

# CONTEXTUALISING PROGRAM OUTCOMES FOR PACIFIC ISLAND LAW GRADUATES

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## I INTRODUCTION

The Law School of the University of the South Pacific (USP) has been working to identify appropriate program outcomes for its Bachelor of Laws degree.<sup>1</sup> Research to help determine such outcomes is available in other jurisdictions,<sup>2</sup> but there is little relating to appropriate program outcomes for South Pacific law graduates.<sup>3</sup> While overseas literature is relevant and useful to some extent, it is necessary that program outcomes are developed in context; that is, graduates must be prepared for the environment in which they will work. As discussed below, the USP Law School was created to do exactly that.

### *A Background to the University of the South Pacific Law School*

The University of the South Pacific has 12 member countries: Cook Islands, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu and Vanuatu. Its students are drawn from all of these countries, as well as occasionally from Papua New Guinea, the Federated States of Micronesia, Palau, and others. Records relating to the establishment of the USP School of Law make it quite clear that the School was not intended simply to emulate the law schools which South Pacific students had previously attended, most commonly in Australia, New Zealand, Papua New Guinea, and occasionally the United Kingdom.<sup>4</sup> In fact the lack of local context in these studies was one of the reasons given for the need to educate South Pacific lawyers in a South Pacific law school. It was argued that the conventional LLB which Pacific students completed overseas had ‘basic flaws’ in terms of equipping students for work in their home countries.<sup>5</sup> Overseas training was not producing ‘a sufficient range of lawyers who fully understood the custom and laws operating in the various jurisdictions

of the region<sup>6</sup> and turned out graduates ‘not immediately suited to work in their home states’.<sup>7</sup> Those who did train overseas often had difficulty coping with the interactions between ‘written constitutions, customary law, land tenure and the working together of (and conflict between) the different parts of [their own] national legal framework’.<sup>8</sup>

Although Australia and New Zealand, like most South Pacific Islands, had colonial histories and British common law legal systems, the context within which South Pacific lawyers worked was very different. Unlike Australia and New Zealand, where the introduced common law system was indisputably dominant, in South Pacific countries traditional laws and legal systems continued to operate strongly, in addition to the common law system. Pre-colonial social structures were far more intact, with custom remaining central to most people’s lives. The continuing importance of custom was evidenced in their constitutions, recently adopted upon Independence. The constitutions of both Vanuatu and the Solomon Islands, for example, provided that custom was part of the law of the country.<sup>9</sup> However custom itself was not homogeneous, and varied from community to community, island to island, country to country, and from time to time, and as such was sometimes perceived as ‘fluctuating, disparate and diverse’.<sup>10</sup> In addition, while English was the language of the common law system, most Ni-Vanuatu and Solomon Islanders spoke English (if at all) as a second, third or even fourth language, following one or more local languages, and Bislama or Pidgin.<sup>11</sup> As a result, it was seen to be essential that students learned the law in this pluralist and multi-faceted context. It was ‘arguable that no law graduate (and certainly no person who has had no background Island education) should be admitted to practice’ without studying the South Pacific context’.<sup>12</sup> ‘In an ideal world, every Pacific Island lawyer would have a first degree from the University [of the South Pacific]’.<sup>13</sup> The solution was a local law school which would prepare Pacific Islanders to be Pacific Islands lawyers.

The USP Bachelor of Laws degree enrolled its first students in 1994, with a curriculum developed by a working group including Pacific Islanders with law degrees from overseas, representatives of USP, and expatriate lawyers, judges and academics.<sup>14</sup> Unsurprisingly, core content areas of the initial curriculum mirrored curricula in other common law jurisdictions such as Australia, New Zealand and the United Kingdom.<sup>15</sup> The USP Law curriculum has been frequently updated since, generally in line with practices and requirements in other common law jurisdictions, and ensuring as far as possible that the USP LLB degree continues to be recognised in those other jurisdictions.<sup>16</sup>

## *B Background to the Legal Environment Research Project*

Like many other universities, USP recently moved toward the articulation of institution-wide graduate attributes.<sup>17</sup> The USP School of Law also attempted to develop its own graduate attributes, and later, program outcomes. In doing so, the School of Law recognised the need to research the legal environment of the South Pacific to determine what its graduates need to know and be able to do once they complete their degrees. The School of Law 2006–2011 Teaching Plan identified the need for this information,<sup>18</sup> but until 2011 the research had not been undertaken.

Unfortunately, the small size of the School of Law, heavy teaching loads, high staff turnover, and the push to research in substantive areas of law militated against research into legal education. What research has been undertaken provided excellent insights into the challenges of learning and teaching law in the South Pacific,<sup>19</sup> but did not deal specifically with graduate attributes or learning outcomes. In addition, no research had asked lawyers themselves, or those with whom they worked, what they needed, although the answers to such questions were clearly relevant in determining appropriate learning outcomes for South Pacific lawyers.

In Australia, extensive research has been undertaken to enable the drafting of national Threshold Learning Outcomes for Law, with a number of years of initial research followed by broad consultation with all parts of the legal community and its peak and representative bodies.<sup>20</sup> The outcomes of such research and consultation are informative for all common law jurisdictions, but relate to the provision of legal training for well developed and relatively stable legal environments, with many experienced lawyers, long-established professional associations, clear requirements for practical training and supervision, and many other resources to aid in the development of new lawyers.

