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Hello and welcome to the June edition of Advancing Together.

We are proud to announce that we have partnered with the Australian Human Rights Commission on a landmark inquiry into the ongoing protection of rights and freedoms in the digital age. Through the inquiry and associated wide-ranging consultation, in turn we will assist in the development of a pragmatic framework through which self-determination and autonomy can be defended in the face of rapid unregulated technological advancement.

The lessons learned from the Cambridge Analytica saga and the recent significant legal changes that GDPR brings have brought these issues to the fore and it’s imperative that we work collaboratively to build robust safeguards for the future.

On the tech front, it has been a busy first half of the year for us at LexisNexis® with the release of our second subscription analytics module, NSW Court of Appeal Analyser. It’s an in-depth analytics tool that provides deep insights on NSW Court of Appeal cases and augments the High Court Analyser we released last year.

These two offerings, combined with our Custom Analytics solution, form an increasingly robust offering for tech-minded lawyers and legal teams. Those who can augment their astute research abilities with the power of technology are the ones developing an edge in an increasingly competitive industry – and this is something we see more and more frequently.

We know that technology is impacting the industry, and this August we are moving that conversation forwards with our 2018 LexisNexis Roadshow Legal Frontiers: From AI to Ethics. This series of panel discussions will look not only at the current state of technology in the industry, but focus on the future: where we are heading, and the ethical implications which we are now having to consider. The Roadshow is coming to Melbourne, Canberra, Brisbane, Sydney, Perth and Adelaide. We will send out more information soon but if you would like to pre-register your attendance, please drop us a line.

As always, we welcome your feedback on everything we do – from suggestions on the content of these newsletters to hearing what tools you need most to provide value for your customers. We value our partnership and remain committed to serving you as best we can.

Sincerely,

Simon Wilkins
General Manager,
LexisNexis Australia
Sustainable Development Goals on fire: the role of universities in Australia’s upcoming Voluntary National Review

Introduction

The United Nations Development Programme’s Sustainable Development Goals (SDGs), otherwise known as the Global Goals, are a universal call to action to end poverty, protect the planet and ensure that all people enjoy peace and prosperity [http://www.undp.org/content/undp/en/home/sustainable-development-goals.html] attests to that fact.

The United Nations considers the inclusion of the rule of law (Goal 16) in the Sustainable Development Goals to be a key achievement as it critically enables all the other Sustainable Development Goals.

Australia has a long way to go but Australian universities have a vital role to play in both reporting and attaining these goals and in Australia nine leading universities have thus far become signatories to a landmark University Commitment to the Sustainability Development Goals which work to support and promote the SDGs through their research, data collection, education and operations, as well as report on activities in support of the goals.

Sustainable Development Goals (SDGs) are on fire in some parts of the world, smoldering in others and barely a taper has been lit in the rest – here include Australia as being particularly slow to engage.

Born out of the Millennium Development Goals - UN Secretary General Ban Ki Moon’s 15 year call to action in 2000 to address poverty and suffering in the developing world – the SDGs have extended the sustainable development initiative for people, planet and prosperity through to 2030. Along with the Paris Climate Agreement (incorporated into the sustainable development agenda as SDG 13), the 17 SDGs with their 169 targets provide a new orientation of strategy and national planning to incorporate both sustainability and development, potentially a contradictory idea first crystallized in the brilliant Brundtland sustainable development report: *Our Common Future* in 1987.

Critically, the SDGs include all countries, because so many development issues such as climate change, wealth distribution, and gender equality, are global.

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1 Its author: Gro Harlem Brundtland, first female Prime Minister of Norway and widely regarded as the “mother” of sustainable development.
Through financial crashes, severe floods, droughts, ice melts and forced migrations due to climate change, we have come to understand both the interconnectedness and the fragility of an inherently unstable world, prone to social, economic and environmental shocks. The SDGs are sophisticated and interconnected, calling upon development initiatives to embody the notion of fairness, accessibility, inclusiveness and sustainability. The SDGs offer a model that is sustainable at a time when the planet is under severe stress from carbon emissions, ocean warming and acidification, plastic waste, inexcusable social inequalities, stranded climate refugees and population growth towards 9 billion.

How can performance against the SDGs be monitored and communicated in a way that engages government, businesses and the public, and allows effective review of Australia’s performance by civil society?

And this is where universities have such a big role to play.

Universities, data and promoting SDGs
Better data is desperately needed to monitor progress over the coming years, allowing governments and organisations to target interventions. Renowned management consultant Peter Drucker’s maxims: ‘measure to manage’ and ‘measure to improve’ are central to achieving the SDGs, for without base-line indicators there is no way of knowing the extent to which a goal is being met and what steps to put in place to meet that goal. Data is at the heart of the VNRS – and universities have a key role in SDGs-related data collection. To this end, the SDG Transforming Australia Project, spearheaded at Monash University, provides a baseline for Australia’s performance against the key SDG targets. And if the latest (2017) SDSN ranking is anything to go by, Australia is not doing too well, slipping down to 26th place from 17th place since measurements were first taken in 2015.

