

# READY FOR A REBOOT: LAW SCHOOLS NEED TO REBOOT AND UPGRADE THE LAW CURRICULUM NOW TO BETTER MEET THE IMPACTS OF TECHNOLOGY

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## ABSTRACT

This paper investigates Australian legal education's capacity to acknowledge and respond to the impacts of the increasing use of technologies aiding legal service delivery. While law academics are debating the extent of this impact, there are already new jobs with new titles requiring new skillsets, and these employment opportunities will go to the best-prepared graduates. Even within the current framework, law academics have the capacity to better equip graduates to succeed in this changing environment through leadership and engagement with the key players. The responsibility to lead this adapted legal education is best held by law schools carrying it out as a fiduciary role towards graduates rather than as a broker for broader tech-interests.

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## I INTRODUCTION

This paper investigates the capacity of Australian law schools to acknowledge and respond to the impacts on legal education of existing and emerging technologies being used in the delivery of legal services, known as ‘LawTech’.<sup>1</sup> LawTech encompasses all technologies that can be applied to the delivery of legal services,<sup>2</sup> including automated decision-making,<sup>3</sup> analytics of decision-making,<sup>4</sup> and predictive analytics of judicial decisions.<sup>5</sup> The impact of these technologies is that ‘[a]nalysis that might have taken years of experience and hours of human work to produce [is] now generated by software programs’, and is ‘now undertaken by programs that replace the trust or validation of a lawyer’.<sup>6</sup>

Where does the responsibility lie for the increasing use of technologies, when lawyers ‘do not possess the analytical tools required to assess [their] adequacy?’<sup>7</sup> The duties under Australian practising certificates provide for a duty of competence,<sup>8</sup> which does not expressly reference ‘technology competence’. It is worth noting that the American Bar Association has ‘amended the ABA [American Bar Association] Model Rules of Professional Conduct to include a Duty of Technology Competence’.<sup>9</sup> Although it is not within the scope of this paper to explore the duties of legal practitioners, it is valuable to have this practitioner context in mind when considering Australian legal education’s response to the impacts of technology on law graduates entering a job market that includes global opportunities and influences.

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<sup>1</sup> Lisa Webley et al, ‘The Profession(s)’ Engagement with LawTech: Narratives and Archetypes of Future Law’ (2019) 1 *Law, Technology and Humans* 6, 6 citing Marcelo Corrales et al, ‘Digital Technologies, Legal Design and the Future of the Legal Profession’ in Marcelo Corrales, Mark Fenwick and Helena Haapio (eds), *Legal Tech, Smart Contracts and Blockchain* (Springer, 2019).

<sup>2</sup> See generally Kevin D Ashley, *Artificial Intelligence and Legal Analytics: New Tools for Law Practice in the Digital Age* (Cambridge University Press, 2017). See also John O McGinnis and Russell G Pearce, ‘The Great Disruption: How Machine Intelligence Will Transform the Role of Lawyers in the Delivery of Services’ (2014) 82(6) *Fordham Law Review* 3041, 3046, where McGinnis and Pearce identify that machine learning will impact legal practice most in the areas of discovery, legal search, document generation, brief generation and case prediction.

<sup>3</sup> Eg, Neota Logic, Rainbird and Oracle Policy Automation.

<sup>4</sup> Eg, Elexirr, GovPredict and LexPredict.

<sup>5</sup> Eg, Pre/Dicta and Premonition.

<sup>6</sup> Sari Graben, ‘Law and Technology in Legal Education: A Systematic Approach at Ryerson’ (2021) 58(1) *Osgoode Hall Law Journal* 139, 143.

<sup>7</sup> *Ibid* 144.

<sup>8</sup> *Legal Profession Act 2007* (Qld) ss 23, 25; *Legal Profession Uniform Law* (NSW) ss 10, 11; *Legal Profession Uniform Law Application Act 2014* (Vic) sch 1 (Legal Professional Uniform Law), ss 10, 11; *Legal Profession Act 2006* (ACT) ss 16, 17; *Legal Profession Act 2006* (NT) ss 18, 19; *Legal Profession Act 2007* (Tas) ss 13, 14; *Legal Practitioners Act 1981* (SA) ss 21, 23; *Legal Profession Act 2008* (WA) ss 12, 13.

<sup>9</sup> Jamie J Baker, ‘Beyond the Information Age: The Duty of Technology Competence in the Algorithmic Society’ (2018) 69(3) *South Carolina Law Review* 557. See also generally Katherine Medianik, ‘Artificially Intelligent Lawyers: Updating the Model Rules of Professional Conduct in Accordance with the New Technological Era’ (2018) 39 *Cardozo Law Review* 1497; Anthony E Davis, ‘The Ethical Obligation to Be Technologically Competent’ (2016) 3 *New York Law Journal*.

Lawyers have already put in place paperless offices and cloud-based practice management systems.<sup>10</sup> One of Covid-19's impacts has been to accelerate the legal profession's use of, and confidence in, technology, which may include simple systems they already use such as Zoom and MS Teams.<sup>11</sup>

While law academics have been debating the extent of the impact of technology on the legal profession — whether it is accurate<sup>12</sup> or over-dramatised<sup>13</sup> — the market into which graduates are seeking employment is already responding to rapidly evolving technologies by offering new jobs with new titles, requiring new skillsets with proficiency in a new language.<sup>14</sup> Employment opportunities are going to those graduates who are best prepared.

There is a growing body of literature, spanning common law countries, on the need for law schools to better prepare students for using technologies in legal practice, often criticising schools for not keeping pace with the current developments.<sup>15</sup> There is also growing recognition that law schools have been late to respond to the need to educate students for the technological demands of legal practice.<sup>16</sup> A recent desktop survey carried out between November 2019 and March 2020 of all Australian law schools indicated an 'uncertainty in the types of technology that may disrupt the legal profession and uncertainty regarding the impact technology will have on graduate employment'.<sup>17</sup> The results point to the need for a more cohesive and coordinated approach by the law academy.<sup>18</sup>

This paper proposes that a more responsive law curriculum set in train by law schools is not difficult to achieve. The legal education framework in Australia currently provides sufficient

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<sup>10</sup> Simon Canick, 'Infusing Technology in Law School Curriculum' (2014) 42 *Capital University Law Review* 663, 663–4.

