.

B *The Practical Legal Training Stage (PLT)*

After completing a Law Degree, aspiring legal practitioners must complete the PLT stage of legal education. Reduced and modified versions of the traditional apprenticeship mode of training (articles of clerkship) remain in some Australian jurisdictions, however, the PLT Course is by far the predominant mode of PLT.[87] The first PLT courses emerged in 1972 in the Australian Capital Territory and Tasmania, followed by courses in New South Wales and Victoria in 1974, in South Australia in 1976,[88] and in Queensland in 1978.[89] Now, nearly all students entering practice fulfil PLT requirements via completing a Graduate Diploma (or Graduate Certificate) in Legal Practice.[90]

---

87 Traineeships continue to be offered as an alternative to PLT Courses in Queensland, Victoria and Western Australia. In Queensland and Western Australia, a PLT course is now, by far, the dominant mode of practical legal training, with the modified 12-month articled clerkship option only taken by less than 5% of new entrants. For example, in the 2015/2016 financial year, the Queensland Legal Practitioners Admission Board considered only 42 applications for supervised traineeships (the new terminology for articled clerk). In this same period the Board considered 1,036 applications for admission. See: Legal Practitioners Admission Board (Qld), '2015-2016 Annual Report'. In Western Australia, 20 law graduates registered articles of clerkship during the 2015/2016 financial year while there were 452 local admissions in the same period. See: Legal Practice Board of Western Australia, 'Annual Report 2015-16'. The same overall trend is true in Victoria but to a lesser extent where legal training (the modern incarnation of articles of clerkship) appears to have remained a viable alternative to PLT. In the 2015/16 financial year, there were 195 supervised trainees compared to 1,277 new admissions in the same period. See: Victoria Legal Admissions Board, 'Annual Report 2015-2016'.

88 Disney et al, above n 56, 267.

89 Helen Gregory, *The Queensland Law Society Inc: 1928-1988: A History* (The Queensland Law Society, 1991) 162.

90 In addition to the small number who complete traineeships (see above n 87), currently three Australian institutions — University of Technology Sydney, University of Newcastle and Flinders University — allow the equivalent of a PLT course to be completed within the law degree itself after completion of certain core academic components. However, depending on institution students can either opt in or opt out of the PLT component of the course. This means that there is no law degree in Australia that includes a compulsory PLT component

A distinguishing feature of PLT courses, compared to the Law Degree, is that they are organised around competency standards[91] as opposed to areas of knowledge.[92] However, despite the focus on practical lawyering skills and competencies, another key feature of PLT courses is the extensive use of online delivery as a predominant mode of training, following a brief face-to-face component at the beginning of the course.[93] The legal profession has largely accepted this mode of delivery for PLT courses despite uncertainty around its effectiveness and research identifying that certain skills should 'be periodically practised over the course duration'.[94]

There are currently ten PLT providers in Australia, including two private non-university providers (the College of Law and Leo Cussen Institute). These two non-university providers, together, account for around half the market share of PLT students.[95] The Australian National University and the Queensland University of Technology are the largest university providers of PLT.[96] The market share attributable to the remaining six university[97] providers is minimal.

nor is there any law degree that offers a complete integration of the academic and practical stages of legal education.

91 Law Admission Consultative Committee, *Practical Legal Training Competency Standards for Entry-Level Lawyers* (2015).

92 Law Admission Consultative Committee, *Prescribed Academic Areas of Knowledge* (December, 2016).

93 For example, the College of Law's online program has a five-day attendance requirement at the beginning of the course. See The College of Law, 'Learn with us' <https://www.collaw.edu.au/learn-with-us/our-programs/practical-legal-training-programs/coursework>. Similarly, the ANU College of Law, which is the largest university provider of PLT training, has a four-day face-to-face requirement at the beginning of the course: see ANU School of Legal Practice, 'Structure of the GDLP Program' (10 August 2015) <https://legalpractice.anu.edu.au/gdlp/structure-gdlp-program>.

94 Gaye T. Lansdell, 'Have We Pushed the Boat Out Too Far in Providing Online Practical Legal Training: A Guide to Best Practices for Future Programs' (2009) 19 *Legal Education Review* 149 at 169.