On the other hand, depending on the country, South Pacific lawyers may be admitted to practice with no practical legal training, may have little or no supervision, may have minimal or no access to continuing legal education (CLE), may have no access to a functioning Law Society, may be in very senior and supervisory positions within a very short time, and may have to work without local, or relevant, legal resources, including cases and legislation, research papers, journal articles, practice manuals etc. In addition, South Pacific lawyers, far more than those in Australia, New Zealand or similar jurisdictions, are likely to need an ability to marry local custom with the formal legal environment, an ability to engage and comply with local traditions at a personal level while dealing in formal legal systems at a professional level, and an ability to work with

scarce resources, across vast distances, with isolated clients and communities, and with poor transport and communication links.

Thus overseas developments regarding the graduate attributes and program outcomes required of lawyers are helpful for the Pacific region, but not sufficient. Rather, the question of what outcomes are required of law graduates in the Pacific Islands must be asked and answered in context. This research project aims to do that.

This article reports on the first phase of the project, which included data collection in Vanuatu and the Solomon Islands, and a summary of that data. It also includes reflection on process issues involved in the research. As the project continues, it is hoped that data will be collected in all USP member countries. Analysis of the data should enable identification of contextually appropriate program outcomes, and suggestions will then be made as to how these outcomes might be incorporated, developed and assessed within the LLB curriculum.

## II METHODOLOGY

As there had been no research conducted into the attributes required of law graduates in the South Pacific, the researcher began with a fresh slate. However, given that the researcher is an expatriate with lengthy experience in Australian legal education, it was important to ensure that the data collected was authentic, and was not simply existing Australian knowledge given a South Pacific gloss. The experiences of other researchers, particularly those who had conducted interviews with the legal fraternity and others in the South Pacific, helped to avoid this problem and offered important contextual insights into the research process.<sup>21</sup> Ethics approval was sought before commencing the research.<sup>22</sup>

The chosen methodology was ‘grounded theory’. Grounded theory involves the creation of theory from the data collected, rather than the data being used to ‘test’ a predetermined hypothesis.<sup>23</sup> Data collection begins in a very open manner, generating a broad range of information about the research topic. The value of this in the present research is that it allows participants themselves to generate information and ideas about the topic, rather than being bound by the researcher’s predetermined ideas. This minimises the danger of participants being influenced by the researcher’s views of the topic.

As the data is collected, it is ‘coded’ to allow patterns or categories to emerge. As some categories become more important and patterns become more prevalent, the researcher may increasingly investigate those categories and patterns, while putting aside the seemingly less important information. Constant and continuing collection and analysis of data leads eventually to the generation of a ‘grounded theory’.<sup>24</sup>

However, it is important also to keep in mind firstly, that participants may never have

thought about this particular topic before, and secondly, that whether or not they have thought about it, they may be unable easily to articulate their ideas on the topic. Thus, after being given the opportunity to report their own views on the knowledge, skills and abilities required of South Pacific lawyers, participants were asked to comment on and rate the importance of each of the Australian draft Threshold Learning Outcomes for Law (prior to Oct 2011) or the USP School of Law draft LLB Program Outcomes (after October 2011).<sup>25</sup> This allowed the researcher to gather participants' views regarding existing ideas about the needs of law graduates, as well as bringing to participants' attention any knowledge, skills or competencies they may have overlooked during the open-ended interview.

Various recruitment methods were used to gain maximum participation in the project. Law Societies and Bar Associations, email lists of local lawyers, the South Pacific Law Association, former USP students, and personal contacts were used to invite people to take part in the study. Participants were then asked to identify other potential participants. In the Solomon Islands a USP law student, who also worked for a major NGO and had many personal and professional contacts within the legal fraternity, assisted in arranging interviews. The Ethics policies and processes of the University of the South Pacific were followed,<sup>26</sup> and all participants were given written information about the project, and were asked to sign written consent forms. They were assured that their information would be kept confidential, and that they would not be identified in any report of the project.

### *A Data Collection*

Fifty participants took part in face-to-face interviews (45) or answered a written survey (5) on the topic of the needs of law graduates in the South Pacific. Interviews ran between half an hour and 1½ hours, and were conducted at a location convenient to the participant, including local cafes, USP campuses, and government, private and NGO offices. Of the 50 participants, 47 worked in either Vanuatu or the Solomon Islands, while three worked in other Pacific Island countries. Interviews were recorded by the researcher in longhand, with the words often read back to the participant to ensure his or her response had been correctly captured.

### *B Data*

The data can be separated into three broad areas:

- background data relating to a particular participant, such as where they studied, where they work, and the length of time in practice;

- data relating to the participant's own experience of legal practice, what skills they need, what skills they have or don't have, and what opportunities exist for furthering their skills; and
- data relating to the broader needs of lawyers in the South Pacific.

