

## THE RISE OF TEACHING SPECIALIST ROLES IN THE LEGAL ACADEMY: IMPLICATIONS AND POSSIBILITIES

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### ABSTRACT

The prevalence of teaching specialist academic roles has risen substantially within universities in Australia and abroad over the past decade. This paper explores the perceptions of specialist roles within law schools by presenting the perspectives of four nationally acclaimed legal academics who have received Australian Awards for University Teaching. The paper considers the potential implications that teaching specialist positions may have on the legal academy, offering approaches that law schools can implement to facilitate a successful transition for the academic staff who assume these teaching specialist roles, and ultimately the law schools that employ them. Whilst it is acknowledged some negative implications associated with teaching specialist roles are systemic within the higher education sector, it is contended that to achieve broad cultural and attitudinal change, such change must first occur locally at a school, faculty and institutional level.

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## I INTRODUCTION

In Australian universities the traditional permanent or fixed-term academic role involves 40 per cent teaching, 40 per cent research and scholarship, and 20 per cent service, community engagement and administration (the ‘40:40:20 model’).<sup>1</sup> Though legal education in Australia was previously taught largely by legal practitioners in a part-time capacity, over the 20<sup>th</sup> century the 40:40:20 model also became the norm for legal academics.<sup>2</sup> However, over recent decades academic roles at many Australian universities have increasingly deviated from the traditional workload model.<sup>3</sup> One significant change is the increasingly casualised academic workforce,<sup>4</sup> but there have also been shifts in the nature of permanent and fixed-term academic work. Between 2009 and 2018, ‘teaching-only’ academics was the fastest-growing component of the Australian academic workforce appointed on a permanent or fixed-term basis.<sup>5</sup> This shift towards universities employing more teaching-only, teaching-intensive and education-focused academics — which will be referred to in this paper as ‘teaching specialisation’ — has also occurred internationally.<sup>6</sup>

There has been some exploration of the general implications of teaching specialisation within the relevant academic literature and selected government reports — some of which have also suggested ways that the less desirable implications can be mitigated or addressed.<sup>7</sup> Whilst the literature relating to the teaching of law has paid some attention to this shift,<sup>8</sup> there has not yet been a broad analysis of the potential effect of teaching specialisation within law schools.

To begin to fill this gap, this paper aims to explore the potential effect of teaching specialisation with respect to law schools and legal academics. Part II of this paper considers the trends and prevalence of teaching specialisation within Australian universities and law schools. Part III then provides some insight into the varied views of experienced legal academics on the matter of law schools moving towards specialist roles. It sets out the views of four legal academics whose teaching has been nationally recognised through the receipt of an Australian Awards for University Teaching (‘AAUT’) Citation for Outstanding Contribution to Student Learning (‘Citation’) and/or Award for Teaching Excellence (‘Teaching Award’). The four AAUT law

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<sup>1</sup> Abel Zvamayida Nyamapfene, ‘Teaching-Only Academics in a Research Intensive University: From an Undesirable to a Desirable Academic Identity’ (EdD Thesis, The University of Exeter, 2018) 13–14; Andrew Norton and Ittima Cherastidtham, Grattan Institute, *Mapping Australian Higher Education 2018* (Report No 2018-11, September 2018) 36. See also Belinda Probert, Office for Learning & Teaching, ‘Teaching-Focused Academic Appointments in Australian Universities: Recognition, Specialisation, or Stratification?’ (Discussion Paper No 1, January 2013) 7, which notes that this ‘traditional’ model is a relatively recent development.

<sup>2</sup> See, for example, Jill Cowley, ‘Recognising and Valuing Teaching Excellence in Law Schools and Teaching-Intensive Appointments’ (2008) 1(1&2) *Journal of the Australasian Law Teachers Association* 275, 284.

<sup>3</sup> See, for example, Norton and Cherastidtham (n 1) 35–39.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> Nyamapfene (n 1) 13–14.

<sup>7</sup> See, for example, Norton and Cherastidtham (n 1); Probert (n 1); Sharon Flecknoe et al, ‘Redefining Academic Identity in an Evolving Higher Education Landscape’ (2017) 14(2) *Journal of University Teaching & Learning Practice* 2; Dawn Bennett et al, ‘What Is Required to Develop Career Pathways for Teaching Academics?’ (2018) 75(2) *Higher Education* 271.

<sup>8</sup> See, for example, Cowley (n 2).

recipients' subjective views were sought through standardised, semi-structured interviews as part of a wider project relating to effective legal teaching.<sup>9</sup> Part IV then explores some implications of teaching specialisation that may be unique to, or particularly felt within, law schools and the teaching of law. Finally, Part V considers how law schools should proceed if teaching specialisation trends continue.

Reflecting on the relevant literature and varied responses from the four nationally acclaimed legal academics interviewed, it is contended that specialisation within law schools could lead to a hierarchical 'multi-tiered' academic workforce, and that teaching specialist legal academics might experience serious health and wellbeing issues that differ from those relevant to their colleagues in the 40:40:20 model (referred to in this paper as 'teaching-research academics'). Consequently, the authors suggest that any further shift towards teaching specialisation within Australian law schools needs to be preceded, accompanied and followed by cultural, attitudinal and institutional change to address these issues.

## II TEACHING SPECIALISATION

For the purpose of this paper, the term 'teaching specialisation' is used to refer to Australian universities moving towards academic workforces with greater proportions of permanent and fixed-term staff employed in roles that have higher teaching and education-related duties than the traditional teaching-research roles. Though the titles used to describe these academics vary between institutions,<sup>10</sup> there are generally three categories of teaching specialist in Australian universities: teaching-only, teaching-intensive and education-focused academics.<sup>11</sup> The 'teaching-only' title typically indicates that no research expectations are imposed upon the academic.<sup>12</sup> 'Teaching-intensive' roles involve teaching, research and service components somewhere between the teaching-only allocation and a teaching-research role. For example, a teaching-intensive academic's workload may require 60 per cent teaching, 20 per cent research and 20 per cent service. 'Education-focused' academics' workloads are not typically characterised by the heavy teaching workloads expected of teaching-only and teaching-intensive academics. Rather, education-focused roles waive the expectation of discipline-based research in favour of requiring these academics to be leaders in relation to teaching excellence, pedagogical innovation, and the scholarship of teaching and learning ('SoTL').<sup>13</sup> Many universities have introduced education-focused roles in an effort to raise the profile and standards of education within their institution.<sup>14</sup>

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<sup>9</sup> See Christina Do and Aidan Ricciardo, 'Meaningful Connectedness: A Foundation for Effective Legal Teaching' (2019) *Curtin Law and Taxation Review* (forthcoming).

<sup>10</sup> See Probert (n 1) 4, which notes: 'There are a number of different titles being used to describe these new types of appointments including the charming title of "teaching scholar" and the less charming "not research-active".'

<sup>11</sup> Nyamapfene (n 1) 15; Flecknoe et al (n 7) 2–3.

<sup>12</sup> Note that in some institutions teaching-only academics may still be expected to engage and publish in the scholarship of teaching and learning. The titles and expectations for teaching specialists differ from university to university, and any two institutions might both use the same title to refer to roles with different expectations.

<sup>13</sup> Nyamapfene (n 1) 15; Flecknoe et al (n 7) 2–3.

<sup>14</sup> Nyamapfene (n 1) 15; Flecknoe et al (n 7) 2–3.