95 College of Law, above n 16, Attachment D.

96 Ibid.

97 They are: Bond University, University of Newcastle, University of Technology Sydney, University of Tasmania, University of Adelaide and Flinders University.

The College of Law is the largest provider and, according to its own website, 'most lawyers in Australia … today start their career with us, undertaking their practical legal training to prepare for admission to practice.'[98] The College of Law, which began in New South Wales in 1974, has expanded to the Australian Capital Territory, Queensland, Victoria, South Australia, Northern Territory and Western Australia,[99] and much of this expansion occurred as smaller university based PLT providers exited the market.[100] The legal profession's acceptance of a flexible, and dominantly online mode of delivery, has allowed the College of Law to benefit from considerable economies of scale and become a dominant market leader with PLT course offerings in all Australian jurisdictions (with the exception of Tasmania). The College of Law is now the 'Amazon' of PLT in Australia and seems capable and willing to cater to any university law graduate who wishes to enrol.

While the Law Degree has a range of educational aims, PLT courses do not; their specific purpose is to prepare students for entry to the legal profession. It seems sensible that, as the stage of education progresses from the general to the specific, opportunities and places would reduce. In overseas jurisdictions with similar staged approaches to legal education, entry into the second, practice-oriented stage is competitive.[101] However, this is not at all the case in Australia because of: (a) widespread acceptance by the legal profession of online transmission of practical knowledge and skills; and (b) the presence of a dominant market player operating on a demand driven model.

---

98 The College of Law, 'About the College of Law' (2018) <https://www.collaw.edu.au/about/about-the-college-of-law>.

99 Ibid.

100 Universities which previously offered a PLT course include: University of Queensland, Monash University, Griffith University, University of Wollongong, and Western Sydney University.

101 For example, in Hong Kong, only about 50% of university law graduates are able to gain entry into the PCLL (which is the Hong Kong version of the PLT course). <http://www.hk-lawyer.org/content/pcll-admissions-myths-and-misunderstandings>. In Singapore students must achieve a certain level of achievement in their law degree to be eligible for bar admission <http://www.sile.edu.sg/singapore-approved-universities>.

It would seem absurd if every student who completed legal studies at high school was able to gain entry to study a Law Degree, irrespective of other factors. Yet it is accepted that anyone who completes a Law Degree can progress to the PLT stage. This demand driven system of PLT training has signalled to students that so long as they complete their Law Degree, they will be able to gain entry to the next stage, irrespective of the level of achievement or suitability for that training, or prospects of employment in legal practice. Arguably then, this demand driven model of online PLT deserves greater accountability as a gatekeeper and cause for the profession's concerns regarding new entrants. Even still, the legal profession itself is the ultimate gatekeeper for aspiring lawyers. It maintains this role via the admission process and the final stage of legal education (Supervised Legal Practice), both of which are discussed in the next section.

C *Admission and Supervised Legal Practice (SLP)*

The admission process follows immediately after completing a PLT course, and in all Australian states and territories applicants must demonstrate they are a 'fit and proper person to be admitted'.[102] The admission process is, for most applicants, a formality and only serves as a screening process for applicants who disclose a history of previous criminal or improper conduct (e.g. academic dishonesty).[103] Applicants simply complete an application attaching evidence of completion of the educational requirements, and affidavits attesting to their good fame and character. Relevant to this discussion, the admission process and the 'fit and proper person' requirement is not directed at any specific competence requirement. For example, there is no further requirement to demonstrate an understanding of ethical and professional responsibility obligations.[104] In short, the admission authorities verify documentation and react to disclosed issues, rather than promoting or testing a particular standard of professionalism.

[102] Law Admission Consultative Committee, *Model Admission Rules* (2015), section 6(e).

[103] For an overview see G E Dal Pont, *Lawyers' Professional Responsibility* (Thomson Reuters, 2016) ch 2.

[104] The legal profession has largely delegated testing competencies to PLT providers, some of which do this predominantly in an online environment.

