



School of Law
Western Sydney University
Parramatta

Professor Mary O’Kane (Chair),
Accord Panel

16 March 2023

Dear Panel members,

Submission to the ACCORD panel from the School of Law, Western Sydney University

At the School of Law Western Sydney University we have a strong commitment to the success of our diverse cohort of students. As lawyers and legal academics, we recognise the significance of law and the legal system as powerful institutions which determine key power relationships within the Australian community. Because of this, we are deeply committed to ensuring that our law and legal profession represents the diversity of our community.

The student body at Western Sydney University Law, is 45% from low socio economic backgrounds, 35% are from culturally and linguistically diverse backgrounds, 39% are first in family to attend University. The attraction and retention of these students is important across all of higher education. But it is particularly significant in professions, such as law, which are high status, and contribute to the shaping of the rules, regulations and law which govern our society.

This submission will address 4 key areas of the discussion paper:

1. The significance of international students and education and the need for greater visa flexibility
2. Ensuring research which connects industry and local communities is supported.
3. Supporting diverse students to participate in higher education and why that is important in law
4. Expanding and supporting clinical legal education in higher education, a subset of WIL

International education (Sub heading 2.4)

Q 4 Looking from now to 2030 and 2040, what major national challenges and opportunities should Australian higher education be focused on meeting?

The Discussion Paper on the Australian Universities Accord, specifically sub-heading 2.4 on



international engagement, global security, and geopolitical competition, acknowledges the substantial contribution of higher education to the Australian economy. Notably, international education is the fourth most valuable export for Australia ("Australian Universities Accord - Discussion Paper," p. 10). The paper also recognizes the soft diplomacy role that universities play in Australia's international engagements. However, despite this recognition, the primary focus concerning the student experience in the Accord discussion paper is on domestic students. Many of the inquiries pertain to enhancing the learning experience of both domestic and international students, as exemplified by question 8, which concerns promoting a quality learning environment to equip graduates with the skills and knowledge they require to enter the workforce.

Nonetheless, foreign students, whether on student visas to pursue education or already residing in Australia and pursuing studies as part of their engagement with their adopted country, face additional challenges that may be compounded by intersectionality. Women on temporary visas provide a specific example. Research on the experiences of women on temporary visas, including student visa holders, demonstrates the "multi-faceted nature of violence against these women".¹ Women on temporary visas confront a unique set of obstacles in seeking assistance when facing domestic and family violence. These include language barriers, financial insecurity, stigma, and insufficient knowledge regarding institutionally available supports for domestic and family violence.

It is critical to recognize that visa conditions and limitations can also present structural barriers to accessing support services, potentially leading to fear of deportation². This is particularly important to consider within the context of higher education and international students on student visas, which have strict enrolment and attendance requirements, as well as restrictions on employment, which also impacts on financial security for herself and for any dependents she may have. International students may remain in situations of violence in belief that there is no other alternative.

In addition, poor domestic circumstances of international students have a negative impact on their educational outcomes, making them vulnerable to academic dishonesty to avoid failing subjects that they cannot engage with properly. In such situations, students may resort to

¹ Poljski, C. (2011). *On Her Way: Primary prevention of violence against immigrant and refugee women in Australia*. Multicultural Centre for Women's Health, p 29. Retrieved from https://www.mcwh.com.au/downloads/publications/On_Her_Way_2011.pdf.

² Crossing, B., & Barassi-Rubio, C. (2013). *Domestic violence and temporary visa holders: Barriers to safety*. Immigrant Women's Support Service. Retrieved from <http://www.iwss.org.au/wp-content/uploads/2013/12/IGP-Winter-13-Crossing-Barassi.pdf>

contract cheating services, collaborative file-sharing sites, or other “outsourcing technologies” such as translation software, notetaking, or paraphrasing tools.³ These behaviours become more attractive and even protective, as they allow students to complete their studies without the fear of deportation and to access the benefits of a completed degree through paid employment.