Although universities employ significant and increasing numbers of sessional academics primarily in teaching roles,<sup>15</sup> the casualisation of the academic workforce is beyond the scope of this paper. However, it must be noted that to address this increasing casualisation a number of Australian universities have created teaching roles, named ‘Scholarly Teaching Fellow’ or similar, to perform teaching work that would otherwise have been undertaken by casual academic staff.<sup>16</sup> This classification can be used as a mechanism to convert casual academic staff into full-time or part-time employees.<sup>17</sup> In this paper, the term ‘teaching specialisation’ is not used to include trends towards employment of sessional teaching or Scholarly Teaching Fellow academics, though many of the issues relevant to teaching specialisation may also be relevant to these trends.<sup>18</sup>

### *A Growth in Teaching Specialist Academic Roles in Australian Law Schools*

The report *Teaching-Focused Academic Appointments in Australian Universities: Recognition, Specialisation, or Stratification?*, prepared for and funded by the Australian Government Office for Learning & Teaching, indicates that since 2009 there has been a steady upward trend of academics taking on teaching-only appointments within the higher education sector.<sup>19</sup> To formally recognise teaching specialist academic roles, a number of Australian universities have incorporated provisions within their enterprise bargaining agreements (‘EBAs’) relating to such appointments.<sup>20</sup> This recognition and growth of teaching-only academic roles within Australia is largely consistent with academic appointment trends in the higher education sector internationally.<sup>21</sup>

At present there are 38 Australian universities that offer a Bachelor of Laws or Juris Doctor,<sup>22</sup> and some of these universities offer their law courses at multiple campuses across Australia or

<sup>15</sup> Norton and Cherastidtham (n 1) 37–40.

<sup>16</sup> Universities that have created ‘Scholarly Teaching Fellow’ roles or similar include Charles Sturt University, University of Technology Sydney, University of Wollongong, Charles Darwin University, Griffith University, University of Queensland, James Cook University, University of the Sunshine Coast, Flinders University, University of Adelaide, University of Tasmania, Deakin University, La Trobe University, Monash University, RMIT University, Swinburne University of Technology, University of Melbourne, Victoria University, Curtin University and Edith Cowan University.

<sup>17</sup> For example, *Charles Sturt University Enterprise Agreement 2018–2021*, ss 30.36, 30.38 specify that a ‘Scholarly Teaching Fellow’ is to be ‘drawn from an applicant pool of casual and fixed term employees with at least twelve (12) months’ academic employment in total in Australian universities within the last three (3) years, and ... has never held an ongoing position at an Australian university’, and that these roles ‘may be used as a conversion option for casual Academic employees’.

<sup>18</sup> For literature that directly considers casualisation in law schools, see, for example, Jill Cowley, ‘Confronting the Reality of Casualisation in Australia: Valuing Sessional Staff in Law Schools’ (2010) 10(1) *Queensland University of Technology Law and Justice Journal* 27; Mary Heath et al, ‘Learning to Feel Like a Lawyer: Law Teachers, Sessional Teaching and Emotional Labour in Legal Education’ (2017) 26(3) *Griffith Law Review* 430.

<sup>19</sup> Probert (n 1) 2.

<sup>20</sup> *Ibid.* The report indicated that, in 2012, 19 universities had drafted provisions recognising teaching specialist roles to present at the then current round of enterprise bargaining negotiations. It was predicted that more universities were likely to follow suit by the time the round of enterprise bargaining negotiations was completed.

<sup>21</sup> *Ibid.*; Nyamapfene (n 1) 14.

<sup>22</sup> ‘Australia’s Law Schools’, *Studying Law in Australia* (Web Page, November 2013) <<https://cald.asn.au/slia/australias-law-schools>>.

fully online.<sup>23</sup> Of these 38 universities, 23 have explicitly created teaching specialist roles with tailored avenues for career progression and promotion, and have expressly acknowledged these roles within the university’s EBA (see Table 1 below). The academic workload and expectations of these teaching specialist roles are outlined in the 23 universities’ respective EBAs. Although 14 of the 38 universities have not explicitly recognised teaching specialist roles in their EBAs, it does not mean that these universities have not adopted these roles. For example, the EBAs of these 14 universities all indicate that the academic workload allocations are not fixed and that academic staff and their line manager can negotiate a larger teaching allocation if desired.<sup>24</sup> Furthermore, some universities may have explicitly created teaching specialist academic roles, but have not formally recognised such positions in their EBA.<sup>25</sup> Information pertaining to academic positions and roles at Bond University was not publicly available as the university’s EBA could not be located on the Fair Work Commission online database.

Table 1: Australian universities that offer a Bachelor of Laws or Juris Doctor that have explicit teaching specialist academic roles set out in their EBA

University	Explicit teaching specialist role in EBA	Teaching specialist title
Australian Catholic University <sup>26</sup>	Yes	Teaching-focused
Australian National University <sup>27</sup>	No	
Bond University	Information could not be located	
Central Queensland University <sup>28</sup>	Yes	Teaching Intensive and Teaching Scholar
Charles Darwin University <sup>29</sup>	Yes	Teaching Focused Academic
Charles Sturt University <sup>30</sup>	Yes	Teaching Focused
Curtin University <sup>31</sup>	Yes	Teaching Academic and Teaching Academic (clinical professional)

<sup>23</sup> ‘Bachelor of Laws’, *Australian Catholic University* (Web Page, 2020) <[https://courses.acu.edu.au/undergraduate/bachelor\\_of\\_laws](https://courses.acu.edu.au/undergraduate/bachelor_of_laws)>; ‘Bachelor of Laws’, *Deakin University* (Web Page, 2020) <<https://www.deakin.edu.au/course/bachelor-laws>>; ‘Bachelor of Laws (Honours)’, *Griffith University* (Web Page) <<https://degrees.griffith.edu.au/Program/1483>>; ‘Bachelor of Laws’, *James Cook University* (Web Page, 2020) <<https://www.jcu.edu.au/course-and-subject-handbook-2018/courses/undergraduate-courses/bachelor-of-laws>>; ‘Bachelor of Laws’, *University of Notre Dame Australia* (Web Page, 2019) <<https://www.notredame.edu.au/programs/fremantle/school-of-law/undergraduate/bachelor-of-laws>>; ‘School of Law, Sydney Campus’, *University of Notre Dame Australia* (Web Page, 2019) <<https://www.notredame.edu.au/about/schools/sydney/law>>; ‘Bachelor of Laws’, *University of Southern Queensland* (Web Page, 2018) <<https://www.usq.edu.au/study/degrees/bachelor-of-laws>>.

<sup>24</sup> For example, *Murdoch University Enterprise Agreement 2018*, s 14.1(c).

<sup>25</sup> For example, *Monash University Enterprise Agreement (Academic and Professional Staff) 2014*, s 17.4. The Monash University EBA refers to a ‘teaching-focused (education-focused) role’ in a provision discussing the ‘Scholarly Teaching Fellow’ role, but does not explain the education-focused role further in the provision or elsewhere in the EBA. Furthermore, Flecknoe et al (n 7) discusses Monash University’s introduction of education-focused roles in 2010. It would seem that Monash University has explicitly created teaching specialist roles, but this has not been reflected in the university’s EBA.

<sup>26</sup> *Australian Catholic University Staff Enterprise Agreement 2017–2021*, s 5.2.4.1.

<sup>27</sup> *Australian National University Enterprise Agreement 2017–2021*.

<sup>28</sup> *Central Queensland University Enterprise Agreement 2017*, s 14.5.16.

<sup>29</sup> *Charles Darwin University and Union Enterprise Agreement 2018*, ss 74.17–19.

<sup>30</sup> *Charles Sturt University Enterprise Agreement 2018–2021*, s 30.14.

<sup>31</sup> *Curtin University Academic, Professional and General Staff Agreement 2017–2021*, s 21.3.