After admission, new lawyers are able to immediately apply for, and receive, a practising certificate, but are required to complete SLP, a form of restricted practice. SLP is a legislative requirement in all Australian states and territories. The duration depends on the type of practical legal training undertaken. For newly admitted lawyers who have completed a PLT Course (which is the most common option), the period is two years.[105] SLP was originally intended to be a final stage of legal training; however, it remains largely unstructured.[106] There is only limited, non-binding guidance on the nature, purpose and requirements for Supervised Legal Practice.[107] At present, the guidelines in South Australia[108] appear to be the most comprehensive, in terms of providing guidance on the purpose and nature of the supervision to be given and received. Even still, in all Australian jurisdictions, the only actual and verifiable requirement for SLP is the passage of time as an employee of a practitioner holding an unrestricted practising certificate.

With no firm profession-wide arrangements for SLP, it is unclear what supervisors are actually supposed to do and the extent to which law firms can cater for new entrants. A consequence of this general lack of structure, is that SLP lies at the centre of a myriad of issues (outlined in the remainder of this section), all of which further complicate the debate about law graduate supply and the number of entry-level jobs for aspiring lawyers. Furthermore, the SLP stage of

[105] *Legal Profession Act 2007* (Qld) s 56; *Legal Profession Act 2006* (ACT) s 50; *Legal Profession Regulation 2007* (ACT) s 13; *Legal Profession Act* (NT) s 73; *Legal Profession Act 2007* (Tas) s 59; *Legal Profession Act 2008* (WA) s 50. For Victoria and New South Wales, see the Legal Profession Uniform Law s 49. In SA, the requirement is not contained in the *Legal Practitioners Act 1981* (SA), but in the *Rules of the Legal Practitioners Education and Admission Council 2004* (SA) (LPEAC Rules): see r 3 of the LPEAC Rules.

[106] See Giddings and McNamara, above n 6.

[107] Lauren Fitzgerald, 'Supervised Legal Practice: A Guide for New Practitioners' (2015) 35(7) *Proctor* 22; Law Society of New South Wales, *Supervised Legal Practice Guidelines* (2017)*;* Legal Practice Board of Western Australia, *Supervised Legal Practice Guidelines* (5 August 2015); Victoria Legal Services Board, *Supervised Legal Practice Policy* (2016).

[108] Legal Practitioners Education and Admission Council (South Australia), *Guidelines for the Supervision of Newly Admitted Practitioners* (22 July 2016).

legal education is marred by supervisors' lack of time and lack of effective supervision skills.[109]

James has identified 'poor quality of mentoring and supervision in the first few years of practice'[110] as a cause of stress. James also notes that the legal workforce is highly mobile and a common cause for attrition is failure of senior lawyers to guide or supervise junior lawyers.[111] James' findings are supported by individual reports from young lawyers in Western Australia[112] that they are:

- 'subject to poor management'[113]
- 'frequently … left waiting for work to be settled'[114]
- 'given instructions to complete tasks after the supervising partner/solicitor has known about the task for hours or days (or even weeks)' and 'then required to complete the task in an unrealistic timeframe'[115]
- 'have a crippling lack of control over the level of work they perform.'[116]

Supervision has also emerged as relevant to a range of legal practice issues such as complaints management,[117] workplace culture,[118]

[109] Giddings and McNamara, above n 6.
[110] James, above n 19.
[111] Ibid.
[112] These individual reports formed part of a submission by the Young Lawyers Committee (WA) to an Ad Hoc Committee that was formed to investigate psychological distress and depression among lawyers. For a report on findings of the Ad Hoc Committee see: Christopher Kendall, *Report on Psychological Distress and Depression in the Legal Profession* (The Law Society of Western Australia, 2011).
[113] Ibid.
[114] Ibid.
[115] Ibid.
[116] Ibid.
[117] Christine Parker and Linda Haller, 'Inside Running: Internal Complaints Management Practice and Regulation in the Legal Profession' (2010) 36 *Monash University Law Review* 217.
[118] Christine Parker and Lyn Aitken, 'The Queensland Workplace Culture Check: Learning from Reflection on Ethics inside Law Firms' (2011) 24 *Georgetown Journal of Legal Ethics* 399.

ethical infrastructures,[119] regulating law firm management,[120] and problems associated with billable hour regimes.[121] Poor supervision has also been identified as a potential cause of junior lawyers acting unethically.[122] The relevance of supervision to legal practice emerges out of broader critiques regarding the commercialisation of law. In this regard, Rhode has commented that 'experienced lawyers who are under growing pressure to generate business and billable hours often have inadequate time or incentive to train junior colleagues.'[123] This situation is complicated by a rapidly changing practice environment, which is driven by disruptive innovation and where lawyers require a new range of skills that may be better developed in legal practice.[124] If these skills are to be developed in the practice environment, then Supervised Legal Practice is the obvious forum for that to occur.