<sup>11</sup> Caroline Hart, 'Future Ready Law Firms: Not Changing Is Not an Option! Interview with Terri Mottershead', *Proctor* (Web Page, 28 June 2022) <<https://www.qlsproctor.com.au/2022/06/future-ready-law-firms-not-changing-is-not-an-option>>.

<sup>12</sup> Richard Susskind, *Tomorrow's Lawyers: An Introduction to Your Future* (Oxford University Press, 2<sup>nd</sup> ed, 2017); Richard Susskind, *Online Courts and the Future of Justice* (Oxford University Press, 2019).

<sup>13</sup> Dana Remus and Frank Levy, 'Can Robots Be Lawyers? Computers, Lawyers, and the Practice of Law' (2017) 30(3) *Georgetown Journal of Legal Ethics* 501.

<sup>14</sup> *Ibid*; Susskind, *Tomorrow's Lawyers* (n 12).

<sup>15</sup> Kenneth J Hirsh and Wayne Miller, 'Law School Education in the 21st Century: Adding Information Technology Instruction to the Curriculum' (2004) 12(3) *William & Mary Bill of Rights Journal* 873; Luke R Nottage and Makoto Ibusuki, 'IT and Transformations in Legal Practice and Education in Japan and Australia' (2002) 4 *University of Technology Sydney Law Review* 31; William BT Mock, 'Informing Law Curricula: Modifying First-Year Courses to Reflect the Information Revolution' (2001) 51(4) *Journal of Legal Education* 554; Stephanie Dangel, Margaret Hagan and James Bryan Williams, 'Reimagining Today's Legal Education for Tomorrow's Lawyers: The Role of Legal Design, Technology and Innovation' in A Masson and G Robinson (eds), *Mapping Legal Innovation* (Springer, 2021) 383, 387; McGinnis and Pearce (n 2); Graben (n 6); Karina Palkova and Olena Agapova, 'Legal Tech in Legal Education: Global Perspectives and Challenges from the Latvian-Ukrainian Experience' (2021) 5 *Society, Integration, Education: Proceedings of the International Scientific Conference* 414.

<sup>16</sup> Dan Hunter, 'The Death of the Legal Profession and the Future of Law' (2020) 43(4) *University of New South Wales Law Journal* 1199. See also Canick (n 10).

<sup>17</sup> Aaron Timoshanko and Caroline L Hart, 'Teaching Technology into the Law Curriculum' (2021) 13/14 *Journal of the Australasian Law Academics Association* 146, 152.

<sup>18</sup> *Ibid* 160.

flexibility and autonomy within individual law schools to proactively incorporate relevant content that will better prepare graduates for the changing marketplace. The determination of that content can be achieved through greater engagement with the full range of employers and technology developers to ensure law academics are better informed about the careers market into which graduates will enter.

The research methodology for this article included a desktop investigation, accessing Google, Google Scholar, university library resources and job sites. Searches focused on the topics of law, technology, and emerging career opportunities for law graduates. It also included a literature review of the role of legal education, the skills and knowledge required of law students and law graduates, and an overview of the current framework within which law academics operate.

In this article, Part II reviews the experience of legal education in accommodating broad interests, including employer interests. Part III then overviews the regulatory framework of legal education, while Part IV focuses on attributes and skills required of the ‘new lawyer’. Finally, Part V provides an analysis of the findings and concludes with recommendations for law academics.

## II WHOSE INTERESTS SHOULD LEGAL EDUCATION SERVE?

The literature reveals that, over the past 50 years, Australian legal education has a record of serving a diverse range of interests, including that of employers.

### *A Law School as a Trade School*

Law school has been seen as a trade school, directly serving the specific needs of the legal profession. The first major state intervention into legal education was the Australian federal government’s 1964 Martin Report, which found that an over-self-regulated profession was not producing the volume and form of lawyers necessary for national economic growth. It did not adequately deal with the needs of corporate practice and the rapidly expanding welfare state.<sup>19</sup> The Martin Report recommended that the state ought to culturally re-engineer the profession through a publicly funded expansion of places and subjects studied in law schools.<sup>20</sup> Prior to this intervention, employability had not been considered a priority or the responsibility of a university legal education. However, with increasing pressure on lawyers to bill for their time, there was no opportunity to provide this ongoing legal education within the workplace. Law

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<sup>19</sup> This was in the context when the legal profession was the legal educator.

<sup>20</sup> Christine Parker and Andrew Goldsmith, “Failed Sociologists” in the Market Place: Law Schools in Australia’ (1998) 25(1) *Journal of Law & Society* 33; Committee on the Future of Tertiary Education in Australia, *Tertiary Education in Australia (Martin Report)* (Final Report, Australian Universities Commission, August 1964) <<http://hdl.voced.edu.au/10707/228215>>; Judith Lancaster, *The Modernisation of Legal Education: A Critique of the Martin, Bowen and Pearce Reports* (Centre for Legal Education, 1993).

school as a trade school reflects the growing demand among employers on universities taking a role in teaching skills in addition to discipline knowledge.<sup>21</sup>

There is also external pressure being applied on universities to make graduates more job-ready.<sup>22</sup> The authors acknowledge that government funding is increasingly tied to employability outcomes to produce work-ready graduates. Government policy may also be a driving force behind the desire for greater skills development in law schools.<sup>23</sup> Employers had traditionally taken on that role through the relatively lengthy articles of clerkship. With the shortened practical legal training, employers' expectations of skills development have increasingly been pushed back onto universities. The importance of skills for law graduates are analysed separately in Part IV below.

The literature on law school as a trade school remains relevant, yet is only one approach to legal education. Other approaches, discussed below, include descriptors of a law school as being a liberalist greenhouse, preparation for potential entrepreneurs and as a sandbox for experimentation and creation.

### B *Law School as a Liberalist Greenhouse*

Should legal education be seen as a liberalist greenhouse? This view is in tension with history, where a law school was seen as a trade school in which the academy is subservient to the profession. This consequently 'has the effect of uncritically endorsing and perpetuating the status quo'.<sup>24</sup> Legal education driven by a need to satisfy only the legal profession fails to address broader 'producers and consumers of legal discourse'.<sup>25</sup>

A law school as a liberalist greenhouse rejects the constraints upon learning and teaching placed upon it by the legal profession. It views legal education as independent of the legal profession and supports law academics learning, teaching and even researching with the more fundamental outcome of producing critical thinking graduates.<sup>26</sup> Keyes and Johnstone have advanced the need for a broader purpose of legal education beyond preparation for private legal practice.<sup>27</sup> For law schools this requires rethinking their relationship with the legal profession

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<sup>21</sup> Kate Galloway et al, 'The Legal Academy's Engagements with LawTech: Technology Narratives and Archetypes as Drivers of Change' (2019) 1(1) *Law, Technology and Humans* 27.