Deakin University <sup>32</sup>	No	
Edith Cowan University <sup>33</sup>	Yes	Teaching Focused Scholar
Flinders University <sup>34</sup>	Yes	Teaching Specialist
Griffith University <sup>35</sup>	No	
James Cook University <sup>36</sup>	Yes	Teaching Specialist
La Trobe University <sup>37</sup>	Yes	Teaching Focused
Macquarie University <sup>38</sup>	Yes	Teaching and Leadership Academic
Monash University <sup>39</sup>	No	
Murdoch University <sup>40</sup>	No	
Queensland University of Technology <sup>41</sup>	No	
RMIT University <sup>42</sup>	No	
Southern Cross University <sup>43</sup>	Yes	Teaching Scholar
Swinburne University of Technology <sup>44</sup>	No	
University of Adelaide <sup>45</sup>	No	
University of Canberra <sup>46</sup>	Yes	Education Focused
University of Melbourne <sup>47</sup>	No	
University of Newcastle <sup>48</sup>	Yes	Education Focused Academic
University of New England <sup>49</sup>	Yes	Education Scholar
University of New South Wales <sup>50</sup>	Yes	Education Focused Academic
University of Notre Dame Australia <sup>51</sup>	Yes	Teaching Scholar
University of Queensland <sup>52</sup>	Yes	Teaching Focused
University of South Australia <sup>53</sup>	Yes	Teaching Academic
University of Southern Queensland <sup>54</sup>	Yes	Teacher Specialisation and Scholarship
University of the Sunshine Coast <sup>55</sup>	Yes	Teaching Focus
University of Sydney <sup>56</sup>	Yes	Education Focused

<sup>32</sup> *Deakin University Enterprise Agreement 2017*.

<sup>33</sup> *Edith Cowan University Enterprise Agreement 2017*, s 9.7.

<sup>34</sup> *Flinders University Enterprise Agreement 2019 to 2022*, sch 11.

<sup>35</sup> *Griffith University Academic Staff Enterprise Agreement 2017–2021*.

<sup>36</sup> *James Cook University Enterprise Agreement 2016*, s 15.3.

<sup>37</sup> *La Trobe University Collective Agreement 2018*, ss 50.16–19.

<sup>38</sup> *Macquarie University Academic Staff Enterprise Agreement 2018*, s 17.5.

<sup>39</sup> *Monash University Enterprise Agreement (Academic and Professional Staff) 2014*.

<sup>40</sup> *Murdoch University Enterprise Agreement 2018*.

<sup>41</sup> *Queensland University of Technology Enterprise Agreement (Academic Staff) 2018–2021*.

<sup>42</sup> *RMIT University Enterprise Agreement 2018*.

<sup>43</sup> *Southern Cross University Enterprise Agreement 2018*, s 402.

<sup>44</sup> *Swinburne University of Technology, Academic & General Staff Enterprise Agreement 2017*.

<sup>45</sup> *University of Adelaide Enterprise Agreement 2017–2021*.

<sup>46</sup> *University of Canberra Enterprise Agreement 2019–2022*, s 44.6.

<sup>47</sup> *University of Melbourne Enterprise Agreement 2018*.

<sup>48</sup> *University of Newcastle Academic Staff and Teachers Enterprise Agreement 2018*, ss 55.26–55.31.

<sup>49</sup> *University of New England Academic and ELC Teaching Staff Collective Agreement 2014–2017*, s 20.2.2.

<sup>50</sup> *University of New South Wales (Academic Staff) Enterprise Agreement 2018*, s 15.0(b).

<sup>51</sup> *University of Notre Dame Australia Staff Enterprise Agreement 2015–2017*, sch 1 sub-cl 1.1.

<sup>52</sup> *University of Queensland Enterprise Agreement 2018–2021*, s 58.3.

<sup>53</sup> *University of South Australia Enterprise Agreement 2019*, s 35.4(c).

<sup>54</sup> *University of Southern Queensland Enterprise Agreement 2018–2021*, s 17.

<sup>55</sup> *University of the Sunshine Coast Enterprise Agreement 2014–2018*, s 8.2.2.

<sup>56</sup> *University of Sydney Enterprise Agreement 2018–2021*, ss 96–103.

University of Tasmania <sup>57</sup>	Yes	Teaching Focused and Teaching Intensive
University of Technology Sydney <sup>58</sup>	Yes	Education-Focused
University of Western Australia <sup>59</sup>	No	
University of Wollongong <sup>60</sup>	No	
Victoria University <sup>61</sup>	No	
Western Sydney University <sup>62</sup>	No	

Although this information does not explicitly specify the number of Australian law academics who are working in teaching specialist roles, it does illustrate the growing number of universities creating explicit teaching specialist academic positions. This suggests that the prevalence of teaching specialist academic roles in Australian law schools is increasing.

### III THE PROJECT: AAUT LAW RECIPIENTS' VIEWS ON LEGAL EDUCATION

The preliminary purpose of the project was to explore the concept of effective legal teaching in higher education from the perspective of experienced Australian legal educators whose teaching has gained national recognition through the receipt of an AAUT Citation and/or Teaching Award. To ascertain the views of AAUT recipients within the discipline of law, legal academics who have been awarded an AAUT Citation or Teaching Award between 2009 and 2018 were asked to participate in a one-off, standardised, open-ended interview. All interviewees were asked the same questions and were provided with the questions in advance. A total of four AAUT legal academic recipients participated in the project.<sup>63</sup>

The project received human research ethics approval prior to commencement,<sup>64</sup> and all participants were provided with an information statement explaining the nature of the project before express consent was obtained. All interviews were conducted and finalised in 2018.<sup>65</sup> Due to the sample size of the project, qualitative data analysis software (such as NVivo) was not used.

The primary aim of the project was to uncover any common thinking patterns or teaching approaches between nationally acclaimed legal academics on the topic of effective legal teaching. However, current developments in legal education and higher education more broadly were also asked about and discussed in the interviews. Given the trend towards specialist academic roles in higher education, this issue was raised to obtain the perspectives

<sup>57</sup> *University of Tasmania Academic Staff Agreement 2017–2021*, s 74.1(a).

<sup>58</sup> *University of Technology Sydney Academic Staff Agreement 2018*, s 38.1.

<sup>59</sup> *University of Western Australia Academic Employees Agreement 2017*.

<sup>60</sup> *University of Wollongong (Academic Staff) Enterprise Agreement 2015*.

<sup>61</sup> *Victoria University Enterprise Agreement 2013*.

<sup>62</sup> *Western Sydney University Academic Staff Agreement 2017*.

<sup>63</sup> Between 2009 to 2018, 65 AAUT Citations and 9 AAUT Teaching Awards were conferred on recipients who teach in the discipline of law. Therefore, the four AAUT legal academics who participated in the project represent approximately 5.41 per cent of the possible AAUT law academic recipients who could have qualified for this project.

<sup>64</sup> Curtin University Human Research Ethics Office approval number: HRE2018-0175.

<sup>65</sup> For a more detailed discussion of the project methodology, see Do and Ricciardo (n 9).

of the experienced legal academics interviewed, all of whom have had at least 10 years of teaching experience in the higher education sector.

### *A AAUT Law Recipients' Views Relating to Teaching Specialisation*

Interviewees were asked the following question: ‘Do you think universities, in particular law schools, should move towards having specialist teachers and specialist researchers?’ Generally the interviewees’ responses to this question provided a balanced and reasoned perspective on teaching specialisation. All four interviewees expressed sentiments in favour of teaching specialisation in law schools, but also spoke of the dangers of such a shift.

The most common argument cited in support of teaching and research specialisation was that specialisation would enable legal academics to do more of what they enjoy and are good at, and be recognised for that:

I think the problem is that you can have people that are really good researchers and not great teachers, and you know, maybe people who are great teachers, but they don’t particularly like writing in their discipline area. So why not capitalise on people’s strengths? Seems to make sense to me.