To address these vulnerabilities, policies and procedures should be revised to enable all students to enrol and complete their education with fewer conditions and restrictions that operate punitively in situations of difficulty or failure. Removing structural barriers for international students, may reduce the fear of deportation and encourage and normalise access to adequately resourced, culturally sensitive, and linguistically diverse services can help improve their educational outcomes, reduce the likelihood of academic dishonesty and preserve the reputation of the institution.

Recommendation: Student visas for international students should contain fewer conditions and restrictions which operate punitively in the case of failure.

Recommendation: Students on student visas who experience domestic or family violence should not have their visas cancelled on reporting this violence.

Clinical legal education and WIL

Q14 How should placement arrangements and work-integrated learning (WIL) in higher education change in the decades ahead?

In all areas of legal education, it is vital to provide opportunities for students to gain real life experience working with clients and communities. In the USA, ALL law students must complete an experiential clinical law subject in order to be admitted to practice law⁴. It is a requirement of the American Bar Association. That is not the case in Australia, although many argue that all law degrees should include work integrated learning through clinical subjects including internships. The reasons for requiring students to undertake clinical subjects are multiple. Providing clinical legal education opportunities trains students to more deeply understand

³ Tracey Bretag, Rowena Harper, Michael Burton, Cath Ellis, Philip Newton, Pearl Rozenberg, Sonia Saddiqui & Karen van Haeringen (2019) Contract cheating: a survey of Australian university students, *Studies in Higher Education*, 44:11, 1837-1856, 1839

⁴ Standard 303 of the Law Standards, American Bar Association 2022-2023 Standards and Rules of Procedure for the Approval of Law Schools, https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2022-2023/22-23-standard-ch3.pdf



ethical issues⁵ in their complexity and thus become better lawyers. In Australia, clinical legal education programs are mostly associated with community legal centres,⁶ and provide additional free legal services to disadvantaged communities. This means that in forming ethical lawyers, student work with some of the most disadvantaged communities, forming their sense of responsibility to improve access to justice and seeing this as an ethical responsibility. Simultaneously clinical legal education subjects teach students about their ethical duties to contribute to the law to make it fairer. Clinical legal education imbues students with a deeper understanding of some of the challenges for disadvantaged clients and communities when the clinical subjects focus on providing legal services to these communities. Students learn to analyse systemic problems and come up with innovative means to solve them through law reform⁷. They learn to be creative and problem solving in their approaches to entrenched problems. These are essential skills for students to learn while studying law.

Secondly with the increasing number of multidisciplinary clinics⁸ students learn that no profession works alone, and problems are not resolved in isolated ways. They learn to collaborate and work as members of teams. These are essential skills to learn through higher education. Social workers and lawyers work together, as do financial counsellors and accountants and lawyers. Providing quality clinical legal education to all law students ensures they understand the significance of both team work, and multi disciplinary work. The development of health-justice partnership work is another example of this work.

Many students decide to study law because they are committed to making law and our Australian society fairer⁹. This motivation can become subsumed throughout study. Providing clinical legal education ensures that students maintain this motivation and will contribute to

⁵ Steven Hartwell, 'Promoting Moral Development through Experiential Teaching, 1 *Clinical Law Review* 505 (1995); Muriel Bebeau, 'Promoting Ethical Development and Professionalism: Insights from Education Research in the Professions', [2008] *University of St Thomas Law Journal*, Vol 5:2 366.; Kevin Kerrigan, "How do you feel about this client?-a commentary on the clinical model as a vehicle for teaching ethics to law students", 2007 *International Journal of Clinical Legal Education* 7 2007.

⁶ Jeff Giddings, 'Clinical Legal Education in Australia: a Historical Perspective' 3 *Int'l Journal of Clinical Legal Education* 7 2003.

⁷ Sameer Ashar, 'Law Clinics and Collective Mobilization', 14 *Clinical Law Review* 355, 2007-2008; Elizabeth Curran, 'University Law clinics and their value in undertaking client-centred law reform to provide a voice for clients' experiences', 2007 *International Journal Clinical Legal Education*, 105, 2007.

⁸ Ross Hyams and Faye Gertner, 'Multidisciplinary clinics-broadening the outlook of clinical learning', 17 *Int'l Journal Clinical Legal Education* 23 2012.

