

SILVER JUBILEE MILESTONE 1992–2017: A CONTRIBUTION TO AUSTRALIAN LAW TEACHING THE COMING-OF-AGE OF THE CENTRE OF LEGAL EDUCATION AND THE LEGAL EDUCATION DIGEST

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I INTRODUCTION

This article is about the Silver Jubilee Milestone 1992-2017 for the Centre for Legal Education ('Centre') and the *Legal Education Digest* ('LED') in Australia. Any examination of the modern transformation of legal education in Australia would have to incorporate a reference to the influence on the process exercised by the Centre and its journal the LED. During its most active period, the Centre had a major influence on the legal communities' reactions to, and views of, contemporary legal education.¹ This paper traces the Centre's evolution and its progress over the relatively short period of two and half decades covering the period of its establishment in 1992 until 2017.

II ORIGINAL ESTABLISHMENT OF THE CENTRE

A Colloquium on Legal Education 1990

The Centre was established by the former Law Foundation of New South Wales, a predecessor body of the Law and Justice Foundation of New South Wales. Its establishment was the outcome of a Colloquium on Legal Education ('Colloquium') conducted by the Law Foundation in June 1990. The Colloquium's major goals were:

To examine the problems and challenges, within the existing education processes that relate to the transforming of law students into legal practitioners; to examine the range of programs, models and possibilities for providing ways of transforming law students into legal practitioners; and to produce, if possible, some consensus on solutions and ways forward.²

B A Proposal to the Law Foundation of New South Wales

Sometime after the Colloquium, in February 1991 a proposal was put to the Board of Governors of the Law Foundation that it establish a body which focused the Foundation's objectives for legal education. The proposed body was intended to be a permanent organisation which would carry forward the Colloquium's outcomes. It was proposed that the overall aim of the Centre would be to further legal education and improve its outcomes. This was seen at the time as taking up the Law Foundation's objects, and dealing with them in a permanent, outgoing and professional manner.³

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1 David Barker, *A History of Australian Legal Education*, (Federation Press, 2017) 22.

2 *The Centre for Legal Education: The First Three Years 1995* (Centre for Legal Education, 1995) 3.

3 *Ibid.*

C Law Foundation Resolution

The Law Foundation's Board of Governors considered the proposal and in February 1991 resolved:

That the Board agree in principle to support the establishment of the Centre for Legal Education, subject to clarification of the Foundation's income arrangements with the Law Society, the overall major projection commitments for the concept from the professional associations and the Chief Justice.⁴

The Board's set conditions were met and in March 1991 the Foundation Board resolved:

That the Board confirm its previous in principle support for the establishment of the Centre for Legal Education and adopt the proposed timetable for establishment, as amended, subject to formal endorsement of the project by the Law Society of New South Wales and an increase in the Law Foundation's income.⁵

Later in May 1991 the Board of Governors resolved:

That an allocation of \$250,000 as a part payment to cover the start-up costs of the Centre for Legal Education be authorised, and that the timing of the commencement of operations of the Centre be dependent upon the Foundation receiving an increased income in the next financial year sufficient to enable its full budget to be met.⁶

In February 1992, the Centre was established with the appointment of its first director, Christopher Roper⁷ which was to prove an inspired choice. Christopher Roper had already been the Executive Director of the Leo Cussen Institute Melbourne 1977-1982, and the Director of the College of Law Sydney 1982-1988, and was currently the Director of Education at an Australian law firm which then known as 'Stephen Jacques'. Christopher Roper was subsequently appointed an AM (Member of the Order of Australia) in 1999 for his contribution to continuing legal education in Australia.⁸

Among these early years, a cross-section of its more significant studies includes those relating to continuing legal education. Two of these, *Senior Solicitors and their Participation in Continuing Legal Education*⁹ and *Foundations for Continuing Legal Education*,¹⁰ were authored by Christopher Roper. Another one, *A Study of the Continuing Legal Education Needs of Beginning Solicitors*¹¹ which incorporates wide-ranging literature review of the topic, was authored by John Nelson.¹²

III THE FIRST SEVEN YEARS 1992–1999

In 1999, the Centre published a document titled 'The First Seven Years'.¹³ This document incorporated a review which chronicled an outstanding list of the Centre's achievements, which

4 Ibid.

5 Ibid.

6 Ibid 3-4.

7 Ibid.

8 *Who's Who 2015, Christopher Roper* (Crown Content, 2015) 1082.