<sup>22</sup> *Higher Education Support Amendment (Job-Ready Graduates and Supporting Regional and Remote Students) Act* (Cth) 2020 took effect to increase student contributions enrolling in law programs after January 2021 compared to students' contributions prior to that date.

<sup>23</sup> The extent to which that desire for skills is resourced is another matter, dependent upon an individual university's allocation of budgets and resources to their law school. The *Job-Ready Graduates* legislation (n 22) has also taken effect to increase student contributions enrolling in law programs after January 2021.

<sup>24</sup> Mary Keyes and Richard Johnstone, 'Changing Legal Education: Rhetoric, Reality, and Prospects for the Future' (2004) 26(4) *Sydney Law Review* 537, 542, 543.

<sup>25</sup> *Ibid* 542; David Sugarman, 'Legal Theory, the Common Law Mind and the Making of the Textbook Tradition' in William Twining (ed), *Legal Theory and Common Law* (Basil Blackwell, 1986) 26.

<sup>26</sup> Discussions on academics' independence made news headlines in Australia during 2022: Bianca Nogrady, 'Australian Researchers Push to End Politicians' Power to Veto Grants', *Nature* (Web Page, 10 March 2022) <<https://www.nature.com/articles/d41586-022-00682-7>>.

<sup>27</sup> Keyes and Johnstone (n 24).

and ensuring that they assert their autonomy in matters of curriculum, teaching and research. Their aims should encompass more than just preparing students for work in private legal practice.<sup>28</sup>

In this role, the purpose of law schools in society is to produce graduates capable of critically evaluating the role of law beyond that of the legal profession and to consider the ethical, social, economic and political implications. This approach is not merely about countering constraints, but one in which a growth mindset is inviting the student to become central to learning and teaching. The benefits include developing broader thinking skills that potentially make such a law degree better futureproofed.

### C *Law School as Entrepreneurial*

Within this approach to legal education, law schools play a role in engaging students with entrepreneurial influences, shaping course content, delivery and assessment. This role played by legal education has been met with the rise of commercial interests outside of the legal profession seeking to influence legal education. This is evident in the sponsorship and interaction of technology companies with law schools.<sup>29</sup> In particular, the commentary from the United States acknowledges a growth of entrepreneurial interests permeating law schools, which exposes law graduates to other opportunities outside the legal profession.<sup>30</sup> The extent of engagement of entrepreneurial interests as part of the curriculum raises several issues (and challenges). For example, how do we determine ownership of intellectual property created as part of assessment and access to licensed software products? Such challenges may be resolved by identifying them before any engagement in the curriculum so they can be addressed early.<sup>31</sup>

### D *Law School as a Sandbox*

Legal education can also be viewed as a ‘sandbox’ or laboratory in which the law is subject to experimentation based on new ideas and views unimpeded by either the legal profession or other regulatory bodies.<sup>32</sup> The outcome is to produce graduates as experimenters and initiators within society.

Under this view, law academics need to build the capacity to engage in curriculum design that challenges the classificatory orthodoxy entrenched within the Priestley 11 (see Part III below).<sup>33</sup> In this alternative curriculum, the text of the law might become a sandbox: a place

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<sup>28</sup> Ibid.

<sup>29</sup> Stephanie Francis Ward, ‘Tech Entrepreneurship Features a Shift in Thinking at Some Law Schools’, *ABA Journal* (Web Page, 9 March 2018) <[https://www.abajournal.com/news/article/tech\\_entrepreneurship\\_features\\_a\\_shift\\_in\\_thinking\\_at\\_some\\_law\\_schools](https://www.abajournal.com/news/article/tech_entrepreneurship_features_a_shift_in_thinking_at_some_law_schools)>.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> Keyes and Johnstone (n 24); Michael Legg, ‘New Skills for New Lawyers: Responding to Technology and Practice Developments’ in KE Lindgren, François Kunc and Michael Coper (eds), *The Future of Australian Legal Education* (Thomson Reuters, 2018) 373; Galloway et al (n 21).

<sup>33</sup> Galloway et al (n 21).

for experimentation with diverse applications and a critical outlook that weighs up the future of law against the purpose of a diversified legal profession as an arm of the justice system.<sup>34</sup>

The value of legal education incorporating knowledge on LawTech into the curriculum as experimenters (rather than waiting for confirmation of its presence or impact) provides law students with opportunities to evaluate and absorb the impacts of LawTech generally.<sup>35</sup> Practical and forward-thinking legal education needs to better prepare students to evaluate the extent to which the claims by technology providers or industries are hype or not.<sup>36</sup>

Although one of the core roles of legal education is to prepare graduates for practice, the precise nature of this role and the extent to which it should be directed by the legal profession or entrepreneurial interests would benefit from reference to informed scholarship, independent evaluation, and review of courses with ultimate responsibility being held by law academics. The brief literature review above reveals that the role of legal education has travelled a path of both accommodating the needs of the legal profession and asserting its own independence. This paper affirms that, although legal education needs to remain independent, it must also engage with and become more informed by innovators and technologies that have entered the field of legal service delivery.

The regulatory environment in which Australian legal education resides has sufficient flexibility to adapt the law curriculum to reflect these developments.

### III THE REGULATORY FOUNDATIONS OF LEGAL EDUCATION

Law programs are shaped at the national level and accredited at the state (and territory) level.<sup>37</sup> This has benefits for national uniformity, lawyer mobility, a degree of consumer confidence and managing disciplinary actions.<sup>38</sup> It is noted that the process for establishing the current national regulatory foundations began in the early 1990s and was not completed until the mid-2000s; any future large-scale change or reform at a national level is likely also to take time.

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<sup>34</sup> Ibid.