⁹ Jane Aiken, 'The Clinical Mission of Justice Readiness', 32 *Boston College Journal of Law & Social Justice*, 231 (2011)



the community when they graduate¹⁰. It keeps students focused on broader societal concerns and their internal motivations and purpose.

By embedding clinical legal education, students learn valuable skills such as reflection skills¹¹ which in turn ensures they become life long learners. Only by ensuring that students are taught how to reflect, on their work, their role as a lawyer, how to behave ethically, can we ensure that lawyers continue to improve in their practice of law. They learn how to learn from their experience of work. This may seem obvious but in fact does not always occur through starting to work.

Finally, for students who are first in family to attend university, providing clinical legal education also provides a pathway into the practice of law. Students who do not have a family member who works in the legal profession or any connections, rely on internships and clinical legal education subjects in order to gain a foothold into legal practice.

Universities should be adequately funded in order to support clinical subjects which include academic content with legal practice development. While this submission focusses on the importance of WIL and clinical legal education within law, similar arguments can be made across higher education. Supporting students and providing these opportunities are essential but also can be costly.

Recommendations: WIL integrated learning should be an integral part of all degree programs, but particularly law degrees.

Funding to support the provision of clinical legal education should be provided to universities teaching law.

Research and community collaborations

Q23 How should an Accord help Australia increase collaboration between industry, government and universities to solve big challenges?

Q24 What reforms will enable Australian research institutions to achieve excellence, scale and impact in particular fields?

Q25 How should Australia leverage its research capacity overall and use it more effectively to

¹⁰ Larry Krygier, 'The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity and Happiness', *Clinical Law review*, 425 (2005)

¹¹ Anna Cody, 'Reflection and Clinical legal education: how do students learn about their ethical duty to contribute towards justice', *Legal Ethics*, Vol 23, 2020, Issue 1-2, 13.

develop new capabilities and solve wicked problems?

Q26 How can Australia stimulate greater industry investment in research and more effective collaboration?

The Accord should recognise and support the role of university-community partnerships in conducting and disseminating research. For the past 30 years, institutions of higher education in the United States and Britain, and elsewhere, have employed participatory action research methods to engage local communities in research partnerships to address complex social and legal problems. Some Australian universities, particularly universities with a specific commitment to local communities, have also led the way in this regard. The important form of knowledge production that results from university-community partnerships has significant reach in advancing social, cultural and the environmental objectives. However, impact is difficult to quantify in metric-based measurements. Assessment criteria which attempt to objectively measure social and economic outputs of collaborative research rarely capture social change or encompass the longer time frames involved in this kind of work. Therefore, we recommend that the Accord adopts a broad understanding of ‘industry’ and specifically recognises the importance of civic engagement and community collaboration in research. Quantitative measurements of ‘impact’ should be applied carefully (if at all) and in conjunction with qualitative assessments of impact.

Western Sydney University Law School supports participatory action research by engaging with local community partners in the field of digital inclusion, the rights and wellbeing of older persons, and access to justice for culturally and linguistically diverse people and First Nations people. Researchers in the School of Law whose work focuses on rights and development in the Indo-Pacific, and Australia’s contribution to the region, have a similar commitment to partner-led engagement in research and end-user utility. Support for collaborative enterprises at the regional and international level would amplify the impact of research on international issues.

Recommendations: Universities should be recognized for the research they do in collaboration with communities.

Quantitative measurements of ‘impact’ should be applied carefully (if at all) and in conjunction with qualitative assessments of impact should be used for measuring the impact of this research.

Diversity and inclusion in higher education participation

Q28 What is needed to increase the number of people from under-represented groups applying to and prepared for higher education, both from school and from other pathways?



Q29 What changes in provider practices and offerings are necessary to ensure all potential students can succeed in their chosen area of study?

Q32 How can best practice learning and teaching for students from under-represented groups be embedded across the higher education system, including the use of remote learning?

Universities globally have pursued a widening participation agenda for at least 20 years in an attempt to ensure that students from under-represented backgrounds are able to successfully complete University. However, common experiences of students from under-represented groups relate to the underlying premise that it is the *students* who are expected to assimilate to university culture.