I do think it’s a good idea for people who have a particular interest — I think it is legitimate too — for people to be allowed to focus on different things ... I do have a [teaching-intensive role] ... I’m a really good teacher and I’m interested in good teaching. It’s better for me to focus on that and be rewarded for my focus on that ... I’m happy to write about things that come up, but it’s not my natural interest ... I can contribute more by being allowed to focus on what I’m interested in, and there are equally others who find [research] really fascinating — that’s important too, but it’s not my bag as much as it is someone else’s. So I think well then let them focus on what they’re uniquely good at.

[Within my law school] there are some people on ‘teaching-intensive’ appointments so there are some people who are specialist teachers and specialist researchers, but the bulk of staff are in a teaching and research position, and that seems like a reasonable balance to me ... I often hear people say that ‘people who can be great researchers can also be great teachers’. I think researchers probably have a great wisdom and knowledge in their area, but whether that translates to being a great teacher probably has a lot to do with the individual themselves. Happily in many instances it probably does accord, but not always.

One interviewee also pointed to the positive impact that teaching specialists could have on teaching quality, practice and innovation within law schools:

Yes [I do support teaching specialisation] because we really need people, I think, to have the energy and the drive to innovate and lead change. And I know that does sound cliché, but ... without people that can focus on that, and then sort of be drivers of change and lead by example, we’ll stagnate.

Three interviewees expressed views that complete teaching specialisation — that is, ‘teaching-only’ positions — may be undesirable because of the role that research plays in informing good teaching:

I think if you’re a teacher you do need to research to some extent, because I think that makes you a better teacher.

I think there’s something about research though, because what research does — you write — and in writing you learn so much! The act of writing is so important to being a teacher as well. Research is



learning. You can forget how hard it is to write. You can mark student essays but when you're given a blank page, it's just not easy! It's hard. And it doesn't really matter who you are! There are all kinds of difficulties but when you're marking student work in this high-and-mighty position I think that you need to appreciate how hard it is to do that.

The reason I thought [law schools should not engage specialist teachers] was because obviously you've got to be up with what's going on in the discipline, so you need to have the sort of subject research there.

However, one interviewee indicated that their views had changed on this issue, continuing:

But then, I was thinking about it and I thought well, no, of course you're going to do that anyway — you might not be publishing in your discipline area if you're teaching-focused but you're still always learning about it because that's what a good teacher does.

In explaining their support of teaching specialisation in law schools, one interviewee even questioned the value of legal research:

I think the notion of research in law is a little bit silly because we have judges. I think I'd lose that argument, but I don't see the problem with specialist roles.

Only one interviewee opined that the relationship between teaching and research is actually symbiotic, and cautioned that specialisation in law schools could negatively impact on the quality of the school's research contributions:

I think it's a danger ... because the thing is, too, research does inform my teaching and my teaching informs research. To make me 'teaching-only' and then to have no research expectation, I think, would be very narrow because then there'd be no impetus for me to share what I'm doing or to share my practices ... I think I can contribute quite a bit writing about that.

That interviewee also warned that teaching specialisation could lead to a 'second class' of academic within law schools:

If you have such a teaching load that you don't have time to research, I don't think that's a good practice at all, and I think ... there's a danger that would lead to a ghettoisation workforce, and inevitably teaching would be viewed as lesser.

Similarly, another interviewee discussed the perception of teaching as being less difficult or worthy than research, and offered opinions about institutional reforms that would need to take place if teaching specialisation were to occur in law schools:

My only caution would be that [the workload model] tends to be thought up by the researchers ... and people think teaching is easy. So because it's easy to quantify, it's not apples with apples. It's hard to achieve equity in those roles and obviously organisationally there would have to be a clear career progression for those teaching-only staff.

Finally, one interviewee associated law school specialisation with the erasure of choice and variation in the academic role, stating:

I wouldn't want to see it that you're either a teacher or a researcher because I love both! So I wouldn't like it for that.

## IV IMPLICATIONS OF TEACHING SPECIALISATION IN AUSTRALIAN LAW SCHOOLS

As the interviewees' responses indicate, the potential implications of teaching specialisation in law schools are varied. This part considers in greater depth the effects of teaching specialisation that may be unique to, or particularly felt within, law schools and the teaching of law. This part will first explore whether specialisation in law schools might position teaching specialists as a lesser 'class' of legal academic. It will then examine the potential consequences of teaching specialisation for the health and wellbeing of legal educators who are teaching specialists.

Much has already been written on the nexus between teaching and research in higher education generally,<sup>66</sup> with some of this literature relating specifically to the legal academy.<sup>67</sup> As such, this paper does not seek to speculate about the potential impact of role specialisation on the overall quality of teaching and research within law schools.<sup>68</sup>

### *A Implications for Perceptions of Teaching Specialist Legal Academics*

Much of the literature on teaching specialisation in universities has pointed to a danger that specialisation could lead to a 'two-tiered' academic workforce, with teaching specialists being valued less than traditional teaching-research academics.<sup>69</sup> This view also seems to be present within law schools, as reflected in one interviewee's perspective (extracted more fully in Part III): '[T]here's a danger that would lead to a ghettoisation workforce, and inevitably teaching would be viewed as lesser.'

In speaking of teaching and research within Australian law schools, Arvanitakis and Matthews note that legal academics 'appointed to "teaching only" positions, even those with distinguished practice experience, are considered to be in an inferior situation to research-teaching and research-only appointments'.<sup>70</sup> This observation explicitly corroborates the view that teaching specialists might be perceived as a lesser 'class' of academic within law schools, but an important and interesting point is also implied within Arvanitakis and Matthews' observation. Implicit within their statement seems to be a perception that teaching specialist

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<sup>66</sup> See, for example, Ruth Neumann, 'Researching the Teaching-Research Nexus: A Critical Review' (1996) 40(1) *Australian Journal of Education* 5; Malcolm Tight, 'Examining the Research/Teaching Nexus' (2016) 6(4) *European Journal of Higher Education* 293; Esther Gottlieb and Bruce Keith, 'The Academic Research-Teaching Nexus in Eight Advanced-Industrialized Countries' (1997) 34(3) *Higher Education* 397; Ademir Hajdarasic, Angela Brew and Stefan Popenici, 'The Contribution of Academics' Engagement in Research to Undergraduate Education' (2015) 40(4) *Studies in Higher Education* 644.

<sup>67</sup> See, for example, Marina Nehme, 'The Nexus between Teaching and Research: Easier Said than Done' (2012) 22(2) *Legal Education Review* 241; Deborah Jones Merritt, 'Research and Teaching on Law Faculties: An Empirical Exploration' (1998) 73(3) *Chicago-Kent Law Review* 765.

<sup>68</sup> For an analysis of the effect of teaching specialisation on the quality of teaching and research in Australian universities, see generally Probert (n 1) 26–35.

<sup>69</sup> See, for example, Flecknoe et al (n 7) 275, 286; Bennett et al (n 7) 10–11; Nyamapfene (n 1) 23.

<sup>70</sup> James Arvanitakis and Ingrid Matthews, 'Bridging the Divides: An Interdisciplinary Perspective on the Teaching-Research Nexus and Community Engagement' (2014) *Adelaide Law Review* 4, 37.

legal academics with distinguished practice experience may be considered to be in a superior situation to teaching specialist legal academics without such experience.