9 Christopher Roper, *Senior Solicitors and their Participation in Continuing Legal Education* (Centre for Legal Education, 1993).

10 Christopher Roper, *Foundations for Continuing Legal Education* (Centre for Legal Education, 1999).

11 John Nelson, *A Study of the Continuing Legal Education* (Centre for Legal Education, 1993).

12 Ibid 11-46.

13 *The Centre for Legal Education: The First Seven Years 1999* (Centre for Legal Education, 1999).

arguably reflected credit on Christopher Roper as its director. The Centre was also supported by a strong Board of Management until 1996, when it was reconstituted by an Advisory Board which continued in operation, until the Centre was transferred to the University of Newcastle in 2000. Already in 1995, a Triennial Review of the Centre had said:

It is difficult to envisage the Centre being able to accomplish more in the three years of its existence than it has accomplished in a variety of legal education domains. It is already regarded as indispensable.

The 1999 Report sets out a long list of achievements which it would be difficult to replicate in this paper. However, a short summary of these accomplishments by the Centre up and until this time, is set out below:

- Under ‘Research and Policy Development’ it was claimed that the Centre had reviewed ‘Practical Legal Training’ in New South Wales and the cost of legal education in Australia;
- Advised the Legal Practitioners Admission Board;
- Assisted the New South Wales Law Society to develop a policy on legal education;
- Carried out a National Law students’ career intentions and career destinations study of Australian law graduates;
- Reviewed the Law Society’s Accredited Specialists’ Scheme;
- Evaluated the Australasian Law Teachers Association (‘ALTA’) Law Teaching Workshops; and
- Supported a study of the socio-demographic characteristics of first year law students.

It should be recognised that for most of these projects, this was the first time that any institution had considered there was a need for review, and that the concept of research into many of the outcomes, was an exemplification of this approach. This was an innovative development towards legal education, and its outcomes had a transformative effect on the long-term relationship between law schools and the legal profession, particularly with respect to ad hoc legal associations such as the admitting authorities and the Law Council.

With regard to information, the Centre had developed an impressive portfolio of legal publications which incorporated the: *Legal Education Digest*, *Australasian Legal Education Yearbook*, a wide variety of legal monographs, two major reports relating to the introduction of the *Uniform Admission Rules* and *The Lawyers Admission Handbook* (the latter intended as a quick reference guide to the mutual recognition regime in the various Australian jurisdictions), the *Lawasia Directory of Law Courses*, and *The Australasian Professional Legal Education Directory*.

The Centre had also developed its own website, which was arguably a major development in the 1990s. It should also be realised that this series of legal publications took account of a need by law academics and the legal profession for: information relating to both regulation and admission into the legal profession, the compilation of information outlining the variety of law programs, the range of law teachers, and those law schools available to provide the respective law teaching.

‘Support and Facilitation’ was the third designated activity of the Centre which covered a wide range of activities, the most prominent of which was the New South Wales Legal Education Conference that drew on a wide membership from New South Wales and the Australian Capital Territory. Members were: representatives of the legal professional bodies responsible for legal education, officers of the Attorney General’s Department, many Law Deans, the heads of practical training courses, providers of continuing legal education, and representatives of the Australian Law Students Association. The importance of these initiatives was that they brought together in a cohesive way, the principal participants in legal education in the State, who had not previously recognised the influence and connections which their respective institutions or departments had on the wider aspects of legal education.

The Conference met on a six-monthly basis with the primary purpose of exchanging information, and particularly, to focus on matters of current concern. It also served to brief participants on matters of interest, so as to develop a common base of knowledge amongst the principal players in legal education in the State. These Conferences were particularly influential. Up and until the foundation of Centre, there had been little or no forum for the consideration of legal education. In some ways, this need was articulated later by the Australian Law Reform Commission in ALRC 89 ‘Managing Justice’ when it said that:

There is need for an institution which can draw together the various strands of the legal community to facilitate effective intellectual interchange of discussion and research of issues of concern and nurture coalitions of interest.¹⁴

The Centre was also involved in various activities which included for example providing the secretariat for various organisations such as: the then Committee of Australian Law Deans (subsequently the Council of Australian Law Deans), the Standing Committee for Teaching Professional Responsibility, the Continuing Legal Education Association of Australia, and the administration of the ALTA Law Teaching Workshops. The latter had been launched in 1988 and was regarded as heralding a continuing encouragement to improve the quality of student teaching in the law, activities with which the Centre became increasingly involved.¹⁵