The inclusion of under-represented groups in higher education is particularly relevant to law schools, because admitting and supporting 'non-traditional' students at law school should contribute to greater diversity in the legal profession,¹² and it is possible to connect the education of law students from diverse backgrounds, diversity in the legal profession and access to justice.¹³ Law schools have a responsibility to support and encourage the success of a diverse range of students, and their responsibility to do so does not end with *admission* of these students to law school, but begins at this point.

The cohort of WSU Law School is 'more diverse and socio-economically disadvantaged than... in traditional law schools, with a high incidence of students from low socio-economic status backgrounds, who are first in family to attend university and who speak a language other than

¹² Maxine Evers, Bronwyn Olliffe and Angela Dwyer, 'Law's Not Hard; It's Just Hard to Get Into: A Study of Alternative Entry Students to Law School' (2017) 51 *The Law Teacher* 151
<<https://www.tandfonline.com/doi/full/10.1080/03069400.2015.1126445>> accessed 20 August 2021, 168.

¹³ See, generally Russell G Pearce and Sinna Nasser, 'The Virtue of Low Barriers to Becoming a Lawyer: Promoting Liberal and Democratic Values' (2012) 19 *International Journal of the Legal Profession* 357; Avner Levin and Asher Alkoby, 'Is Access to the Profession Access to Justice? Lessons from Canada' (2012) 19 *International Journal of the Legal Profession* 283; Michael Kirby, 'Leo Cussen Justice Speech: Unmet Legal Needs in Australia: Ten Commandments For Australian Law Schools, *Australian Law Teachers' Association Conference, La Trobe University, Melbourne Campus* (2015), 10-14; Tina McKee and others, 'The Fairness Project: The Role of Legal Educators as Catalysts for Change. Engaging in Difficult Dialogues on the Impact of Diversity Barriers to Entry and Progression in the Legal Profession' (2021) 55 *The Law Teacher* 283, 1-2; Lady Hale, 'Lord Upjohn Lecture 2021-"When There Are 12": Legal Education and a Diverse Judiciary' [2021] *The Law Teacher* 1, 5-6; Dennis Foley, 'Quadrivium: So You Want to Be a Lawyer?' (2014) 8 *Indigenous Law Bulletin* 19; Naveed Khan, 'An Evolution, Not a Revolution' (2017) 91 *Law Institute Journal* 65; Asian Australian Lawyers Association, 'The Australian Legal Profession: A Snapshot of Asian Australian Diversity in 2015' (2015) Report.



English at home'.¹⁴ There is also a significant proportion of students who enter a law degree at WSU via a pathway from prior vocational education and training.¹⁵ Aggregated data of our first year cohorts from 2018-2021 shows that 45% are from low-SES backgrounds,¹⁶ 35% are from culturally and linguistically diverse backgrounds, 39% are first in family to attend University, 53% are students who have not entered their law course directly from school.

One of the ways in which we support this very diverse student cohort is to centre their experiences *outside* of law school. The 'traditional' model of study at University is that of the 'full time' student or the 'part time' student. 'The expectation still remains that students will 'fit' around academic institutions, but this is complicated by students' responsibilities outside this environment.'¹⁷ However, for many of our students, there is no 'leeway' in their lives outside of law school. Some face serious challenges, have disability, and have commitments to work, to their families and in their communities, and law school has to fit *around* these. These commitments are immutable; University study is and should be malleable. We communicate to our students that we expect them to adopt a range of study sequences, and that they should do as much law study which fits into their lives, rather than attempting to fit life around their studies. The 'non-traditional' pathway through a law degree is positioned as one of the *strengths* of our students. We tell them that having commitments outside of law school will ultimately make them more well-rounded and empathetic lawyers and professionals. If it takes them longer to obtain their law degree, then that is to be commended, because the experiences they are having outside of law school will shape the type of lawyers they become. A student who takes breaks from study, works full-time while studying, or engages in community commitments is the 'typical' student rather than being seen as 'other'.