It should be noted that there was almost no discernible difference in responses attributable to respondents of different backgrounds and cultures, but where there were differences they have been noted in the data summarised below. It may be that once the project broadens beyond Melanesia, greater variations will appear.

The data summarised below relate to a pilot study and thus should be viewed as interim only. A final report will be issued following the completion of data collection and subsequent analysis. This article is published at this stage to inform others of the study, to report initial findings, and to invite feedback and suggestions relating to this research.

### *1 Background data*

Of the 50 research participants, at least 33 were South Pacific Islanders.<sup>27</sup> Thirty-six of the 50 were trained lawyers, with the balance being people without law degrees but working closely with the legal fraternity, such as senior police personnel and statutory officers. Representation included, among others, government lawyers and non-lawyers, private legal practitioners, NGO workers, judiciary and court support staff, and academics. Roles were varied and diverse, but could best be grouped as:

- government employees and consultants involved in advising government, policy development, legislative drafting, supporting parliamentary committees, public prosecutions and legal aid;
- police, and court and judicial officers;
- lawyers in private practice, most commonly general practitioners undertaking a broad range of work including contract, conveyancing, family, employment and maritime law, and civil and commercial litigation; and
- NGO and aid workers involved in mentoring, capacity building, project coordination and infrastructure development, and researchers, academics and other educators.

### *2*

#### *Data relating to the participant's own experience of legal practice*

As it was intended initially to determine the type of work lawyers did and the skills they used and needed, this group of questions was asked only of those with law degrees (36). Twenty-two of these had more than three years of experience in legal work, while 14 had three or fewer years of experience. Eighteen of the 36 lawyers had senior or supervisory roles. Twenty-two had law qualifications from the University of the South Pacific, one from UPNG, and 17 had law degrees from outside the Pacific Islands.<sup>28</sup>

### *What do you actually do?*

Participants' roles are summarised above. However, when asked, 'What do you actually do?' responses were considerably more detailed. Many participants gave examples of very general legal work such as correspondence, taking instructions, interviewing clients, and giving advice. In more detailed responses, half of the participants mentioned drafting, including court documents, letters, contracts and legislation; in-court work; and oral communication (outside the court room) such as interviewing, explaining law, and explaining court processes. Less frequently cited were preparation for court, research, supervision and mentoring, and community engagement. Policy work, capacity building, and infrastructure and systems development were undertaken by few participants.

### *What skills do you use most frequently?*

#### *a) Participants*

More than half of the participants reported using oral and written communication skills most frequently, with many also mentioning writing or drafting as a separate skill. Next to communication skills, research skills were most frequently used. Personal skills such as patience, humour, and cross-cultural sensitivity, and interpersonal skills such as networking and relationship building, were mentioned by fewer participants, as were analysis, management and organisation, and computer skills.

#### *b) Supervisees*

Half of the lawyer participants were in senior or supervisory positions from which they could also respond in respect of their junior staff. When asked what skills their junior staff most frequently used, they most commonly cited skills that mirrored those used by participants themselves: communication skills, drafting, and research. Other skills reported to be frequently used by junior lawyers were management and organisation, analysis, and client care.

### *Are you adequately equipped with those skills?*

#### *a) Participants*

Participants were asked whether they were adequately equipped with the skills they most frequently used. More than half said yes, and a further 10 gave a qualified yes, such as 'yes, but constantly challenging', 'yes, mostly, but always learning', or 'yes, but more skills to be acquired'.<sup>29</sup> Some participants felt they did not yet have the skills they needed for their work.

*b) Supervisees*

In regard to their juniors, slightly more rated their junior's skills as inadequate than rated them as adequate, and a few answered that they had some of the required skills but not others.

*Did law school prepare you with the required skills?*

*a) Participants*

Very few participants felt that they had left law school with the skills they use most often, but more participants reported that they 'more or less' had the skills, or had 'some' of the skills, or had the skills 'to some extent'. A number felt they were only partially equipped with the required skills in law school, but the most frequent response was that participants did not leave law school with the skills they use most often in the work they do.

*b) Supervisees*

About equal numbers felt their juniors did and did not have the skills required when they completed law school, with some again answering that they had some of the required skills but not others.

*Do you need more skills in order to do your work effectively, and if so, what skills?*

*a) Participants*

The most frequent response was the need to upgrade or enhance the participant's current skill set, with almost as many identifying the need for better research skills, better communication skills, and better advocacy and courtroom skills. Fewer mentioned the need to upgrade drafting or writing skills, and the same number mentioned time management and organisational skills. Knowledge, analysis, and an ability to draw on the expertise of others, were also mentioned but by fewer participants.

*b) Supervisees*

Again, participants felt that supervisees needed to enhance their current skill sets. The most commonly mentioned areas needing improvement were drafting and writing skills, followed by research, and advocacy and court room skills. According to participants, better time management and organisational skills were also required of supervisees, as was more 'knowledge'.