More so than many other disciplines, current and former practitioners play a prominent role in teaching within law schools.<sup>71</sup> Legal academics who have come to teach law during or after a distinguished practicing career are typically highly respected by students and valued greatly by law schools.<sup>72</sup> The existence of practitioner-teachers in law schools may in fact mean that teaching specialisation within law schools risks creating something more problematic and divisive than a ‘two-tiered’ workforce or a ‘second class’ of academic. Rather, wider teaching specialisation within law schools could in fact lead to a ‘multi-tiered’ workforce with ‘third class’ academics and beyond. This is because teaching specialist academics without distinguished careers in legal practice may be valued less than teaching specialists with such experience, and less than academics with traditional teaching-research or research specialist positions.

Arguably, however, this varied composition of researchers, teachers and practitioners within law schools is nothing new and not something that the legal academy should be wary of. Referring to academic roles generally, Probert notes that what we now regard as ‘[t]he “traditional” academic [role] is not, in fact, very traditional’.<sup>73</sup> Specifically within Australian law schools, Cowley observes:

The picture one gains of legal education during the 19<sup>th</sup> and much of the 20<sup>th</sup> century in Australia is that it was primarily vocational; content of the programs was largely dictated by the professional admitting bodies and *taught by practitioners in a part-time capacity*.<sup>74</sup>

Whilst law is now largely taught by ‘legal academics with postgraduate qualifications, whose teaching is informed by wide-ranging and in-depth research’,<sup>75</sup> this was not always the case. Arguably, the legal academy is now well accustomed to accepting and respecting teachers of law who come from a range of backgrounds with varied specialisations that — in different ways — equip them to teach law students well. As such, it may be that law schools are well equipped to thrive with a mix of specialised and non-specialised academics, just as they have (and do) with a mix of academics who come from distinguished practice backgrounds or other backgrounds. This diversity may also better suit the needs of diverse cohorts of law students who now have a range of aspirations within and beyond the legal profession.<sup>76</sup>

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<sup>71</sup> Cowley (n 2) 284; Michael Chesterman and David Weisbrot, ‘Legal Scholarship in Australia’ (1987) 50(6) *Modern Law Review* 709, 710–12; John H Wade, ‘Legal Education in Australia — Anomie, Angst, and Excellence’ (1989) 39 *Journal of Legal Education* 189, 191.

<sup>72</sup> See Wade (n 71) 194, which posits: ‘In Australia, substantial credibility lies with successful legal practitioners who also teach. Giving recent “practical” examples in class clearly adds credibility and authority.’ See also Hugh W Silverman, ‘The Practitioner as a Law Teacher’ (1971) 23(3) *Journal of Legal Education* 424, 434.

<sup>73</sup> Probert (n 1) 7.

<sup>74</sup> Cowley (n 2) 284 (emphasis added).

<sup>75</sup> *Ibid.*

<sup>76</sup> *Ibid.*

Law schools may therefore be uniquely positioned to capitalise on their history to accommodate a mix of specialised and non-specialised academics without developing a ‘multi-tiered’ workforce. This will, however, depend greatly upon an appropriate approach being taken by law schools that specialise their academic workforce — a matter that is considered in greater depth in Part V of this paper.

### *B Implications for Teaching Specialist Legal Academics’ Health and Wellbeing*

It is well recognised that the nature of academic life can carry with it serious adverse consequences for health and wellbeing.<sup>77</sup> Teaching specialist academics are likely to encounter varied occupational health issues compared to their colleagues with traditional teaching-research roles. For example, academics with heavy teaching loads and large class sizes are at high risk of developing dysphonia, a voice disorder that can have a significant impact on quality of life. According to Carding and Wade:

The main risk factors for non-organic dysphonia include excessive use of the voice, limited vocal recovery time, and stress ... These problems are typically reported not only by the actor with a demanding performance schedule but also by the teacher of a large class.<sup>78</sup>

Academic life also presents challenges to psychological wellbeing.<sup>79</sup> Though the wellbeing of legal academics is under-researched compared to the vast literature examining psychological distress in law students and lawyers,<sup>80</sup> many legal academics also experience psychological distress.<sup>81</sup> Some of the factors that can lead to higher levels of stress and psychological distress in legal academics may be disproportionately experienced by teaching specialist legal academics. A recent study by Wilson and Strevens explored the wellbeing of law teachers in the United Kingdom, and observed that sources of stress for legal academics include having ‘too much to do, feeling out of control, overwhelmed by demands, and [having] bad relationships with co-workers’.<sup>82</sup> Drawing on self-determination theory, Wilson and Strevens concluded that surveyed law teachers who felt lower levels of autonomy, competence and relatedness reported higher levels of depression, anxiety and stress.<sup>83</sup> In particular, the study noted that autonomy over one’s work seems to be of high importance to law teachers.<sup>84</sup>

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<sup>77</sup> Paula Baron, ‘Thriving in the Legal Academy’ (2007) 17(1&2) *Legal Education Review* 27, 27.

<sup>78</sup> Paul Carding and Andrew Wade, ‘Managing Dysphonia Caused by Misuse and Overuse’ (2000) 321(7276) *British Medical Journal* 1544, 1544.

<sup>79</sup> Baron (n 77) 27, 43–44.

<sup>80</sup> *Ibid*; Paula Baron, ‘A Dangerous Cult: Response to the Effect of the Market on Legal Education’ (2013) 23(2) *Legal Education Review* 273, 283–84.

<sup>81</sup> Clare Wilson and Caroline Strevens, ‘Perceptions of Psychological Well-being in UK Law Academics’ (2018) 52(3) *The Law Teacher* 335.

<sup>82</sup> *Ibid* 345. Note that Australian research concerning the wellbeing of legal academics in Australia has been conducted by Rachel Field and Colin James, and is forthcoming.

<sup>83</sup> Wilson and Strevens (n 81) 344.

<sup>84</sup> *Ibid* 346–49.

## 1 *Self-Determination Theory and Teaching Specialist Legal Academics*

Wilson and Strevens' study did not directly explore the particular experience of legal educators who are teaching specialists. However, there are a number of indications that teaching specialist legal academics would be likely to experience feelings of low autonomy, competence and relatedness, which may lead to poor wellbeing.

Teaching specialist legal academics may have less autonomy over their work than other legal academics. The academic role has traditionally been characterised by a high degree of autonomy and relatively low levels of day-to-day supervision.<sup>85</sup> Arguably, this traditional characterisation has changed for all academic roles in the wake of corporatisation of the higher education sector in Australia and many other countries.<sup>86</sup> Research, however, is still conceptualised as the function that provides academics with more freedom and autonomy in relation to what the academic does, how they do it, and when they do it.<sup>87</sup> Teaching, on the other hand, can be characterised by lower levels of freedom.<sup>88</sup> Class times, sizes and formats are not always flexible and are often dictated by the institution. Unlike researchers who are generally free to research in any area that is of interest to them, teaching academics are not always able to choose the particular units they teach, and are often not able to adjust the curriculum of their units in any material way.<sup>89</sup> This is particularly the case in Australian law schools, where the highly prescriptive requirements of the Law Admissions Consultative Committee's Academic Requirements for Admission (previously called the 'Priestly 11') mean that there is often very little 'wiggle-room' for academics teaching core units to choose the individual topics that they do or do not teach within their units. Teaching academics taking core units may also have little freedom in relation to choosing the form of assessment in their units, in part due to 'curriculum-mapping' within law schools to ensure that students build a number of core skills through the various assessment pieces in the course structure (for example, some units may be allocated research papers, whereas assessment in other units may involve presentations, moots, or mock client interviews).<sup>90</sup> As a consequence of these factors, it seems probable that legal academics with higher teaching loads — including teaching specialists — might feel that they have less autonomy in their work than their academic colleagues with fewer or no teaching responsibilities.<sup>91</sup>

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<sup>85</sup> Nick Fredman and James Doughney, 'Academic Dissatisfaction, Managerial Change and Neo-liberalism' (2012) 64(1) *Higher Education* 41, 45.