IV THE CENTRE’S MAIN TWO PUBLICATIONS:

THE LEGAL EDUCATION REVIEW AND THE LEGAL EDUCATION DIGEST

The Centre has been responsible for two major ongoing publications: the *Legal Education Review* (LER) and the LED. The influence of these two journals should not be underestimated. This is particularly the case with respect to the LER which, having been published on a regular basis until the present time, has become a highly regarded journal. It could also be argued that one of its best qualities has been the provision of comment, analysis and criticism of legal education.

A *The Legal Education Review (LER)*

The Legal Education Review was established in 1989 with the support of a grant from the then Law Foundation of New South Wales. It is a refereed journal whose objectives are described as ‘to encourage and disseminate research into legal education and to stimulate discussion, debate and experimentation on topics related to legal education.’¹⁶ The LER had always been under the control of ALTA, although for some time in its early years, its administration had been the responsibility of the Centre. Currently, the LER is managed by Bond University with Professor Nick James the Dean of the Law School, as Editor in Chief. It is published annually in electronic form.

B *The Legal Education Digest (LED)*

Since its inception, the LED has been a journal of the Centre, and was published originally, on a quarterly basis in both hard and electronic forms. The Foundation Editor was Dr John Nelson,¹⁷ and in 2000, an agreement was negotiated with the Association of American Law

14 Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System*, Report No 89 (2000). 154.

15 Ben Boer, ‘The Australasian Law Teaching Clinic: Its Past, Present and Future (1989)’ 1 *Legal Education Review* 145.

16 The Review Mission, *Legal Education Review* <<http://epublications.bond.edu.au/ler.edu.au>>.

17 John Nelson, ‘In this Issue’ (2000) 8(3) *Legal Education Digest* 1.

Schools ('AALS') whereby a copy of the LED would be distributed to each of its member law schools in return for financial support from the AALS. This Agreement was terminated in 2005 and resulted in the co-directors having to review the LED's future financial viability. A reluctant decision was made to request Dr John Nelson, who had been the salaried editor since its foundation in 1992, to relinquish his position and be replaced by the author as Editor, and Dr Michelle Sanson as Associate Editor, both on an honorary basis. This arrangement continued until the end of 2015 when Bridget Kennedy replaced Dr Michelle Sanson as Associate Editor. Also, the end of 2016 saw the termination of hard copy publications of the LED, with 2017 seeing the introduction of electronic copies of the Digest only, being restricted to circulation to ALTA Members.

V THE CENTRE MOVES TO THE UNIVERSITY OF NEWCASTLE LAW SCHOOL 2000

The Centre's move to the University of Newcastle was the outcome of a review, by the then NSW Law Foundation, of its financial resources. This had culminated in a decision to disestablish both the NSW Centre for Legal Justice and the NSW Centre for Legal Education.¹⁸ Although the Centre continued to function, there was concern with regard to the long term financial commitment to the Centre by the University of Newcastle. The problems involved were with regard to operating such a centre away from Sydney where most of its activities had been concentrated, and the additional difficulty which occurred when the Foundation Director Christopher Roper resigned at the end of 2001.¹⁹ Although the Centre continued under the Acting Director, Professor Ted Wright, Dean of Law at the University of Newcastle, a decision was made by the University that there was no long-term future for the Centre in Newcastle.

VI THE CENTRE'S TRANSFER TO THE UNIVERSITY OF TECHNOLOGY SYDNEY (UTS)

At a meeting of the Council of Australian Law Deans in 2002, Law Deans were invited for expressions of interest for the transfer of the Centre to their law schools. It was surprising that whilst the Australian Law Deans had been one of the principal beneficiaries of the outcomes of the Centre, particularly those in New South Wales, the only expression of interest to host it was made by the author on behalf of the UTS Law Faculty. Consequently, it was agreed that the Centre's transfer between the respective law schools would take place as soon as possible. Whilst most of the Centre's physical assets, such as the law library, archives and current files, were transferred to the Kuring-gai Campus of UTS at the beginning of 2003, the deed transferring the Centre's intellectual property, and thus effectively its control, was not executed until the 9th of May of that year.²⁰ There was no funds transfer to support the Centre's future administration, other than a sum of \$40,000 which had been held in a separate account on behalf of the *Legal Education Review*.