There is not much time to reach the 17 goals and their 169 targets by 2030 and yet the SDG agenda is on the move, especially in Northern Europe with the Scandinavian countries leading the way.

So let’s look to Australia and what it’s doing. Australia has agreed to participate in the 2018 Voluntary National Review and will present its first national report to the United Nations in July 2018. As a key part of achieving the SDGs, the 2030 Agenda for Sustainable Development encourages member states to “conduct regular and inclusive reviews of progress at the national and sub-national levels, which are country-led and country-driven”. It is hoped that by sharing experiences, including successes, challenges and lessons learned, implementation of the 2030 agenda will be accelerated. The VNRS will highlight gaps that need addressing, and provide examples too of what is working well, to effect change by strengthening policies and institutions of governments and mobilize multi-stakeholder support and partnerships for SDG implementation.

By way of background to its VNRS, the Australian Government launched a recent Senate enquiry into Sustainable Development Goals requesting submissions that answered simple questions on SDGs. Significantly, with regard to the importance of data, one of its key questions was:

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See diagram below:

A snapshot from the SDG Index and Dashboards Report on how Australia is performing on the SDGs. Image: SDSN

In a nutshell, Australia is doing relatively badly compared both to its past rankings, and to neighbours such as New Zealand. So where is Australia not doing so well? Goal 2 (obesity levels too high); Goal 5 (inequality in gender pay; and high rates of violence against women); Goal 7 (clean sustainable energy let down by too much coal-fired electricity plants); Goal 13 (climate action let down by too many Government support for giant coal mining such as the proposed Adani $16.5bn Carmichael Mine in Queensland’s Galilee Basin); Goals 14 and 15 (the pollution of the oceans, and land clearance do not rank well here); and Goal 17 (partnerships blows with lowering of ODA).

2 Australia’s Official Development Assistance (foreign aid) has fallen from 0.5% under Prime Minister Robert Menzies in the 1960s to just 0.23% of GNI now when average incomes are much higher.
So data matters, it is the stuff of scorecards, and scorecards make us accountable, make us sit up and look to ways to improve. Without data there would be no VNRs, no SDSN global ranking reports, no metrics on which to hang the 2030 agenda for change. The key authors of the latest SDSN report (2017), esteemed economist Jeffrey Sachs (Director of Sustainable Solutions Network) and Aart de Geus, Chairman and CEO, Bertelsmann Stiftung, stress the importance of comprehensive data to measure the SDG performance:

The SDG Index and Dashboards show that data on important SDG priorities are sometimes unavailable or out of date or not yet counted on the official list of indicators. Filling these gaps and ensuring that key measures are included among the official indicators will require improved metrics as well as more and better data. One priority for SDG implementation must therefore be to invest in strengthening data collection, choice of indicators, and statistical capacity in all countries.

Three examples of ways to address this
• Through its SDSN Australia/Pacific Network, c/o Monash Sustainable Development Institute³, Monash University is stepping up to help meet Australia’s SDG VNR requirements.
• The University of Sydney’s Integrated Sustainability Analysis is at the forefront of data collection in line with the UN SDG’s agenda – alongside MDGs, the Living Planet Report and Planetary Boundaries – see diagram below:
• In the northern hemisphere, academics at Newcastle University in the UK are currently engaging with government representatives in some Global South countries to survey their approach to the VNR process with the aim to facilitate and strengthen the reporting process.

As well as a monitoring role, the SDG Index and Dashboards Report emphasizes that global institutions including universities will ‘play a vital role in turning the SDGs into practical tools for explaining sustainable development, managing implementation, ensuring accountability, and reporting on progress at local, national, regional, and global levels’. To this end, universities have the capacity to mainstream SDGs into campus operations, teaching, advocacy, outreach and research inculcating SDGs into all aspects of campus life. SDGs should be included in the institution’s strategic plan to convey the clear message of their importance and to enable resources be assigned to them. To affect this absorption of SDG norms and values, institutions need the equivalent of an Office of Sustainability, responsible for mainstreaming sustainability within campus operations (food, waste and recycling, purchasing, ground transportation and water), as well as instilling an SDG focus in research and teaching, universities’ investments, and community initiatives. The office would enlighten the institution about the importance of the SDGs, serving as a clearing house for information about the SDGs, to coordinate all activities related to the SDGs, to ensure that the SDGs are mainstreamed in all the activities of the institution and to mobilize resources, whether nationally or internationally.