<sup>86</sup> Mary Henkel, 'Academic Identity and Autonomy in a Changing Policy Environment' (2005) 49(1) *Higher Education* 155; Nickolas James, 'The Good Law Teacher: The Propagation of Pedagogicalism in Australian Legal Education' (2004) 27(1) *University of New South Wales Law Journal* 147, 162.

<sup>87</sup> Arvanitakis and Matthews (n 70) 37.

<sup>88</sup> *Ibid*; James (n 86) 162.

<sup>89</sup> See generally Richard Johnstone and Sumitra Vignaendra, Higher Education Group, Department of Education, Science and Training, *Learning Outcomes and Curriculum Development in Law: A Report Commissioned by the Australian Universities Teaching Committee* (Report, January 2003) 224–26.

<sup>90</sup> Universities largely undertake 'curriculum-mapping' processes for the purposes of assuring and demonstrating integration of the university's course learning outcomes and university graduate attributes pursuant to the *Higher Education Standards Framework (Threshold Standards) 2015* (Cth).

<sup>91</sup> See generally Nick James, 'How Dare You Tell Me How to Teach!: Resistance to Educationalism within Australian Law Schools' (2013) 36(3) *University of New South Wales Law Journal* 779, 804.

In relation to feelings of competence, Wilson and Strevens observe that many legal academics associate ‘feelings of low competency (inability to do a good job due to work demands) with stress’.<sup>92</sup> Wilson and Strevens point to a number of factors as the source of low competency feelings in legal academics, with those particularly relevant to teaching specialists including ‘increased student numbers and new notions of student contracts with universities ... [and] more regular curriculum redesign with demands for more diverse modes of delivery’.<sup>93</sup> Whilst there are therefore aspects of a teaching specialist legal academic’s work that might lead to lower feelings of competency, it is possible that the very reason why many teaching specialists are in such a role is because they feel more competent doing teaching than other aspects of academic work. As such, those individuals might feel higher levels of competency than if they were in a traditional teaching-research role. This perspective is corroborated by a 2017 Australian study on education-focused academics by Flecknoe et al, which found that the majority of participants ‘had strong confidence in their teaching skills, with some contrasting this to a lack of self-confidence in their discipline research’.<sup>94</sup> This view is also broadly reflected in one of the interviewee’s responses to the present project (extracted more fully in Part III):

I do have a [teaching-intensive role] ... I’m a really good teacher and I’m interested in good teaching. It’s better for me to focus on that and be rewarded for my focus on that ... I can contribute more by being allowed to focus on what I’m interested in.

However, this perspective cannot necessarily be generalised to all teaching specialists within law schools — in part because not all teaching specialist academics have made an active choice to be in such a role. Whilst some teaching specialists applied for those roles, other people in teaching specialist roles at Australian universities experienced ‘enforced transition’ as part of institutional restructuring and reshaping.<sup>95</sup> Even for those who do apply for teaching specialist roles, this may not be out of any real choice. For those looking to commence an academic career the only roles open for them to apply for may be teaching specialist positions.<sup>96</sup> These cohorts would perhaps be less likely to feel the same heightened feelings of competence as those academics who have made an active and genuine choice to be teaching specialists.

Relatedness refers to the forming of positive relationships with others, for example, colleagues. Wilson and Strevens note that the ‘ability to build collegiality at work may be more difficult for law teachers than for other academics’.<sup>97</sup> They also identify increased expectations from students and ‘increased role demands including increased student numbers’ as some of the factors that contribute to difficulty with building collegiality.<sup>98</sup> These factors are likely to be of

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<sup>92</sup> Wilson and Strevens (n 81) 346.

<sup>93</sup> *Ibid* 346–47.

<sup>94</sup> Flecknoe et al (n 7) 5–6.

<sup>95</sup> Bennett et al (n 7) 276. In relation to this cohort, Bennett et al state that ‘a majority would find it challenging to “repackage” their knowledge and skill sets to align with enforced and potentially impermanent role transitions, thereby compromising their employability, marketability, and even their survival in their new positions’. This indicates that they may be particularly prone to lower feelings of competence.

<sup>96</sup> *Ibid* 277.

<sup>97</sup> Wilson and Strevens (n 81) 347.

<sup>98</sup> *Ibid* 347–48.

particular relevance for teaching specialist legal academics. Further, whilst there are research networks, hubs and centres within law schools and across faculties to foster collegiality, comparable teaching networks within law schools and institutions are less common.

Arguably legal academics may also feel relatedness as a result of their interactions with students and the connections they form with their students. Meaningful connectedness between a law teacher and their students can be characterised as a foundation for effective legal teaching.<sup>99</sup> As such it may be contended that because teaching specialist legal academics typically have more contact with students due to the nature of their heavier teaching loads, they have many opportunities for this kind of relatedness open to them in the course of their work. However, there are a number of difficulties that may hinder a legal academic's ability to foster meaningful connections with their students. For example, many legal academics — particularly those who are teaching specialists — may teach many hundreds of students in any given teaching period.<sup>100</sup> As a consequence of this, the sheer quantity of opportunities for relatedness with students may actually be counterproductive, jeopardising the potential quality of those connections and in fact resulting in lower feelings of relatedness for the teaching specialist legal academic.

## 2 *Teaching Law and Emotional Labour*

Teaching specialist legal academics may be at greater risk of burnout and emotional exhaustion than their teaching-research colleagues due to the emotional labour inherent in teaching work. Emotional labour refers to the exchange of emotional work for payment, and usually occurs within professions and occupations that require workers to exhibit certain 'appropriate' emotions whilst managing the feelings of other people.<sup>101</sup> As put by Heath et al:

Law teachers are implicitly (if not explicitly) expected to be able to build rapport with and between students; exercise tact in providing effective constructive feedback; deal with inappropriate and, at times, confrontational in-class interactions; manage the delivery and impact of sensitive and challenging material; [and] encourage confidence, persistence and resilience in students ... These are among the many aspects of academic work which could be characterised as emotional labour ... academics are routinely expected to manage their own feelings so as to provide the customer service demanded by universities and law students ... and to generate particular emotions in others (students, for example).<sup>102</sup>

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<sup>99</sup> Do and Ricciardo (n 9).

<sup>100</sup> Johnstone and Vignaendra (n 89) 321–44.

<sup>101</sup> Da-Yee Jeung, Changsoo Kim and Sei-Jin Chang, 'Emotional Labor and Burnout: A Review of the Literature' (2018) 59(2) *Yonsei Medical Journal* 187, 187–88; Blake Ashforth and Ronald Humphrey, 'Emotional Labor in Service Roles: The Influence of Identity' (1993) 18(1) *The Academy of Management Review* 88, 90; Alicia A Grandey, 'Emotion Regulation in the Workplace: A New Way to Conceptualize Emotional Labor' (2000) 5(1) *Journal of Occupational Health Psychology* 95; Heath et al (n 18) 433. See also Amy S Wharton, 'The Affective Consequences of Service Work: Managing Emotions on the Job' (1993) 20(2) *Work and Occupations* 205.

<sup>102</sup> Heath et al (n 18) 433. See also Emmanuel Ogbonna and Lloyd C Harris, 'Work Intensification and Emotional Labour among UK University Lecturers: An Exploratory Study' (2004) 25(7) *Organization Studies* 1185, 1188–93.