A number of these supervision related issues seem to stem from legal practitioners' tendency to take an overly 'legal' approach to supervision. By way of example, in 2015 a South Australian law firm proposed to 'charge newly admitted lawyers an upfront fee of $22,000 for a two year graduate position'.[125] This proposal 'sparked outrage'[126]

---

[119] Christine Parker et al, 'The Ethical Infrastructure of Legal Practice in Larger Law Firms: Values, Policy and Behaviour' (2008) 31(1) *University of New South Wales Law Journal* 158, 160.

[120] Christine Parker, Tahlia Gordon and Steve Mark, 'Regulating Law Firm Ethics Management: An Empirical Assessment of an Innovation in Regulation of the Legal Profession in New South Wales' (2010) 37 *Journal of Law and Society* 466.

[121] Christine Parker and David Ruschena, 'The Pressures of Billable Hours: Lessons from a Survey of Billing Practices inside Law Firms' (2011) 9 *University of St. Thomas Law Journal* 619.

[122] Andrew Francis, 'Legal Rthics, the Marketplace and the Fragmentation of Legal Professionalism' (2005) 12(2) *International Journal of the Legal Profession* 173.

[123] Deborah L Rhode, *In the Interests of Justice*: *Reforming the Legal Profession* (Oxford University Press, 2003) 37.

[124] See FLIP Report, above n 40; Sandford Clark, *'Regulating Admissions – Are We There Yet?'* (Paper submitted to the Law Admissions Consultative Committee, 2017).

[125] Aaron Lane, 'Law Graduates: Regulations a barrier to finding employment', *The Australian* (24 July) 2015.

[126] Ibid.

and was eventually blocked by the Law Society of South Australia.[127] The proposal, which effectively required students to pay a fee 'to cover the cost of supervision, mentoring and education programs'[128] was rejected by the Law Society because part of the program was inconsistent with an 'employment relationship'.[129] Based on this report, the Law Society characterised SLP fundamentally as an employment relationship, as opposed to a period legal training. This article endorses neither the proposal nor the decision to reject it. Rather, this article argues that considering SLP in terms of an employment relationship only conceals the broader problem of significant uncertainty about how many new entrants there should be in the legal profession, how they can be developed into autonomous practitioners, and who should pay for the process. This uncertainty stems from a lack of structure supporting SLP, as well as deficiencies in supervisor time and know-how needed to provide effective supervision to newly admitted lawyers.[130] Ultimately, the uncertainty surrounding the legal profession's capacity to finalise the training of newly admitted lawyers is directly relevant to the supply issue.

D *Towards a Coordinated Response Across the Stages of Legal Education*

The Law Degree and PLT stages of legal education have been described as 'disconnected parts of an uncoordinated system' lacking 'clear alignment with the supervised legal practice period'.[131] The entire system is particularly uncoordinated in terms of signalling to, and channelling, students as they consider progressing from one stage to another.

---

[127] Michael Owen, 'Law Society Concerns stall legal firms buy-a-job proposal', *The Australian* (22 September 2015).

[128] Ibid.

[129] Ibid.

[130] Michael John McNamara, *Towards Effective Supervision for the Legal Profession: A Focus on Supervised Practice* (PhD Thesis, Griffith University, 2018) ch 9. This PhD thesis identified a number of barriers to effective supervision during Supervised Legal Practice and found that lawyers in their early years of practice are at a high risk of not receiving the necessary training and support needed to transition to competent, autonomous practitioners.

[131] Evans et al, *Australian Clinical Legal Education* (ANU Press, 2017), 21.