*Do you have opportunities to develop those skills, and if so how?*

Assistance from Australian advisors, or placements in Australia, were the most commonly cited opportunities for improving the skills of participants and their supervisees. One respondent claimed there were no opportunities to develop skills 'apart from Australian advisors', while another noted 'training and development are only available when Australian advisors are in the office, not otherwise'. The next most commonly mentioned opportunity to develop skills was through observation, practice, and learning on the job, but even here one respondent mentioned the opportunity to develop



skills was ‘only by doing it. There are no other avenues. There were before when there was an AusAid project in place, but not now’. Another participant responded that it’s ‘very complicated, very hard, very difficult. No time, especially in private firms ... because time is money, need to get paid, so no time to teach a young solicitor. Learning is time consuming and thus costly’.

There was very little mention of formal or informal supervision or mentoring in the workplace as an opportunity to develop the required skills. However, in each of Vanuatu and the Solomon Islands, one private law firm and one government law office were reported to have some formal or semi-formal supervision or mentoring process, ranging from a weekly meeting of all staff in the office, to ‘with colleagues, we discuss cases outside working hours, at the nakamal’.<sup>30</sup>

Continuing Legal Education (CLE) was commonly mentioned, but often as an opportunity which should have existed, or may possibly exist in the future, rather than a current opportunity. Some participants were disappointed at the failure of past attempts to introduce ongoing CLE programs, and those who had been involved in developing the programs were disappointed by the take-up. ‘They have no interest in building skills’ said one, while another said ‘they don’t want to do it [give CLE presentations], only to receive it, and they won’t attend out of hours’.

### 3

#### *Data relating to the broader needs of lawyers in the South Pacific*

The data above was gathered from lawyers in regard to the work they do in the South Pacific, the skills they have, the skills they need, and the opportunities available for gaining those skills. The data below, on the other hand, is collected from both lawyers and non-lawyers. The non-lawyer participants worked closely with lawyers and the legal system in government and non government organisations such as the parliament, police service, Auditor General’s department, Transparency International, UNDP, RAMSI, and the World Bank. All participants, lawyers and non-lawyers, were asked: *Do you think there are areas of knowledge which lawyers in the South Pacific would need which lawyers elsewhere would not need, or would not need to the same extent? If so what are they?*

Participants commonly stated that a contextual understanding of the law was needed, that knowledge of law was insufficient without an understanding of a particular country’s culture, history, politics, constitution, government, and legal system. Participants felt that lawyers needed knowledge relating specifically to their own country or the country within which they worked — a generic knowledge of these issues in the Pacific Islands was not enough.

Further, participants overwhelmingly stated that South Pacific lawyers needed to know about local custom and customary law, and the interaction between that and the formal legal system. Lawyers needed ‘an understanding of custom, and an ability to work with and through it’. They needed to appreciate ‘the importance of custom, not so much

to the legal system as to the people'. Just as importantly, lawyers need to know how the two systems interact; 'how custom works, its role and place and its interaction with the normal legal system', 'the interface between [custom] and introduced law'.<sup>31</sup> A number of participants noted the need to work across both:

[C]riminal issues are settled by criminal courts, but in terms of relationships they're settled outside court. Lawyers need to know those systems, custom, customary laws, the informal justice system. It's unwritten, and hard for a lawyer to know the right system or process ... If lawyers can operate outside court also it will be much more meaningful, because sorting out issues in the courtroom brings up other issues outside the court.

The diversity of custom was also noted, making it something which could not easily be taught. One participant noted that urban dwellers did not understand the 'custom in the islands' while another noted 'you need to know the diversity of culture and custom. Whose custom? Whose tradition?' One participant suggested that general approaches to custom might be taught at USP, while specific custom would need to be learned afterwards, in the local setting.

It was not suggested that customary law should be taught at USP, which teaches only 'introduced' law. Rather, the concern seemed to be that learning introduced law prepared lawyers for working in an introduced system, whereas law in practice required lawyers to work in a pluralist legal setting. It was the nature of pluralism and the demands of working with and between varied systems which seemed to require more attention, rather than knowledge of specific customs in law. It should be noted also that these issues were raised by many participants, both local and expatriate, and were not confined to one group or another. In addition to culture and custom, some more specific areas of knowledge were mentioned as necessary for South Pacific lawyers. Knowledge of development, environment, and resource management issues in areas such as logging, fishing and tourism was needed, as was the ability to use that knowledge in less developed areas or for less educated people.

*Do you think there are skills or abilities which lawyers in the South Pacific need which lawyers in other places would not need, or would not need to the same extent?*

Some participants thought no special skills or abilities were needed, with a couple commenting that lawyers' skills are the same everywhere; 'skills are not about location, we just need good lawyers' skills'. These were very much the minority however, and many skills were identified as being more necessary in the South Pacific than elsewhere. Language skills were most commonly mentioned; with some noting the importance of good English, to argue in court and to manage technical legal vocabulary. However, many more noted the importance of good Bislama or Pidgin, which are not native languages but are commonly spoken in Vanuatu and the Solomon Islands. These were needed to explain to clients, to understand instructions, and to elicit evidence in court.<sup>32</sup> The next most common response, and obviously related to the above, was communication skills, especially for working with poorly educated people with little knowledge of law and little facility with English language.