<sup>35</sup> Kasey Panetta, '5 Trends Drive the Gartner Hype Cycle for Emerging Technologies, 2020', *Gartner* (Web Page, 8 March 2021) <[www.gartner.com/smarterwithgartner/5-trends-drive-the-gartner-hype-cycle-for-emerging-technologies-2020](http://www.gartner.com/smarterwithgartner/5-trends-drive-the-gartner-hype-cycle-for-emerging-technologies-2020)>.

<sup>36</sup> Ibid.

<sup>37</sup> *Legal Practitioners (Miscellaneous) Amendment Act 2013* (SA); *Legal Profession Act 2006* (ACT); *Legal Profession Act 2006* (NT); *Legal Profession Act 2007* (Qld); *Legal Profession Act 2007* (Tas); *Legal Profession Act 2008* (WA); *Legal Profession Uniform Law Application Act 2014* (NSW); *Legal Profession Uniform Law Application Act 2014* (Vic).

<sup>38</sup> James W Jones et al, 'Reforming Lawyer Mobility — Protecting Turf or Serving Clients?' (2017) 30(1) *The Georgetown Journal of Legal Ethics* 125.

This part of the paper suggests that the current foundations are, for the moment, sufficiently flexible to accommodate inclusion of LawTech into the curriculum. The framework within which legal education is offered<sup>39</sup> includes:

1. a national framework to ensure specified content is uniformly covered, responding to national policies and accredited at state (and territory) levels
2. Threshold Learning Outcomes ('TLOs') endorsed by the Council of Australian Law Deans ('CALD')
3. graduate attributes ('GAs') implemented at the university level.

Each will now be discussed in turn.

### *A Regulatory Requirements at the National Level: The Priestley 11*

There have been several reviews into the role of legal education and the extent to which legal education providers should be responsive to the interests of others. Perhaps the most enduring review of the law curricula was made in 1992 when the Law Admissions Consultative Committee ('LACC') determined that students must complete 11 areas of knowledge — the Priestley 11 — to qualify to practice.<sup>40</sup> The Priestley 11 does not have to be taught within the law curriculum as separate courses. Rather it is the substance of each area that must be covered. This provides flexibility for individual law schools determining their own curriculum.

The Priestley 11 has remained the same, with no additions or deletions, for almost 30 years, other than CALD's recognition of the importance of statutory interpretation.<sup>41</sup> The Priestley 11 merely identifies areas of knowledge. It is

focused entirely on areas of law that students should know. The reality is that tools such as Google search and IBM Watson are already better at knowing basic information and that future tools will come to 'know' more complex or advanced knowledge.<sup>42</sup>

In 2019, the LACC, an important committee in informing legal education, sought feedback on 'Redrafting the Academic Requirements for Admission' to revise descriptions for the Priestley

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<sup>39</sup> Law graduates who seek to practise law as an employed solicitor must also complete practical legal training, and employed solicitors who want to own and manage a law firm are required to complete an accredited practice management course. This is beyond the scope of this paper. It is enough to note here that becoming a 'law graduate' is likely to be just the beginning for a life in the legal profession.

<sup>40</sup> The Priestley 11 refers to the 11 subjects that every Australian law school must cover: administrative law, civil procedure, company law, contracts, criminal law and procedure, equity (including trusts), ethics and professional responsibility, evidence, constitutional law (both federal and state), property law and torts.

<sup>41</sup> Jeffrey Barnes et al, *The Council of Australian Law Deans: 2015 Good Practice Guide to Teaching Statutory Interpretation* (Report, prepared for CALD, June 2015) <<https://cald.asn.au/wp-content/uploads/2017/11/Council-of-Australian-Law-Deans-Good-Practice-Guide-to-Teaching-Statutory-Interpretation.pdf>>.

<sup>42</sup> Lyria Bennett Moses, 'The Need for Lawyers' in KE Lindgren, François Kunc and Michael Coper (eds), *The Future of Australian Legal Education* (Thomson Reuters, 2018) 355, 366.



11, including specific recognition of the impact of emerging technologies.<sup>43</sup> However, at the time of this publication no formal changes have been made to the Priestley 11.

### B *Threshold Learning Outcomes*

TLOs are a ‘different attempt to articulate what needs to be learnt within a law degree’.<sup>44</sup> TLOs are ‘the set of knowledge, skills and the application of the knowledge and skills a person has acquired and is able to demonstrate as a result of learning’.<sup>45</sup> TLOs were developed as part of the Higher Education Quality and Regulatory Framework.<sup>46</sup> The Australian Learning and Teaching Council was commissioned to manage components of the Learning and Teaching Academic Standards that incorporated ‘eight broad discipline groups’, including law.<sup>47</sup> CALD were part of the consultation process to develop a set of standards for Australian law schools.<sup>48</sup>

TLOs go further than the requirement that a law student simply acquires knowledge. There is a reference to skills. The TLOs for the Bachelor of Laws include: fundamental areas of legal knowledge; ethics and professional responsibility; thinking skills that relate to legal issues and legal reasoning; research skills on legal and policy issues; communication and collaboration skills; and self-management on learning, working independently and personal and professional development.<sup>49</sup> There is no express statement about ‘technology skills’.

### C *Graduate Attributes*

Most universities in Australia have developed GA principles, and these are embedded into the course objectives, materials, and assessment of coursework programs. The objective of incorporating these principles into coursework is to ensure that all students demonstrate these attributes when they complete their coursework program.<sup>50</sup> The GAs include: well-informed individuals with discipline-specific expertise; critical, creative thinkers; effective communicators and collaborators; ethical, engaged professionals and citizens; employable, enterprising professionals; and culturally capable individuals.<sup>51</sup> GAs relate to

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<sup>43</sup> This consultation was carried out by the LACC and disseminated through the networks of CALD and the Legal Education Associate Deans Network during 2019. At this stage, it remains for law schools to determine their curricula. Bond University has been proactive through its Centre for Professional Legal Education and its project on the impact of emerging technology on each of the Priestley 11 subject areas.

<sup>44</sup> Moses (n 42) 366.

<sup>45</sup> Sally Kift and Mark Israel, *Learning and Teaching Academic Standards Project: Bachelor of Laws, Learning and Teaching Academic Standards Statement* (Australian Learning and Teaching Council, December 2010) <<https://cald.asn.au/wp-content/uploads/2017/11/KiftetalLTASStandardsStatement2010.pdf>>.