The author (who was then Dean of Law at the UTS) and Michael Adams, were appointed as the Centre's co-directors, taking responsibility for its administration on the basis that there could be no undertaking of financial support by the UTS, other than the provision of office services and office space. In the short term, the author and Professor Adams transferred their share of a 2002 University Team Teaching Award, to cover these initial costs.

18 Christopher Roper, 'Centre for Legal Education Moving to a New Home' [2000] (January) *Newsletter of Centre for Legal Education* 1.

19 Christopher Roper, 'From the Director' (2000) Vol 9 No 3 *Newsletter of Centre for Legal Education* 1.

20 'A Brief Look at Our History', (2008) *Newsletter of Centre for Legal Education* 3.

VII THE NSW LEGAL EDUCATION FORUM

In view of the fact that the author had completed his two terms as Dean of the UTS Law Faculty at the end of February 2005, the co-directors agreed that it would be appropriate to re-activate some of the Centre's functions. It was recognised that the Centre would need administrative support. The author therefore agreed to contribute part of his book royalties so that the Centre could pay for the employment of a research assistant, Rachel Moore, a final year law student at the University of New England, who would be available during her university vacations. This was supplemented in 2005 by a further sum from the author, who had carried out a review of the University of South Pacific Law program for which he received a small honorarium, which was also paid to the UTS to further subsidise the research assistant's funding.

The first priority was re-establishing the NSW Legal Education Conference. In view of the fact that there were no funds available, it was agreed that the new centre would be renamed 'Centre for Legal Education Forum' to reflect the different objectives of the forum in contrast to previous conferences.

A *The First Forum*

The first of these new forums took place during the morning of 1 February 2006 at the State Library of New South Wales, with financial sponsorship being provided by the Co-Op Bookshop. As well as the attendance of representatives from the various law schools in the state, there were also representatives from the College of Law, the Director of the Law Extension Committee, Roger Wescombe, Secretary of the Legal Profession Admission Board (LPAB), Geoff Mulherine, Director of the Law and Justice Foundation, and Professor Paul Moyle as the Chair of the ALTA Executive Committee. Besides the exchange of views between the law school representatives, Professor Moyle gave a review of the expansion of ALTA's activities, Professor Jill McKeough reported on her role as Convenor of the NSW Law Deans and as a member of the LPAB, with Geoff Mulherine giving an account of the Law and Justice Foundation. It was agreed by all attendees that the Forum had been a worthwhile exercise and should be repeated on a regular basis in the future.²¹

B *The Second Forum*

The Second Forum was held at the NSW Law Society of New South Wales on 22 June 2006, with sponsorship from Thompsons Book Publishers. Besides the usual exchange of views between NSW law schools, there was also a discussion panel involving Professor Carl Monk, Executive Director of the Association of American Law Schools (AALS) and John Dobson, a member of the NSW Law Society Council. Whilst both members of the panel gave an account of their responsibilities within their respective organisations, the main part of the discussion was concerned with the questions of: 'whether Australian Law Schools could learn from their North American counterparts?' and 'differing ways in which practising lawyers and the Judiciary were involved with United States Law Schools'.²² Carl Monk also gave an account of the establishment of the International Law Schools Association, an initiative of AALS.²³

21 'Centre for Legal Education Forum – The First Forum' (2008) *Newsletter of Centre for Legal Education* 4.

22 'Centre for Legal Education Forum – The Second Forum' (2008) *Newsletter of Centre for Legal Education* 5.

23 *Ibid.*

VIII THE CENTRE STRIVES TO SURVIVE

From 2000 onwards, the Centre had suffered from a chronic lack of funds. In 2007, an application had been made to the NSW Statutory Fund for \$54,460.00 to continue and expand the Centre's activities. The Statutory Fund outright refused to offer any financial support. This meant that the Centre was unable to undertake a projected survey of the activities, and funding of New South Wales Law Schools and other proposed activities of the Centre, such as further Legal Education Forums, were put on hold. However, due to the members of the Centre continuing their services on a pro-bono basis, it was possible to maintain the publication of the *Legal Education Digest* which also received some financial support from ALTA, in return for it being distributed to all its members free of charge.