The ability to act in a culturally appropriate manner was noted as important, but being

involved with the culture was also seen to create difficulty. Lawyers need an ability to ‘distance yourself from your background, culture, learning and education. Your job is different from your place in the hierarchy’. Graduates also ‘can get drawn into what happens in the street, in the community, they can still get drawn down emotionally even though they have a law degree ... You need to see how you can separate yourself from your brothers, to see yourself as someone different to others’.

A common theme in a number of areas was the need for flexibility and adaptability such as the ability to use custom and to work in custom settings, an appreciation of non-formal systems, the ability to work with legal pluralism, and the ability to be creative in legal research and to use non traditional methods of finding information. More specific abilities identified were legislative and other drafting skills.

*Do you think a law degree undertaken in the South Pacific would equip a graduate for work as a lawyer anywhere in the South Pacific?*

Most participants thought a South Pacific law degree would equip a student for work in any South Pacific nation, as it was ‘generic’ or ‘general’ enough to be applied anywhere in the region. Many felt the USP degree was appropriate as an ‘entry point’ or ‘to start with’, particularly as many legal skills are transferable. Participants noted ‘skills are applicable across all jurisdictions’ and ‘a student with excellent research skills will manage in any Pacific Island’.

One respondent felt the USP degree was ‘too generic, [with a] one size fits all approach’, resulting in students’ learning at too great a level of abstraction, but this was contrary to most responses. Most participants, including many who thought the USP degree *would* equip a graduate for working anywhere in the South Pacific, qualified their responses, as below.

*Do you think there are things which lawyers need to know/to be able to do, which are specific to individual nations?*

Participants overwhelmingly noted that while the USP degree did equip graduates for commencing work anywhere in the South Pacific, there was a great deal of context specific learning still required. Some legal areas (such as constitutional law) needed to be understood in the context of their specific jurisdiction, and legal practice also required a more local focus. Differences between Polynesia and Melanesia were noted, as were cultural differences between the various Pacific Island nations. A number of participants suggested that while general training came from USP, graduates would need to ‘adapt to cultural differences’ in the country where they worked: ‘specific knowledge of the local jurisdiction comes from on-the-job training’. As one participant commented, ‘basic generic stuff cross-pollinates, but you need also to know culture, language etc for different societies’. Generally participants felt that basic skills and knowledge came (or

should come) from the law degree, but that the ability to apply those skills and knowledge would be developed in the workplace.

While participants had been asked about the knowledge and skills required of lawyers in the South Pacific, it was often difficult to distinguish what they thought were the essential or most important skills and knowledge from those which were perhaps less important. To give an opportunity to distinguish between them, participants were asked, *If you had to choose just one thing, what would you say is the most important thing for a lawyer in the South Pacific to know, to understand, or to be able to do?*

Interestingly, the most frequent response was that lawyers needed 'knowledge', including 'generalist' knowledge, knowledge of local constitutions and other local law, and a need to understand that knowledge in the local context. Following knowledge, the most common response was ethics, and a passion for doing right, and using the law for good. The next most frequently mentioned were advocacy and research skills.

All of the above data was generated by the participants themselves in answer to open ended questions and without prompting. However, it was clear that participants may never have thought about this particular topic, and that whether or not they had thought about it, they may have been unable to easily articulate their ideas on the topic. Thus after being asked their own views about the knowledge and skills required of South Pacific lawyers, they were shown proposed learning/program outcomes for law degrees, and asked to comment on those.

#### *Threshold learning outcomes/LLB program outcomes*

The outcomes used were the Australian draft Threshold Learning Outcomes for Law (interviews prior to Oct 2011) and the USP School of Law draft LLB Program Outcomes (interviews after October 2011).<sup>33</sup> This allowed collection of participants' views regarding existing ideas about program outcomes, as well as bringing to their attention knowledge, skills or competencies they may have overlooked during the open ended interview. In fact, after seeing the program outcomes already articulated by others, participants often claimed one or more of these attributes to be essential or very important, although they had not identified them in the first part of the interview. Further, the list of identified attributes seemed to prompt new trains of thought, which led participants to offer further information and to express new ideas.

Participants were asked to give a score of between 1 and 5 to each outcome, where 1 was very important and 5 was not very important. *Professionalism and ethical behaviour* was seen as the most important, followed very closely by *knowledge* and *legal reasoning* skills. *Communication* skills were rated as less important, and *ability to contribute to the development of South Pacific laws and legal systems* was seen as least important.<sup>34</sup>

However, all were seen as important. On the scale of 1–5, with 1 being very important and 5 being not very important, every outcome received an average score between one and two.

### III FINDINGS

It appears, from the data above, that lawyers in the Solomon Islands and Vanuatu need to know and to be able to do all the things which other common lawyers need to know and to be able to do. While few felt that they or their junior had the necessary skills for practice when they left law school, most felt that they had developed those skills after some time in practice.

However, even after that on the job development, many lawyers still felt their skills needed improvement, especially in the areas of written and oral communication, research, and advocacy and courtroom skills. Unfortunately, while most lawyers did develop those skills in practice, there was not much opportunity for structured, ongoing learning and development. There was little in the way of formal supervision or organised professional development in the workplace, continuing legal education was only intermittently available, and overseas advisors were helpful while present, but were not always present.