Though emotional labour can be enjoyable, it also contributes to exhaustion, stress and psychological distress.<sup>103</sup> Heath et al contend that ‘some aspects of emotional labour are specific to teaching law’, pointing to factors such as teaching about injustice and receiving student disclosures of trauma.<sup>104</sup> This emotional labour is disproportionately experienced by legal academics with high levels of student contact, including sessional law teachers and teaching specialists.<sup>105</sup>

Receiving disclosures of trauma and mental health issues from students can be particularly troubling for law teachers. Wilson and Strevens note that increased student disclosures may impact on a legal academic’s perceptions of competency.<sup>106</sup> Many teaching specialists are in such a role because they genuinely care about students, and it can be distressing when they feel unable to assist their students with these issues.<sup>107</sup> The troubling nature of this impact is compounded by the fact that teaching specialist legal academics may have relatively weak collegial support networks to reach out to if they feel distress (as outlined above in relation to relatedness).<sup>108</sup>

## V HOW LAW SCHOOLS SHOULD PROCEED

To capitalise on any shift towards a specialist academic workforce in the higher education sector, it is critical that law schools navigate this transition carefully. Law schools need to address the negative perceptions and implications associated with teaching specialist academic roles to ensure that teaching specialist legal academics are afforded opportunities to thrive professionally. Whilst some of the negative perceptions and implications of teaching specialist roles are systemic within the higher education sector nationally and internationally, in order to achieve broad cultural and attitudinal change such change must first occur locally at a school, faculty and institutional level. Law schools taking active measures to address the negative perceptions and implications arising with the implementation of teaching specialist roles will in turn be better placed to maximise any inherent benefits of a specialised workforce.

### A *Addressing Perceptions of Teaching Specialist Legal Academics*

The concern that teaching specialist academics would be valued less than traditional teaching-research academics or research specialist academics stems from the long-standing university culture that promotes and favours research over teaching,<sup>109</sup> which has ultimately led to

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<sup>103</sup> See, for example, Wharton (n 101); Amy S Wharton, ‘Service With a Smile: Understanding the Consequences of Emotional Labor’ in Cameron Lynne Macdonald and Carmen Sirianni (eds), *Working in the Service Society* (Temple University Press, 1996) 91; Karen Pugliesi and Scott L Shook, ‘Gender, Jobs and Emotional Labor in a Complex Organization’ in Rebecca J Erickson and Beverley Cuthbertson-Johnson (eds), *Social Perspectives on Emotion* (Emerald Group Publishing, 1997) vol 4, 283.

<sup>104</sup> Heath et al (n 18) 433–34.

<sup>105</sup> See *ibid* 435 in relation to the disproportionate impact on sessional academics.

<sup>106</sup> Wilson and Strevens (n 81) 348.

<sup>107</sup> As put by *ibid*, ‘neither lawyers nor academics are experts in mental health issues or counselling’.

<sup>108</sup> *Ibid* 347–48.

<sup>109</sup> See, for example, Flecknoe et al (n 7) 275, 286; Bennett et al (n 7) 10–11; Nyamapfene (n 1) 23.



disparity of esteem between the two activities.<sup>110</sup> There have been attempts nationally by the Australian government to alter this perception — for example, one of the aims of establishing the AAUT scheme in 1997 was to raise the status of teaching in higher education.<sup>111</sup> Whilst the AAUT ‘have become a valued form of recognition for university educators Australia wide’,<sup>112</sup> the award scheme has not successfully elevated the status of teaching to that of research in the higher education sector, as it is still reported that research is valued over teaching.<sup>113</sup> Evidently, there needs to be a cultural shift within the higher education sector if teaching specialist roles are ever to be seen as equal. As this is a significant change, it will take time to transform the attitudes and perceptions of the sector, and it is not necessarily something that any individual law school may be able to achieve. What law schools can do is take measures to raise the profile of teaching within their school and, over time and with the collective efforts of others, the perceptions of teaching may change.

One suggested approach to ensure teaching specialist legal academics feel as valued as their teaching-research or research specialist colleagues is for law schools to create tangible recognition schemes to reward teaching excellence.<sup>114</sup> A majority of Australian universities have formalised teaching award schemes at both a faculty and institutional level that are aligned to the AAUT criteria. Law schools that have not already done so should follow suit and also establish a teaching award scheme within the school. These school-based teaching awards can be used as a basis for academics to progress towards applying for faculty and institutional awards. Given that research indicates a vast majority of teaching specialist academics consider awards for teaching excellence to be important, this is a simple and effective way to demonstrate to teaching specialist academics that their work is valued at a school level and by their direct line management.<sup>115</sup>

### *B Promoting Health and Wellbeing for Teaching Specialist Legal Academics*

As universities shift towards recognising and implementing teaching specialist academic roles, law schools must handle this transition with caution in order to support the health and wellbeing of legal academics who take on teaching specialist positions. Drawing on Wilson and Strevens’

<sup>110</sup> Probert (n 1) 2.

<sup>111</sup> Mark Israel and Dawn Bennett, ‘National Teaching Awards and the Pursuit of Teaching Excellence’ in Christine Broughan, Graham Steventon and Lynn Clouder (eds), *Global Perspectives on Teaching Excellence: A New Era for Higher Education* (Routledge, 2018) 106, 107.

<sup>112</sup> ‘Australian Awards for University Teaching’, *Universities Australia* (Web Page, 2020) <<https://www.universitiesaustralia.edu.au/policy-submissions/teaching-learning-funding/australian-awards-for-university-teaching>>.

<sup>113</sup> See, for example, Probert (n 1) 2.

<sup>114</sup> See Bennett et al (n 7) 278; see also Probert (n 1) 26–27, quoting Mark Israel, Australian Learning & Teaching Council, *The Key to the Door?: Teaching Awards in Australian Higher Education* (Fellowship Final Report, 2011) 4.

<sup>115</sup> See Emmaline Bexley, Richard James and Sophie Arkoudis, Centre for the Study of Higher Education, University of Melbourne, *The Australian Academic Profession in Transition: Addressing the Challenge of Reconceptualising Academic Work and Regenerating the Academic Workforce* (Report prepared for the Department of Education, Employment and Workplace Relations, September 2011) 26–27, which finds that 71 per cent of teaching-only academics regard teaching excellence awards as important.

work and self-determination theory generally, it appears that poor psychological wellbeing in law teachers is linked to lower feelings of autonomy, competence and relatedness.<sup>116</sup> Therefore, where possible within the constraints of university bureaucracy, law schools should make attempts to enable autonomy, foster competence, and create opportunities for teaching specialist legal academics to feel relatedness with colleagues and students.

In order to reap the benefits of a specialist academic workforce, legal academics must have autonomy in choosing whether to take up or move into a teaching specialist role. Any perceived lack of choice (for example, through enforced transition) may not only have negative implications for the health and wellbeing of academics who are forced to take on these positions,<sup>117</sup> but the learning experience of students could also be adversely impacted.<sup>118</sup> Consistent with the importance of this choice, some university EBAs state that teaching workload allocations should not be used as a punitive measure for academics who have not met their research outputs in the previous year.<sup>119</sup> Additionally, with respect to teaching-only and education-focused positions, some university EBAs indicate that staff can move from these positions to a more traditional teaching-research role at the discretion of the school management, depending on the staffing and budgeting needs of the school.<sup>120</sup>

Where possible, law schools should provide academics with autonomy by allowing law teachers to select the units that they teach. Aligning a legal academic's interest with the units that they are assigned to teach has inherent benefits for both the academic and their students.<sup>121</sup> Whilst academics responsible for core units may have restricted autonomy with respect to the content that must be covered and learning outcomes that must be assessed, where possible law schools should include teaching academics in periodic curriculum mapping discussions and reviews. Being involved in such discussions and reviews will permit academics to have some input in determining the learning outcomes and assessment items to be covered in the units they teach. Research also indicates that involving academics in curriculum mapping processes and empowering academics to be involved in the mapping of university graduate attributes increase the likelihood of successful integration of graduate attributes.<sup>122</sup>

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<sup>116</sup> Wilson and Strevens (n 81) 344.