<sup>46</sup> *Ibid.* TLOs were also developed for the Juris Doctor (postgraduate-level law program) that apply the same outcomes, but to a standard reflecting the postgraduate status of the Juris Doctor.

<sup>47</sup> *Ibid.* 3.

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*

<sup>50</sup> ‘Graduate Attributes Policy’, *University of Southern Queensland* (Web Page, 2022) <<https://policy.usq.edu.au/documents/18747PL>>.

<sup>51</sup> *Ibid.*

the qualities, skills and understandings a university community agrees its students should develop during their time with the institution. These attributes include but go beyond the disciplinary expertise or technical knowledge that has traditionally formed the core of most university courses. They are qualities that also prepare graduates as agents of social good in an unknown future.<sup>52</sup>

They ‘encapsulate transferable, non-discipline specific skills that a graduate may achieve through learning that have application in study, work and life contexts’.<sup>53</sup> Attributes include, but are not limited to, both skills and knowledge.

This definition indicates that GAs bring an enduring quality that will provide a graduate with some ‘insurance’ (or foundation) that the skills and knowledge they have acquired at university will have value beyond university. They will support employment, entrepreneurship, and career futureproofing.<sup>54</sup>

The literature has questioned whether GAs are fit-for-purpose in a rapidly changing world, in particular when considering the disruption<sup>55</sup> flowing from new technology.<sup>56</sup>

The Priestley 11 is not prescriptive, merely requiring that a law school must cover the 11 areas of knowledge. The TLOs push legal education forward in requiring not just knowledge, but also skills and application. Finally, GAs are governed at the university level and give recognition to the need for graduates to be prepared for at least the foreseeable future.

The framework described above reveals that there remains a high degree of autonomy within individual law schools to chart and navigate their own course on developing a responsive and dynamic law curriculum. Perhaps such individuality will result in even further differentiation between schools and more distinct options for students seeking differing career paths. By doing so they can futureproof students for their employability and potential to contribute more broadly to a changing social and economic world. It is also a reminder that the framework was established in 1992 and most recently updated over a decade ago in 2010. Perhaps if enough law schools take the lead within this environment by responding through evolution and

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<sup>52</sup> Simon C Barrie, ‘A Research-based Approach to Generic Graduate Attributes Policy’ (2004) 23(3) *Higher Education Research & Development* 261, citing J Bowden et al, *Generic Capabilities of ATN University Graduates* (Report, Department of Education, Training and Youth Affairs, Commonwealth Government, 2000). See also Beverley Oliver and Trina Jorre de St Jorre, ‘Graduate Attributes for 2020 and Beyond: Recommendations for Australian Higher Education Providers’ (2018) 37(4) *Higher Education Research & Development* 821, 822.

<sup>53</sup> Sara Hammer, Peter Ayriss and Amanda McCubbin, ‘Style or Substance: How Australian Universities Contextualise Their Graduate Attributes for the Curriculum Quality Space’ (2021) 40(3) *Higher Education Research & Development* 508.

<sup>54</sup> However, there is an opposing view that an emphasis upon GAs linked too closely to employability may diminish the purpose of university as being an opportunity for students to develop socially and personally: Cassandra Star and Sara Hammer, ‘Teaching Generic Skills: Eroding the Higher Purpose of Universities, or an Opportunity for Renewal?’ (2008) 34(2) *Oxford Review of Education* 237.

<sup>55</sup> Clayton M Christensen, *The Innovator’s Dilemma: When New Technologies Cause Great Firms to Fail* (Harvard Business School Press, illustrated ed, 2015).

<sup>56</sup> Oliver and Jorre (n 52). But see ‘Graduate Attributes and Skills Development’, *Melbourne Law School* (Web Page, 4 December 2019) <<https://law.unimelb.edu.au/students/jd/studies/grad-attributes-and-skills>>.

adaptation to our changing world, they could trigger broader formalised national change. This article asserts that such change is possible within the current regulatory framework.

The desktop review into the job market for law graduates (discussed below) reveals a shifting and transitioning environment from which legal education is in danger of becoming disconnected.

#### IV LAWTECH AND EMPLOYABILITY

The place of LawTech within the legal profession has been described as occurring in a series of waves. Australia is currently in a third wave, which commenced in 2012, in which legal analytics and technology-assisted review are increasingly being used in the delivery of legal services.<sup>57</sup> The use of these technologies at this developmental stage is gaining momentum, especially in other countries.<sup>58</sup>

The impact on law graduates of technologies being used to deliver legal services will be varied. It may include the loss of jobs for junior lawyers involved in the traditional ‘time-consuming, repetitive tasks requiring relatively low levels of skills and experience’<sup>59</sup> — for example, those previously reviewing huge boxes of documents for discovery and litigation requirements. This is now being replaced by e-discovery and e-litigation technologies, making the process much more efficient.

The desktop review conducted by the authors into the existing job market for law graduates revealed the following insights. First, employers of law graduates, including government, top law firms and the ‘Big Four’ banks in Australia, are already exploring and embracing technologies, including blockchain technologies to complete commercial contracts.<sup>60</sup>

Second, the government has been one of the most significant users of technologies to assist in carrying out statutory powers and functions, most recently (and most notably) for automated administrative decision-making systems, as in the case of debt recovery.<sup>61</sup>

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<sup>57</sup> Julian Webb, ‘Legal Technology: The Great Disruption?’ in Richard L Abel et al (eds), *Lawyers in 21st Century Societies: Vol 2 — Comparisons and Theories* (Hart Publishing, 2022) 515, 519–20. Webb describes the first wave occurring from 1970 to 1990, focusing on the automation of legal research and information retrieval: at 516–17. The second wave of digital transformation, occurring from 1991 to 2012, was enabled by increased use of personal computers, cheaper software, the internet and increased mobile devices.

<sup>58</sup> Ibid 520–1. Countries taking leadership, across varied platforms of technology, include Singapore, China, Canada and the US.

<sup>59</sup> Moses (n 42) 365.