Unfortunately, recent changes to higher education policy, and in particular the jobs ready graduates reforms introduced in 2022, work against our efforts to centre students' lives which

¹⁴ Michelle Sanson, 'WSU Law First Year Review' (2016) Consultation Paper, 43.

¹⁵ See *ibid*, 43, which reported that, in 2016, 12% of students in the Law School's first year cohort entered the law course from a Vocational Education Training (VET) background.

¹⁶ The University bases low SES status on the students' postcode of permanent home residence within the SSEs value derived from the ABS 2016 Census SEIFA Index for Education and Occupation for postcodes. See Western Sydney University, 'Annual Report: The Year in Review, Volume 1' (2020) Report, 55, Table 7; Australian Bureau of Statistics, 'Details - Socio-Economic Indexes for Areas (SEIFA) 2016' (27 March 2018)

<<https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/2033.0.55.0012016?OpenDocument>> accessed 17 January 2022.

¹⁷ Sarah O'Shea, 'Transitions and Turning Points: Exploring How First-in-Family Female Students Story Their Transition to University and Student Identity Formation' (2014) 27 *International Journal of Qualitative Studies in Education* 135

<<http://www.tandfonline.com/doi/abs/10.1080/09518398.2013.771226>> accessed 5 August 2021, 153.

happen outside of University. They place unnecessary time limits on Commonwealth supported study assistance and the low pass rate requirements disproportionately penalise students who may initially struggle to adapt to the academic expectations of University. These measures discourage the participation of under-represented groups, and should be reconsidered as part of the Accord process.

Another way in which we support this diverse cohort is to embed the development of academic skills within the curriculum, rather than making academic skills support external and additional to the curriculum. This support is then accessible to all students, and means that students who need this support are not framed in deficit, and referred to an external academic skills unit within the University.

However, this model of academic skills support is resource intensive, because it requires close collaboration between experienced academic literacy experts and law academics to incorporate skills development into discipline content. While universities may prefer to use digital third-party commercial products, such as Studiosity, our submission is that these are not as effective as discipline specific, embedded academic literacy skills. While these products may be economically viable, studies have demonstrated their lack of efficacy, primarily due to the fact that they decouple academic skills from their discipline context.¹⁸ These products are also not democratic, because they require students to already possess both discipline expertise and traditional cultural capital to use them effectively. Finally, research demonstrates that where these supports are provided externally to curricula, the students who most need the support are the least likely to access it.¹⁹

To ensure that all potential students can succeed in their chosen area of study, universities should be incentivised to embed academic skills support into curricula, rather than externalising it, or outsourcing it to third party providers.

Recommendations: Universities should be appropriately recognized and funded for the support and success they have in retaining diverse students (from culturally diverse backgrounds, who are first in family to attend University, who are Indigenous)

¹⁸ Helen Joy Benzie and Rowena Harper, 'Developing Student Writing in Higher Education: Digital Third Party Products in Distributed Learning Environments' (2020) 25(2) *Teaching in Higher Education* 633.

¹⁹ Ursula Wingate, 'Doing Away with "Study Skills"' (2006) 11(4) *Teaching in Higher Education* 457; Sophie Arkoudis and Lachlan Doughney, *Good Practice Report – English Language Proficiency* (Report, 2014); Sophie Arkoudis, Chi Baik and Sarah Richardson, *English Language Standards in Higher Education: From Entry to Exit* (ACER Press, 2012).



Universities should be rewarded for fitting patterns of study around the student, and offering flexibility and that funding models do not disadvantage students with complex needs who complete their studies at a slower pace.

Universities should be rewarded for providing academic literacy support for diverse students within the curriculum and which are discipline specific rather than generic.

Conclusion

We welcome this opportunity to contribute to the re-shaping of the higher education sector, drawing on our expertise in legal education and research at Western Sydney University.

We and look forward to further engagement with this process.

Yours sincerely,

Prof Anna Cody, (Dean), Elen Seymour (Deputy Dean), Dr Sandy Noakes (Director of Academic Programs), Prof Catherine Renshaw (Associate Dean Research), Dr Amira Aftab.

On behalf of the School of Law,
Western Sydney University.