Participants overwhelmingly reported the need for South Pacific lawyers to have a contextual knowledge and understanding of their jurisdiction, including an understanding of a country's history, politics, governance, and formal and informal laws and legal systems. While Pacific Island customs and cultures were seen to have enough commonality to be addressed initially at a level relevant to the region, laws and legal systems, customs and cultures, communication skills and particular languages would still need to be learned and developed in the context of a specific jurisdiction.

Ethics and doing right were identified by many participants as the most important thing for a South Pacific lawyer to know, understand, or be able to do, and this was mirrored in participant responses to the learning and program outcomes they were shown. Participants' responses to these proposed outcomes suggest that the outcomes identified are very appropriate for the needs of South Pacific lawyers, although other data suggests that while appropriate, they will still need to be complemented by outcomes more specific to the local context.

### IV PROCESS ISSUES

This research was conducted as a pilot study upon which further research will be based. Therefore, in addition to the substantive data, the researcher was looking for

lessons relating to the process itself. Many things were learned during this phase which should improve the next phase of the project.

- As others researching in this environment have noted, methods adopted will be dictated to some extent by ‘the particular circumstances and opportunities that exist ... at the time’.<sup>35</sup> On many occasions communication was difficult, last-minute obligations arose, and appointments were broken. Even with reminders participants sometimes simply did not show up. Considerable flexibility and lateral thinking is required to avoid wasting time. For example, the researcher often found someone else in the firm, office, or neighbourhood to interview instead, and rescheduled the original interview for another time. If this was not possible, the spare time was used for transcribing interviews,<sup>36</sup> coding data, reading relevant literature, and arranging further appointments.
- Participants may never have thought about or discussed the topic before, and may thus have difficulty articulating their ideas. To enable them to respond more confidently to open-ended questions, it is important they have prior information about the purpose of the research and its parameters, which will provide context for their ideas and responses.<sup>37</sup>
- Although all interviewees spoke English, it was often as a second, third or fourth language. Further, the participant’s English and the interviewer’s English were often different, which raised issues of clarity.<sup>38</sup> Involving local people in the research, and ‘road testing’ research questions is important, and will be further incorporated into the next phase.
- Requests for face-to-face interviews had far greater positive responses than requests to complete survey forms.<sup>39</sup> In addition, interview responses give far richer data than written responses, as the parties engage in a conversation about the topic, rather than simply asking and answering questions. Further, interviews allow participants to take time to answer, and allow interviewers to follow up on and clarify responses.<sup>40</sup>
- Researchers must anticipate possible inhibitions of the participants, which again would be helped by involving local people in planning the research, and ‘road testing’ research questions beforehand. For example, some participants felt reticent to criticise USP when being interviewed by a USP researcher, and thus needed assurance that frank responses were both welcomed and more useful.
- Participants may not identify, or may be reluctant to report, their own lack of knowledge, understanding or skills. Future interviews will include questions about participants’ observations of *other* lawyers, which may identify further needs which participants do not or will not identify as their own needs.
- Interviews were most easily arranged through word of mouth; people were more likely to agree to an interview requested by someone they knew than by a stranger. Thus asking interviewees to recommend and contact other potential participants was helpful, as was asking a well-connected local to assist in arranging interviews.

## V NEXT STEPS

The researcher hopes to conduct similar research across all USP member countries of

the South Pacific, taking into account both the substantive findings and the process issues discussed above. A research grant from the University of the South Pacific helped to fund the initial stages of the project. If resources do not allow research in all USP countries, only a representative range of countries will be included; for example small and large countries, more and less developed countries, Polynesian and Melanesian countries and so forth.

Resources may also limit the number of participants who can be included in the study, in which case it will be necessary to select participants representative of particular groups, such as recently admitted lawyers, senior lawyers with supervisory roles, or lawyers with a greater overview of the area such as judges, Law Society presidents, or Attorneys-General or Solicitors-General.

The pilot study has helped to identify a number of other sources which may both add to the data and allow triangulation. These include documents such as reported court cases from Pacific Islands jurisdictions which have commented upon lawyers' knowledge, skills and abilities, AusAID and other government reports on the Law and Justice sector in the Pacific, the newly formed South Pacific Law Association which has conducted research into the needs of and support for Pacific Islands lawyers, and the Pacific Islands Law Officers Network, which gathers and disseminates information particularly regarding government law and lawyers in the Pacific Islands. Such sources may also help to identify potential participants.

The outcomes required of the LLB will depend greatly on opportunities for graduates to take part in ongoing education. While the law degree in many jurisdictions may be only one small part of an integrated and ongoing legal education, it may be a much bigger part of a legal education in the South Pacific. Thus this research will need to take account not only of the numerous environments in which USP law graduates will need to work, but also of the lack of opportunities for further and ongoing legal education.

## VI CONCLUSION

The research undertaken for this pilot study has begun to identify the knowledge, skills and abilities required of South Pacific lawyers, as well as identifying important contextual issues which need to be taken into account in preparing law graduates for legal work. While it would be premature to make specific proposals for change at this stage, this article has sought to inform others of the research project, and to report on preliminary findings.