<sup>60</sup> Corporate and Institutional Banking, ‘Blockchain: The Next Big Thing’, *NAB Business Research and Insights* (Blog Post, 16 January 2019) <<https://business.nab.com.au/blockchain-the-next-big-thing-32894>>; Westpac Banking Corporation, ‘ANZ, Commonwealth Bank, IBM, SCentre Group and Westpac Commence Live Pilot for Lygon, a Blockchain-Based Platform to Transform the Bank Guarantee Process’ (Media Release, 4 July 2019) <<https://www.westpac.com.au/about-westpac/media/media-releases/2019/4-july>>; ‘CBA’s Blockchain Centre of Excellence Puts the Pedal to the Metal’, *Commbank* (Web Page, 21 January 2019) <<https://www.commbank.com.au/guidance/newsroom/commodities-blockchain-trade-finance-201901.html>>.

<sup>61</sup> Dominique Hogan-Doran, ‘Computer Says “No”: Automation, Algorithms and Artificial Intelligence in Government Decision-Making’ (2017) 13(3) *Judicial Review* 345.

Third, job descriptions are shifting from the familiar and long-held titles of ‘law clerk’ and ‘law graduate’, to titles such as ‘e-discovery consultant’, ‘legal document reviewer’, ‘legal searching support assistant’, ‘paralegal technologist’, and ‘associate document reviewer’. Recruiters and employers categorise these positions as ‘legal positions’. Law academics need to look for avenues to engage with this environment to ensure that law curricula become more responsive to a changing market for the benefit of graduates’ employability.<sup>62</sup>

Fourth, legal education needs to acknowledge that law graduates are the emerging policy developers and law reformers in this changing job market. The need for emerging lawyers to have an understanding of the implications of technologies — legal, economic, social and technical literacy — will only increase as these technologies are promoted as sources of commercial success or social benefit.<sup>63</sup> The law has a history of being criticised for not keeping up with technology, with the resulting lag having implications where ‘new technologies can also create new hazards’.<sup>64</sup> Law plays an important role in providing mechanisms to manage these risks,<sup>65</sup> but such risk management is only effective where lawyers are appropriately educated to identify and investigate the issues and critically contribute to the appropriate resolution of how they are to be managed. As put by Denton and Reynolds:

Every new development presents similar concerns about the speed at which it can be regulated. This includes technologies that currently lack adequate frameworks such as commercial use of drones, self-driving cars, space exploration and computing. The need for regulation of these technologies is perhaps more apparent due to their novelty, but this novelty highlights the need for whole new frameworks.<sup>66</sup>

Employment opportunities favour graduates with the knowledge, skills and mindset that show at least some competency in this environment. Legal education must adapt, through engagement (including research) with employers and the job market to sharpen the understanding of the impacts of technology on the delivery of legal services, as well as the broader legal, social and economic impacts. Having identified the changing employment opportunities afforded by technologies in law, we turn to consider changing attributes expected of law graduates.

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<sup>62</sup> Hunter (n 16); ‘Employer Satisfaction Survey’, *Quality Indicators for Learning and Teaching* (Web Page, 2020) <<https://www.qilt.edu.au/qilt-surveys/employer-satisfaction>>. The Quality Indicators for Learning and Teaching data does not specifically address ‘legal profession’ employer satisfaction.

<sup>63</sup> Farran Powell, ‘FTX Declares Bankruptcy’, *Forbes Advisor* (Web Page, 14 November 2022) <<https://www.forbes.com/advisor/investing/cryptocurrency/ftx-declares-bankruptcy>>; Luke Henriques-Gomes, ‘Robodebt Went Ahead, Despite Legal Doubts, after Earning Scott Morrison’s Backing Inquiry Hears’, *The Guardian* (online, 2 November 2022) <<https://www.theguardian.com/australia-news/2022/nov/02/robodebt-royal-commission-legal-doubts-centrelink-welfare-debt-recovery-scott-morrison-backing-inquiry-hears>>.

<sup>64</sup> Jai A Denton and Christopher S Reynolds, ‘Limping Along and Lagging Behind: The Law and Emerging Gene Technologies’ (2018) 24 *James Cook University Law Review* 61, 61.

<sup>65</sup> *Ibid.*

<sup>66</sup> *Ibid* 61–2.

## A *What Attributes Do ‘New Lawyers’ Need?*

The attributes of the traditional lawyer have been identified as including a lack of empathy, focus on detail and an unwillingness to delegate.<sup>67</sup> Paradoxically, the ‘new lawyer’ is emerging almost in opposition. Richard Susskind, in 1996, first articulated the idea of the ‘new lawyer’,<sup>68</sup> emerging from the increasing use of technologies to deliver legal services. More recently, a summary of the skills needed for the new lawyer was provided by Professor Michael Legg.<sup>69</sup> This summary was part of a commission of inquiry, carried out by the Law Society of New South Wales, in which seven skills or areas of knowledge were identified as essential for the successful future practice of law: the ability to understand and employ technology; interpersonal skills; professional skills; business skills; project management skills; inter-disciplinary experience; and resilience.<sup>70</sup>

The evolution from traditional lawyer to new lawyer invites the question as to where the law academic might sit as an educator of those who will fit on this continuum?

### 1 *Technology Literacy*

Law students need to be able to identify the best technology to employ in a given situation, finding the most efficient and cost-effective way to meet the client’s objective.<sup>71</sup> Some law schools ‘have already begun to assist students to acquire proficiency in these skills through “law apps” courses and “hackathons”’.<sup>72</sup>

While many law students may enter law school with some technology skills,<sup>73</sup> these ‘need to be directed to, and honed for, the practice of law’.<sup>74</sup> For example, the use of document review and e-discovery is rising sharply; students need to be aware of how it works, its applications and its shortcomings.<sup>75</sup>

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<sup>67</sup> Caroline Hart, *The Seven Elements of Successful Country Law Firms* (Federation Press, 2018) 26. Research indicates that there is a ‘surprising correlation between pessimism and success in law school’, discussed by Martin EP Seligman, Paul R Verkuil and Terry H Kang, ‘Why Lawyers Are Unhappy’ (2001) 33 *Cardozo Law Review* 33, 40.

<sup>68</sup> Richard Susskind, *The Future of Law: Facing the Challenges of Information Technology* (Clarendon Press, 1996); Richard Susskind, *The End of Lawyers: Rethinking the Nature of Legal Services* (Oxford University Press, 2008); Susskind, *Tomorrow’s Lawyers* (n 12); Richard E Susskind and Daniel Susskind, *The Future of the Professions: How Technology Will Transform the Work of Human Experts* (Oxford University Press, 2015).