Once the initial stage, the Law Degree, is completed there appears to be a free for all in terms of progressing through the next stages and competing for a perceived limited pool of jobs. However, the limited pool of entry-level jobs for lawyers may be a misperception and ought to be challenged for two reasons. Firstly, there remains significant access to justice issues indicating that there is unmet demand for legal work.[132] Secondly, there may be more of a bottleneck at SLP stage arising from lack of structured arrangements and supervisory expertise, rather than an absolute unwillingness to employ more junior lawyers.[133] Irrespective of whether the over-supply of law graduates is actual or perceived, this article argues that the uncoordinated system of legal education needs to take measures to coordinate the debate about numbers of students and new entrants. This begins with a clear understanding of the responsibilities of the stakeholders at each stage.

Universities should continue to be transparent about prospects for law graduates and encourage diverse career pathways for Law Degree graduates. This involves carefully considering how to best manage the various ambitions and career trajectories of their student cohorts, rather than a one-size fits all approach. In order to strengthen the prospects of those who study a Law Degree but are not attracted to, or unsuitable for, traditional legal practice, this article proposes that university law departments should:

- Embrace the incorporation of new study areas (such as legal futures, legal technology and innovation) into the law curriculum;[134]
- Develop streams or majors, linked to a particular career path, which students can select after completing foundational or core subjects;[135] and

[132] See Part II (B) above.

[133] McNamara, above n 130. A specific example of this is a tendency of some supervisors to micro-manage and pay undue attention to stylistic issues, which is inefficient and potentially stymies the development of the supervisee.

[134] This is consistent with the recommendations of FLIP report, above n 40. In particular, ch 6 of that report.

[135] See above n 84 and surrounding text. This approach is consistent with other university degrees that lead to a range of career paths.

- Foster the growth of clinical legal education programs that serve a range of purposes, which include but are not limited to preparing students for traditional legal practice.[136]

This article argues that non-university PLT providers with significant online offerings deserve greater scrutiny when it comes to the alleged over-supply of law graduates. They are the final stop before admission to legal practice. In this sense, they are the ultimate gatekeeper in terms of ensuring meeting competency standards of entry-level lawyers. The current demand driven system, which signals an unlimited supply of places in PLT courses, ought to be reviewed. This article argues that thoughtful consideration should be given to limiting the number of PLT graduates based on close consultation with the profession regarding its ability to cater for new entrants. There is a range of ways this could be done including: a review of entry requirements, a move away from online delivery, and evaluating the suitability of the current level of competence required to successfully complete a PLT course.

The legal profession itself could seek to organise and streamline opportunities for law graduates, beginning with clear data collection so that clear signalling can be sent to PLT providers and university law students about opportunities and expectations. This involves clarifying the arrangements for Supervised Legal Practice, especially the efficiency and effectiveness of those arrangements.[137]

V CONCLUSION

This article has outlined how claims of an oversupply of law graduates do not accord with continuing access to justice barriers, or the way non-lawyer operated legal technologies are feeding an unmet demand for legal services. The oversupply argument is confusing when PLT

[136] The range of objectives to which clinical legal education can contribute were covered in Part IV(A) above.

[137] See McNamara, above n 130.

providers and admission authorities maintain standards that (subject to serious, disclosed misconduct) allow virtually anyone who completes a Law Degree to be formally admitted and qualified as a lawyer.

This article has reinforced the need for current, comprehensive and streamlined data about student numbers at each stage of legal education, their intentions at the beginning of each stage, and their eventual destination after completion of each stage. This article has also argued that the legal profession has failed to innovate and modernise in such a way that efficiently and effectively brings enough new entrants into the profession so that new (and less profitable areas) of legal service delivery could be targeted.

While university law departments should continue to look inward at their purpose and scope, a realistic debate about the lure of school leavers to the practise of law needs the stakeholders in the latter two stages of education — PLT providers, admission boards and law societies — to share responsibility and scrutiny. The profession, instead of galvanising over protectionist and elitist sentiment, could productively spend time implementing better practices for training a greater pool of lawyers. This would allow the legal profession to capitalise on increased collective legal knowledge to achieve innovative ways of delivering access to justice to a greater cross section of society. Alternatively, if the profession is adamant on maintaining the status quo in terms of type of work, then it needs to address the lack of any meaningful barrier to legal practice following completion of a Law Degree, which has become, for better or for worse, a degree with general application leading to a wide range of opportunities.