<sup>117</sup> See Bennett et al (n 7) 278, which notes that teaching specialist academics who encounter enforced transition are described as 'less content' and 'not too happy'.

<sup>118</sup> Ibid 283.

<sup>119</sup> For example, *University of the Sunshine Coast Enterprise Agreement 2014–2018*, sch 6.

<sup>120</sup> For example, *University of Tasmania Academic Staff Agreement 2017–2021*, s 74.1(e) states that an 'Academic Staff Member's workload category may be altered for an agreed period. Requests to alter the workload category will not be unreasonably refused.' Similarly, *University of South Australia Enterprise Agreement 2019*, s 35.5 states that '[n]othing in this clause restricts a staff member from changing their career pathway with the agreement of their Head of School (or equivalent) as part of performance development and management discussions'.

<sup>121</sup> Feng Su and Margaret Wood, 'What Makes a Good University Lecturer? Students' Perceptions of Teaching Excellence' (2012) 4(2) *Journal of Applied Research in Higher Education* 142, 149; see also Wilson and Strevens (n 81) 345–46, which notes that choice in processes such as workload allocation is important to law teachers who value autonomy. It is also likely that this choice will increase feelings of competence, as presumably academics would choose to teach subjects that they feel confident teaching.

<sup>122</sup> Beverley Oliver, LSN Teaching Development Unit, Curtin University, *Teaching Fellowship: Benchmarking Partnerships for Graduate Employability* (Final Report, 2010) 18.

Creating occasions for academics to network with likeminded peers will help teaching specialist legal academics feel a sense of relatedness.<sup>123</sup> At a regional level, the Australasian Law Academics Association ('ALAA') is an established platform for legal academics to 'network, collaborate and share expertise'.<sup>124</sup> The annual ALAA conference provides an opportunity to engage and share in SoTL, and also connect with other legal academics across the Australasian region. In Western Australia, representatives from three of the Western Australian law schools organised the Western Australian Teachers of Law ('WAToL') forum in 2017, an event that has since been held annually. Similar to ALAA, the intended purpose of WAToL is to 'establish and promote collegial networks and collaboration' at a state level.<sup>125</sup> To facilitate collegial opportunities at a school level, law schools should establish teaching and education-related networks, hubs and centres, equivalent to those established for the purposes of research.<sup>126</sup> These teaching and education groups will not only provide opportunities for academics to share learning and teaching practices, but can also facilitate research opportunities in the area of SoTL. Creating avenues for teaching specialists to engage with academics with similar academic profiles and interests can increase feelings of relatedness, which may in turn have a positive impact on a legal academic's overall mental health and wellbeing.<sup>127</sup>

Given that establishing meaningful connections with students has been identified as a basis for establishing effective legal teaching,<sup>128</sup> it is important for academic workloads to adequately reflect the time it takes to build such connections with students. If this time is not appropriately accounted for in academic workloads, it may impose a disproportionate burden of emotional labour on teaching specialist legal academics and thereby adversely impact their health and wellbeing.<sup>129</sup> As part of addressing this concern, law schools should incorporate reasonable student consultation hours within teaching specialist academic workload allocations to account for the time spent with students outside of the classroom.

Common concerns associated with teaching specialist academic roles include whether there are genuine career pathways and progression opportunities for academics who assume these roles.<sup>130</sup> Similar sentiments were raised by an interviewee as a part of the project:

It's hard to achieve equity [between teaching specialist roles and traditional teaching-research roles] and obviously organisationally there would have to be a clear career progression for those teaching-only staff.

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<sup>123</sup> Flecknoe et al (n 7) 11.

<sup>124</sup> 'About Us', *Australasian Law Academics Association* (Web Page, 2019) <<https://www.alaa.asn.au>>.

<sup>125</sup> The intended purpose of the WAToL forum was stated in the forum flyer distributed via email in January 2017.

<sup>126</sup> Though many law schools have formal learning and teaching committees, these are typically concerned with broad learning and teaching issues that arise within the school, and do not typically provide academics with opportunities to network, collaborate and share ideas in relation to teaching and education more generally.

<sup>127</sup> Flecknoe et al (n 7) 11; Wilson and Strevens (n 81) 347.

<sup>128</sup> Do and Ricciardo (n 9).

<sup>129</sup> Heath et al (n 18) 434–35.

<sup>130</sup> See, for example, Probert (n 1) 17; Dawn Bennett, Lynne Roberts and Subramaniam Ananthram, 'Teaching-Only Roles Could Mark the End of Your Academic Career', *The Conversation* (Web Page, 28 March 2017) <<https://theconversation.com/teaching-only-roles-could-mark-the-end-of-your-academic-career-74826>>.

Although academic promotion policies are established by university management with little input at school level, law school management can nevertheless encourage teaching specialists who have tangible evidence demonstrating teaching excellence to apply for promotion within the confines of the promotion criteria. Probert notes that, despite perceptions that universities do not value teaching as highly as research, ‘evidence suggests that academics who apply for promotion on the basis of teaching excellence are not in fact disadvantaged by this compared to those claiming research excellence’.<sup>131</sup> Whether teaching specialist applications are approved may be beyond the control of law school management, however encouragement and recognition from direct management can boost the academic’s morale and feelings of competence.<sup>132</sup> In order to begin developing university cultures that genuinely facilitate teaching specialist career pathways, law schools must support and encourage teaching specialist academics to apply for promotion when appropriate.

## VI CONCLUSION

Academic roles at Australian universities are increasingly deviating from the traditional 40:40:20 model. As part of this shift, universities are employing more academics in teaching specialist roles that require them to undertake a higher proportion of teaching and education-related duties. Despite the trends towards teaching specialisation in higher education generally, there has been little consideration of the impact of teaching specialisation within law schools in the relevant literature. The research presented in this paper seeks to contribute to understanding the potential impact of teaching specialisation within Australian law schools, in part by providing insights from four experienced legal academics who are AAUT recipients.

The four AAUT law recipients interviewed provided mixed opinions on academic role specialisation within law schools, with all four interviewees pointing to both positive and dangerous implications of such a shift. Considering these responses in light of perspectives from the relevant academic literature, the authors contend that there are potential implications of teaching specialisation that may be unique to, or particularly felt within, law schools and the teaching of law.

One implication is that teaching specialisation within law schools could lead to a ‘multi-tiered’ academic workforce in which teaching specialist legal academics are valued less than other academics. To address this, the authors suggest that law schools need to play an active role in tackling the established culture in higher education that prizes research at the expense of teaching. One way to do this is by recognising the value of teaching work through teaching award schemes within law schools.

It is also contended that teaching specialist legal academics may encounter obstacles to their health and wellbeing that differ from those experienced by other legal academics. To promote optimal health and wellbeing for teaching specialist legal academics, law schools need to

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<sup>131</sup> Probert (n 1) 17, citing Belinda Probert, Peter Ewer and Kim Whiting, *Gender Pay Equity in Australian Higher Education* (Report prepared for the National Tertiary Education Union, 1998) 59.

<sup>132</sup> See generally Bennett et al (n 7) 276–77; Flecknoe et al (n 7) 8–9.

ensure that teaching specialists are provided with autonomy, duties that facilitate competence, and genuine opportunities for relatedness. Amongst other measures, this may occur through the careful consideration and planning of workload allocations in a way that involves teaching specialist legal academics in decisions that are made about their work.

Despite the varied opinions of legal academics and the potential for undesirable implications, shifts towards teaching specialisation are a reality in Australian universities and law schools. Given this reality, law schools that specialise their academic workforce must approach any transition and the new landscape in a way that visibly respects, rewards and values teaching specialist legal academics.