IX TRANSFER OF THE CENTRE FROM THE UNIVERSITY OF TECHNOLOGY SYDNEY TO WESTERN SYDNEY UNIVERSITY

In 2011, the Centre received notice from the UTS Law School that it did not satisfy the new requirements of the University with regard to the status of University law centres.²⁴ The outcome of this notice from the University was that again, the Centre made arrangements to move, this time to Western Sydney University Law School where Professor Michael Adams, one of the Co-directors, was Dean of the Law School. This move, which took place in 2012, enabled the Centre to retain its law library of unique legal books, and also all its records and back copies of its publications and former hard copies of the LED. It was during this period that Christopher Roper became involved again with its activities, particularly with the development of a new Web Site. However, continued lack of funding persisted to prevent any extension of the activities which had been so successful in its first decade.

X A FINAL MOVE? PROJECTED MERGER WITH BOND UNIVERSITY LAW SCHOOL'S CENTRE FOR PROFESSIONAL LEGAL EDUCATION (CPLÉ)

Observers of the Centre's activities over the last two and a half decades, would gain the impression that its main activity was the involvement in a peripatetic exercise of moving its base from law school to law school! This would overlook the fact that throughout this period, the LED has continued to be published on a regular basis with each edition including at least 60 or more pages involving the précising of at least thirteen law articles, and the review of one or more legal education texts. There is also evidence that during the first week of each publication of the LED in electronic form, it attracts a readership of over 200 readers.

When Professor Michael Adams retired as Dean of the Western Sydney University Law School in June 2017, it was inevitable that without his influence, the Centre would need to review its future options which might even require a further move to a more appropriate law school. Fortunately, a meeting in March 2017 at CALD between Professor Michael Adams and Professor Nick James, the Dean of Bond University Law School, initiated negotiations which led to the proposal for the Centre's merger with the Bond University Law School's Centre for Professional Legal Education (CPLÉ).²⁵ As Bond University was already responsible for the publication of the *Legal Education Review*, this meant that there could also be an advantage for the future location of the publishing of both the LER and the LED being carried out at the same law school. Hopefully, there will also be additional synergies for the recognition of legal

24 Letter from Professor David Barker to Professor Jill McKeough, 16 April 2010 (David Barker's Personal Papers).

25 David Barker, 'Future Arrangements for Centre for Legal Education and Legal Education' (Agenda Item, Australasian Law Teachers Association Executive Meeting, 10 April 2017)

education arising from the combination of the activities of the CLE and CPLE. Certainly, the future combination of the staff of both centres could lead to a committed critical mass of law academics focused on the development of high quality research and outreach activities in legal education – at the very least creating a re-enactment of that tradition of enthusiasm, which had been the hallmark of the Centre since the early days of its formation.

XI REFLECTIONS ON THE ACHIEVEMENTS AND OUTCOMES OF THE CENTRE AND LED

Arguably it has to be recognised that when the Centre was first established in 1989, Australian legal education was largely unstructured with regard to the development of legal research and its effect on the ongoing development of the legal profession. Much of this was only touched on for the first time with the release of the Pearce Report in March 1987,²⁶ and the concurrent outcomes of the Dawkins Report with its abolition of the binary divide in tertiary education.²⁷ However, it was the foundation of the Centre under the leadership of Christopher Roper, that sought to develop and correct some of the inadequacies of Australian legal education which had been highlighted in the Pearce Report.²⁸ Part of this was due to Roper realising that at that time, there was government funding available to assist this development. This funding was not available before 1989, and by 2000, it had come to an end when the New South Wales Government had to fully utilise the Statutory Fund to finance the shortcomings which were becoming evident in the funding of legal aid in the State.

Nevertheless, what the Centre was able to do during its most prolific period in the first decade of its foundation, was to inject into all aspects of Australian legal education, the confidence that led to differences in the approach to the teaching of law, and the continuing improvement in the teaching methods within law programs. There was also the emphasis by the Centre on the development of legal research, with a focus on the systematic investigation of the effect of legal education on the provision of legal practitioners, the extension of practical legal training, the development of continuing legal education, and the ongoing examination of the changing patterns of law graduates with respect to career intentions and destinations.

This paper has endeavoured to highlight a view that the Centre was in the vanguard in developing many of the improvements which have taken place in Australian legal education, and that under Christopher Roper's leadership, it was responsible for injecting confidence into the manner by which this was subsequently undertaken by the wider legal academic community.

26 Barker, above n 1, 209.

27 Ibid 100.

28 Ibid 212.