Firstly, there appears to be considerable commonality between the work of lawyers in

the South Pacific (or at least in Vanuatu and the Solomon Islands) and the work of lawyers in other common law jurisdictions. While a different emphasis may be needed in the teaching of particular areas, it is likely that research and practice from other jurisdictions may be appropriately incorporated into South Pacific legal education to improve learning outcomes in these areas of commonality.

Secondly, at least in Vanuatu and the Solomon Islands, the research identified few opportunities for additional or ongoing legal education. Further research will be needed to investigate the extent of legal education available beyond the LLB, so that program outcomes can be developed with this in mind.

Thirdly, this pilot study suggests that custom and cultural issues are significant in a lawyer's work in the South Pacific, and that legal education will need to take into account far more than the formal law and legal system if it is to prepare its graduates for their work environments. Important questions will arise as to the extent to which this can be done as part of an academic law degree or practical legal training, and as to the best methods of doing it. Given the diversity of laws and legal systems in place in the South Pacific, it is unclear what level of education can be carried out through a centralised institution such as the University of the South Pacific, and what will need to take place within the lawyer's own work environment.

This pilot study has identified a number of areas which will require consideration in any proposal for improving legal education in the South Pacific, but there may be more as yet unidentified, and it is hoped that the next steps of this project will reveal them. It should be noted that, even when these needs are identified, introducing change may not be easy due to existing pressures upon staff and shortages of financial and academic resources.

However, this article has demonstrated that knowledge about the local legal environment is essential if graduate attributes and program or learning outcomes are to be appropriate to the context in which they will be used. This research project is one step in providing such information for legal education in the South Pacific.

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<sup>1</sup> The term used at USP is 'program outcomes' and that is the term used in this article, although the proposed outcomes could also be seen as 'graduate attributes' or 'learning outcomes'. The draft 'program outcomes' at USP are similar to Australian 'threshold learning outcomes'.

<sup>2</sup> See, e.g., S Kift, M Israel, and R Field, *Learning and Teaching Academic Standards Project: Bachelor of Laws, Learning and Teaching Academic Standards Statement* (Australian Learning and Teaching Council, 2010), and Council of Australian Law Deans, *Standards for Australian Law Schools, Final Report* (2008).

<sup>3</sup> There is literature from prior to the establishment of the USP Law School relating to the need for law teaching in the South Pacific, and the deficiency of overseas study in training South Pacific lawyers, discussed below. There is also more recent literature relating to legal education in the South Pacific (see n 19) but not on the attributes or outcomes required of LLB graduates.