<sup>69</sup> Legg (n 32).

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid* 375.

<sup>72</sup> *Ibid* 376. A law app is where students use software packages to build an application to assist in access to justice. A hackathon is a short, intense collaboration between people with a variety of skills (eg, computer programmer) to solve a problem.

<sup>73</sup> Lorelle J Burton et al, ‘Digital Literacy in Higher Education: The Rhetoric and the Reality’ in Marcus K Harnes, Henk Huijser and Patrick Alan Danaher (eds), *Myths in Education, Learning and Teaching: Policies, Practices and Principles* (Palgrave Macmillan, 2015) 151 <[https://doi.org/10.1057/9781137476982\\_9](https://doi.org/10.1057/9781137476982_9)>.

<sup>74</sup> Legg (n 32) 385.

<sup>75</sup> PA Ryan, ‘Exploring the Use of Artificial Intelligence to Improve Law Students’ Self-Assessments’ in KE Lindgren, François Kunc and Michael Coper (eds), *The Future of Australian Legal Education* (Thomson Reuters, 2018) 421, 420.

As described in Part I, these technologies are already being deployed in legal practice. It would not be too onerous for a law school to map such technologies against their substantive law courses and suitably embed them. At the very least, acknowledgement of them is essential.

While law students may not need to know how to code, they do need to know the output of the technology and how to evaluate different technologies that are already being used in practice.<sup>76</sup> However in all discussions around the developing technologies affecting legal practice we should not lose sight of the core fundamental legal principles that must underpin these new tools. Students should not be encouraged to think that the application of any technology is an end in itself and a goal that signifies good legal practice. Their use for efficiency purposes will no doubt become crucial. But future practitioners must have an understanding of how the technologies work to have the confidence that they will aid in the provision of sound legal services. Fundamental legal knowledge should drive the choice and manner of use of the tools, not the other way around.

## 2 *Interpersonal Skills, Including Emotional Intelligence, Teamwork and Collaboration*

There are a set of skills required of the new lawyer that are described as human characteristics, particularly emotional intelligence, teamwork and collaboration.<sup>77</sup> These attributes are essential for client care and management, as well as in the new ways of delivering legal services that require ‘lawyers to collaborate not only with other lawyers but also with technologists, project managers and other professionals’.<sup>78</sup> Many law schools already incorporate opportunities to develop teamwork and collaboration skills as part of assessment.

## 3 *Business Skills, Including Accounting and Finance*

Law is both a profession and an endeavour where law firm owners are operating and managing a business.<sup>79</sup> ‘[S]uccess in the law is not achieved by simply being an outstanding legal technician. Knowledge of business and the key accounting and finance tools is a necessity to operate in the legal market’.<sup>80</sup> Law graduates will need to adopt an entrepreneurial mindset to take advantage of opportunities in a more casualised workplace. This includes the ability to network and navigate a more flexible, entrepreneurially based market.<sup>81</sup>

## 4 *Legal Project Management Skills*

Law graduates will need both knowledge and skills relating to legal project management, which involves the scoping, scheduling and costing of legal work, as well as knowing how it is resourced, managed and monitored.<sup>82</sup>

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<sup>76</sup> Legg (n 32) 376.

<sup>77</sup> Ibid.

<sup>78</sup> Ibid 378.

<sup>79</sup> Hart (n 67).

<sup>80</sup> Legg (n 32) 379–80.

<sup>81</sup> Hunter (n 16).

<sup>82</sup> Legg (n 32).

## 5 *Inter-disciplinary Experience*

The literature recognises the advantages held by students who have had customer experience in any capacity. This could include, for example, retail or food services. Such work can give them important skills necessary for dealing with clients.<sup>83</sup> One of the key elements identified as part of this experience is the structured training and reflection that heightens opportunities for student learning.<sup>84</sup> In addition, expectations are that the new lawyer will work not only with clients but also with a range of other professions and occupations, including software developers and accountants.<sup>85</sup>

## 6 *Cross-disciplinary Knowledge and Skills*

Emerging from the literature is that graduates need to acquire certain attributes to become the new lawyer,<sup>86</sup> including cross-disciplinary knowledge.<sup>87</sup> Law schools need to expose students to cross-disciplinary contexts to produce graduates who are more immediately useful to their employers while still teaching the doctrinal content that continues to be mandatory. If law graduates are to remain employable while meeting new challenges,

then legal education needs to change. ... [T]he demands for students with legal and technical expertise, for Susskind's legal knowledge engineers, legal technologists, legal hybrids and legal data scientists, is likely to increase.<sup>88</sup>

This cross-disciplinary trend is not to suggest that law students will learn, acquire and develop 'expertise' in all these skills. Expertise takes time to develop. Instead, law students should acquire the knowledge and skills at university, which are then refined through further study (eg, practical legal training) and continued legal and professional education. Introducing students to the attributes required to succeed with LawTech is seen as a way to maximise students' prospects of success in practice, 'because the right tools optimised to a lawyer's needs and individual practice ultimately make the job far more enjoyable, and far more effective and efficient'.<sup>89</sup>

What is common to this list of attributes for the new lawyer is the focus on experience and skills, rather than knowledge. Yet substantive law and knowledge 'still dominates law school

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<sup>83</sup> Ibid.

<sup>84</sup> Ibid.

<sup>85</sup> Ibid.

<sup>86</sup> Richard S Granat and Stephanie L Kimbro, 'The Teaching of Law Practice Management and Technology in Law Schools: A New Paradigm' (2013) 88(3) *Chicago-Kent Law Review* 757; Oliver R Goodenough, 'Developing an E-Curriculum: Reflections on the Future of Legal Education and on the Importance of Digital Expertise' (2013) 88(3) *Chicago-Kent Law Review* 845.

<sup>87</sup> Moses (n 42).

<sup>88</sup> Ibid 366.