- <sup>4</sup> R Grimes, 'Legal Education in the South Pacific — Producing Tomorrow's Lawyers: Introduction' (Discussion Paper, USP Pacific Law Department, 1995) 3.
- <sup>5</sup> C G Powles, 'Legal Education and Information Needs' (1984) 12(1) *Pacific Perspective* 17, 21.
- <sup>6</sup> Grimes, above n 4, 3.
- <sup>7</sup> A H Angelo and J Goldring, 'The Study of Law at the University of the South Pacific' (1994) 24 *Victoria University of Wellington Law Review* 103, 104.
- <sup>8</sup> Powles, above n 5, 19.
- <sup>9</sup> Constitution of Vanuatu 1980, 95(3): 'Customary law shall continue to have effect as part of the law of the Republic of Vanuatu'. Constitution of the Solomon Islands 1978, 75(1): 'Parliament shall make provision for the application of laws, including customary laws. (2) ... Parliament shall have particular regard to the customs, values and aspirations of the people of Solomon Islands. Schedule 3.3(1) ... Customary law shall have effect as part of the law of Solomon Islands'.
- <sup>10</sup> K Brown, *Reconciling Customary Law and Received Law in Melanesia: The Post Independence Experience in Solomon Islands and Vanuatu* (Charles Darwin University Press, 2005) 42.
- <sup>11</sup> Solomon Islands Pidgin is based on English, while Vanuatu Bislama is based primarily on English but with French influence also. Both Vanuatu and the Solomon Islands have numerous local languages which are still spoken, but Bislama and Pidgin are used as common languages for communicating between those of different native language groups.
- <sup>12</sup> Powles, above n 5, 21.
- <sup>13</sup> *Ibid* 17.
- <sup>14</sup> Angelo and Goldring, above n 7, 105.
- <sup>15</sup> *Ibid* 106–8. Initial curriculum included Legal Systems, Legal Research and Writing, Contract, Criminal Law and Procedure, Public Law, Torts, Property, Equity, Trusts, Succession and Legal Drafting. 'Pacific' content included the core final year course Current Developments in Pacific Law, and the non-law core courses Study of Society, Principles of Land Tenure, and a unit of history or politics. In the 15 years since USP's first LLB graduation, there has been some change to the curriculum including course restructuring and name changes, the inclusion of Evidence and Legal Ethics in the core, the removal of Succession from the core, and the updating of the non-law core.
- <sup>16</sup> Discussions between the researcher and USP Law School staff (2010 to 2011).
- <sup>17</sup> The University of the South Pacific, *USP Strategic Plan 2010–2012* <<http://www.usp.ac.fj/fileadmin/files/academic/pdo/Planning/USP>>. 'The University will deliver relevant and high-quality programmes leading to improved levels of student success and graduates who are well-grounded in Pacific issues and who are (i) knowledgeable and well-informed, (ii) creative and critical thinkers, (iii) superior problem-solvers, (iv) effective communicators and team players, (v) competent leaders, (vi) innovative and entrepreneurial, (vii) ICT and information literate, (viii) socially and culturally responsive, and (ix) self motivated and independent learners.'
- <sup>18</sup> 'Action 9: Undertake survey of graduates and employers of graduates to identify satisfaction of stakeholders and continuing education needs. Rationale: In order to maintain the quality of our courses and to be effectively self accrediting we need to ensure that our graduates who are entering the legal profession are meeting the requirements of professional bodies in the region. This research will also identify continuing education needs in the region. Timeframe: 2006–2007.'
- <sup>19</sup> See for example Grimes, above n 4, Powles, above n 5, Angelo & Goldring, above n 7, and see E Hill, 'The USP Community Legal Centre: Combining Legal Education and Legal Services in a Developing Island Country' (2004) 8(1) *Journal of South Pacific Law*; J Corrin Care, 'Finding the Right Balance in Plural Systems: Training Lawyers in the South Pacific' (2006) 4(2) *Journal of Commonwealth Law and Legal Education* 171; R Cartledge, 'In Depth; Thrown in at the Deep End' (2011) Iss. 3 *SPLAsh*, Newsletter of the South Pacific Lawyers Association 5.
- <sup>20</sup> Kift, Israel, and Field, above n 2. This statement was preceded by and drew upon numerous projects and reports carried out from at least as early as R Johnstone and S Vignaendra, 'Learning Outcomes and Curriculum Developments in Law' (Australian Universities Teaching Committee, 2003). See links to many of these preceding documents via Resources, Education from the homepage of the Council of Australian Law Deans <<http://www.cald.asn.au/home>>.
- <sup>21</sup> See, eg, M Forsythe, *A Bird that Flies with Two Wings: The Kastom and State Justice Systems in Vanuatu* (PhD Thesis, The Australian National University, 2007) 62, especially 'Methodology'; The Solomon Islands Truth and Reconciliation Commission, *Statement Taking* <<http://solomonislands-trc.com/activities/statement-taking.html>>; W Prior, S Mellor, G Withers, 'Promoting Social Tolerance and Cohesion through Education' (Deakin University and Australian Council for Educational Research, 2001), especially 'Research Methodology'. Also informed by discussions between the researcher and Anusha Goonitillekke, postgraduate student at USP Law School.
- <sup>22</sup> Initial approval was sought from the USP Faculty of Arts and Law in accord with USP protocols (no USP

Ethics Committee had been convened at that time). More recently ethics approval has been granted by ANU's Humanities & Social Sciences Delegated Ethics Review committee — Protocol: 2012/263

23 M Birks and J Mills, *Grounded Theory; A Practical Guide* (Sage, 2011); K F Punch, *Research Methods in Education* (Sage, 2009).

24 Birks and Mills, above n 23; Punch, above n 23. This full development of theory occurs only toward the end of the process. The current article reports only initial data and findings, and process information, and not yet a 'grounded theory'.

25 Kift, Israel, and Field, above n 2, 10. The draft Australian TLOs had been developed at the commencement of this study and so were used initially. However, the USP draft outcomes had been developed by October 2011 and so were used in interviews occurring after that date.

26 Above n 22.

27 Some participants, including four who filled out written surveys, did not state their nationality or background.

28 Some participants had law degrees from more than one university, and thus the total of qualifications is more than the total number of lawyers.

29 Unless otherwise stated, all quotes in the text are drawn from interview transcripts.

30 These are traditionally important meeting places for men in Vanuatu culture, but now in urban areas commonly frequented by both Ni-Vanuatu and ex-pats to drink kava after work.

31 Note the use of the terms 'the legal system', 'the normal legal system', and 'introduced law'. Participants also used terms such as 'foreign law', 'white man's law', and 'formal law'.

32 The formal legal systems in both Vanuatu and the Solomon Islands ostensibly operate in English, but in reality Bislama and Pidgin are commonly used in court, especially by parties and witnesses.

33 Above n 25.

34 Most outcomes were loosely transferable between the draft Australian TLOs and the draft USP program outcomes, whereas the final USP program outcome (ability to contribute to the development of South Pacific laws and legal systems) was clearly not transferable and was included only after the USP program outcomes were drafted.

35 Forsythe, above n 21, 62.

36 Interviews were recorded in longhand, and typed up afterwards.

37 In this case, prior to the interview, participants were provided with an information statement explaining the purpose of the research and the method of gathering information.

38 For example some participants interpreted 'the South Pacific' as including Australia and New Zealand, whereas the researcher would have used another interpretation of 'the South Pacific'.

39 In two countries, the Attorneys-General asked all lawyers to respond to a written questionnaire. These requests resulted in two responses from one country and zero from the other.

40 For example a written answer to what skills a lawyer needs may be 'legal skills'. In person the interviewee could be drawn out further on the topic.