<sup>89</sup> Law Society of New South Wales, *The Future of Law and Innovation in the Profession: The FLIP Report 2017* (Report, 2017) 31 <<https://www.lawsociety.com.au/sites/default/files/2018-03/1272952.pdf>>.

teaching and curriculum in Australia with insufficient adaptation to the changing environment or reflection about the implications of all of this for legal education’.<sup>90</sup>

Possibly one of the barriers to providing appropriate skills development within law schools is that delivering learning and teaching focused on the acquisition of skills is more resource intensive when compared with providing a law student with a login and password to a database. The economic constraints of offering law programs have been raised by the law academy, including concerns that ‘[l]aw schools and their faculty are being asked to train students to practice in ways that produce a faster return on investment for law firms and the legal market’.<sup>91</sup> This has been described by Margaret Thornton as universities imposing corporatist and commodifying approaches upon law academics.<sup>92</sup>

## V ANALYSIS AND RECOMMENDATIONS

‘There’s no turning back: technology is now a ubiquitous reality in the everyday practice of law.’<sup>93</sup> It is therefore part of the world and job market into which law graduates are entering. Law schools must respond to this new world and better prepare and equip their graduates. They have the flexibility to do so within the existing regulatory framework.

### A *Legal Education Has the Ability to Adapt and Respond*

The first finding from this exploratory research is that one of the core roles of legal education has been to prepare graduates for employment, including contributing more broadly within the legal system to include legal, social and economic aspects. Ultimately, the responsibility for adaptation and evolution is best held by law academics, and this role should be carried out as a fiduciary role towards graduates, rather than as a broker acting in the interests of either the legal profession or entrepreneurial tech-interests.

In carrying out this role, law academics must engage to a greater extent with technology innovators and developers, as well as the expanding and changing range of employers. Engagement needs to be proactive rather than reactive and motivated by attempts to bridge the widening gap between law schools and the job market. That gap is fast becoming the dinosaur (rather than the elephant) in the rooms of both law academics and practitioners.

This engagement can be done by law academics drawing upon their existing skillsets, including independent critical analysis and research design expertise.<sup>94</sup> The question must be asked: what

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<sup>90</sup> David Weisbrot, ‘Taking Skills Seriously: Reforming Australian Legal Education’ (2004) 29(6) *Alternative Law Journal* 266, 269.

<sup>91</sup> Margaret Thornton, ‘The Law School, the Market and the New Knowledge Economy’ (2009) 10(6–7) *German Law Journal* 641, cited in Graben (n 6) 150.

<sup>92</sup> Graben (n 6) 150 citing Margaret Thornton, ‘Technocentrism in the Law School: Why the Gender and Colour of Law Remain the Same’ (1998) 36(2) *Osgood Hall Law Journal* 369.

<sup>93</sup> Baker (n 9) 557.

<sup>94</sup> Complex adaptive systems theory gives insights into the approaches that legal education can leverage. Kevin J Dooley, ‘A Complex Adaptive Systems Model of Organization Change’ (1997) 1 *Nonlinear Dynamics, Psychology, and Life Sciences* 69 <<https://doi.org/10.1023/A:1022375910940>>.



is the point of universities, if not to be the laboratory for research and development in response to curiosity, which then flows into the classroom as learning and teaching? Law academics have a window of opportunity to draw upon their abilities to research and engage, with the outcome of bringing about renewal of the curriculum to better prepare their graduates.

The market into which law graduates are seeking employment is a rapidly changing one, as described throughout this paper, yet such graduates have gained their law qualifications through traditional approaches, taught by law academics who have also progressed through traditional pathways. Should there be a fear that both are possibly siloed from outside engagement?

### *B Adaptation within the Current Regulatory Framework*

The second finding of this paper is that review and reform of the law curricula at the national level may be time-consuming and require consensus among the legal profession and law deans. However, this does not mean that a law school cannot undertake its own review of its own curriculum within the parameters of the Priestley 11, TLOs and GAs.<sup>95</sup> Law academics need to question whether, and to what extent, they are prepared to take on a greater leadership role at the law school level of those activities that are within their control. Such activities include investigating, researching, mapping and adapting curricula to ensure their graduates can compete in a changing legal profession impacted by technologies that demand new skills and new attributes.

There is nothing to stop law academics from harnessing the very technologies under discussion — for example, applying modelling and predictive analysis — to explore the impacts of adapted legal education to better meet the needs of law graduates,<sup>96</sup> while at the same time staying true to the fundamentals of core legal knowledge.

While the legal profession and judiciary may direct elements of legal education (in part to ensure consumer protection and ethical standards), there remains sufficient autonomy and flexibility within the national and state regulatory framework for law academics to respond and adapt to a changing world that is presenting challenges, pressures and opportunities.

The TLOs and GAs have, so far, provided some futureproofing and employability opportunities for graduates because they have focused on skills rather than technical expertise that could ground a graduate in a time capsule and therefore limit their ability to maximise opportunities. The knowledge and skills acquired by graduates should have some capability of application into the future rather than having a short use-by-date. For example, the skill of critical analysis is likely to futureproof a graduate more than a detailed knowledge of a particular technology. The role of a law school should include investigating its curriculum to determine where and how students can be engaged, challenged and prepared for the impacts of technologies. This is

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<sup>95</sup> Moses (n 42).

<sup>96</sup> Dooley (n 94).

generally not yet occurring.<sup>97</sup> Further, law schools must make informed decisions about curriculum design and be willing to seek evaluation and review, not only by the Tertiary Education Quality and Standards Agency, admitting authorities and the institution itself, but also from graduates and employers. Anecdotally, feedback from recent graduates about their transition into practice can be very sobering.<sup>98</sup>

### *C Recommendations*

This paper makes three recommendations for legal education to better prepare law graduates for a changing world.

First, law schools should reflect upon the proven dynamic nature of legal education and take a more proactive approach to reviewing and redesigning their curricula, rather than waiting for others to act. Leadership within law schools is needed to ensure law graduates are taught and assessed on skills and knowledge appropriate to the changing employment environment.

Second, law schools should move in closer and engage with employers (who seem to be adapting more effectively to technology) to ensure law academics are better informed about the careers market into which graduates are entering.

Third, law schools must engage and connect with disciplines other than law to incorporate cross-disciplinary knowledge and skills, such as interpersonal skills, emotional intelligence, teamwork and collaboration, legal project management skills, as well as the languages associated with other disciplines.

More than ever, legal education needs to reboot and adapt to a changing environment. It needs to remain independent but be far better informed if it is to fulfil its function as a lead actor in ensuring continuity and improvement of access to law and justice.

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<sup>97</sup> Hunter (n 16).

<sup>98</sup> Eg, feedback received via university alumni networks.