Furthermore, to make it effective, such a unit should be under the office of the institution’s chief executive officer. Activities that should receive the special attention of the unit are:

a) ensuring that the institution has sufficiently trained staff to undertake work on the SDGs to transform curricula and pedagogy towards a sustainable development perspective

b) playing an active role in data collection and monitoring SDGs

c) encouraging a multi-disciplinary or trans-disciplinary approach best suited to complex sustainable development issues typical in SDG initiatives

d) enacting sustainable measures for all campus operations

University associations (The International Association of Universities and regional associations, such as the Association of African Universities or the Association of Universities of Latin America and the Caribbean; Mainstreaming Environment and Sustainability in Africa or MESA; the Promotion of Sustainability in Postgraduate Education and Research or ProsPER Net in Asia-Pacific; COPERNICUS Alliance in Europe; CEMS and ARIUSA in Latin America and the Caribbean) can also play a meaningful role in promoting the SDGs in their member institutions to build capacity, share resources and expand the influence of education for sustainable development. As an illustration, for the past two decades the UK’s Environmental Association for Universities and Colleges (EAUC) has been providing a forum for sharing of experiences and information between colleges and universities, disseminating good practice on environmental issues, campus greening and curriculum greening. The initiative has expanded its reach to help universities and colleges plan, design and implement context-specific tools for improving social responsibility and environmental performance through an holistic institution approach. At the global level, the United Nations Environment Programme created the Global Universities Partnership on Environment for Sustainability or GUPES, which now has a membership of nearly 600 universities worldwide and whose overall goal is mainstreaming environment and sustainability concerns into university systems across the world and facilitating inter-university networking and partnerships.

Good news that in Australia nine leading universities have thus far become signatories to a landmark University Commitment to the Sustainability Development Goals. The University of Adelaide, The University of Melbourne, RMIT University, Monash University, University of Technology Sydney, Western Sydney University, Deakin University, Griffith University and James Cook University have agreed to play their part in achieving the SDGs, including to support and promote the SDGs through their research, data collection, education and operations, as well as report on activities in support of the goals.

So change is afoot. Albeit a slow burn, the Australian Government is getting on board through its VNR responsibilities towards an increasing awareness of sustainability at all levels of life where universities too have an important role to play.

*Dr. Jane Fulton obtained her PhD from the University of Sydney 1998 in Arts (Sociology/Anthropology) looking at conflict over natural resources and concepts of nature. She then took on the role of Coordinator at the inception of the Centre for Peace and Conflict Studies at USYD from 1998-2002 where she taught ‘Peace and the Environment’ as part of the MA in Peace and Conflict Studies. Jane was co-founder and jury member from 1998-2002 of Sydney Peace Foundation with its remit to bring the conversation of peace with justice to a broader community. During that time the Sydney Peace Prize was awarded to Professor Muhammad Yunus, Arch Bishop Desmond Tutu, Xanana Gusmao, Sir William Deane and Mary Robinson.

From 2002 Jane moved to New York where she joined the United Nations Development Programme’s Water, Sanitation and Ocean Governance team (2006-2016), coming up with the 2008 UN International Year of Sanitation campaign ‘Stand up for those who can’t sit down’. This led to UK Water Aid and other NGOs taking up what became a Guinness Book of Records entry for the longest line to the toilet, highlighting the plight of those without access to sanitation. Her work at the UNDP was focused on meeting the 2015 Millennium Sustainable Goals, hence her interest in, and advocacy for, Sustainable Development Goals 2030 that grew out of the MDG programme. Currently Jane is a consultant to Energy Transition Advisors with its focus on sustainable solutions to global energy.

Open justice: education, courts visits and the Rule of Law

‘It is well established that the principle of open justice is one of the most fundamental aspects of the system of justice in Australia’.  

Members of the public have a more positive view of the court system and its integrity, if they have more knowledge about that system 5. In addition and as a bonus for the oft-maligned lawyers in the room, ‘...if the public develops a keener understanding of the law and basic legal principles, they may view lawyers and courts in a more positive light’. 3

While proceedings in open courts and the judgments of such courts are often educative, sometimes startling and every now and then contain a glimmer of wit and prose 5, legal proceedings are not always easily understood solely from observation. There is some ‘unpacking’ of the legal process required to facilitate understanding, that is, a combination of legal concepts and ‘real world’ experiences. 5

In schools, and for first-time university students studying law, the teaching of legal concepts begins with an explanation of our legal and political structures and how the courts function within those structures. Students then move onto undertaking deeper analysis of types of law, including criminal and civil proceedings. Despite this, legal education in its traditional model, may not teach the ‘nuances of specific geographic, social and cultural contexts’ 6 nor the complex social and political issues at play in law. 7

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1 John Fairfax Publications Pty Ltd v District Court of NSW [2004] NSWCA 324 at [18].
2 Don Burnett, ‘Civic Education, the Rule of Law and the Judiciary: “A Republic...if you can Keep it”’ 58 Advocate 26, 27 (2015).
4 There is little that soothes the soul of a legal reader like a well-structured judgment or quip. See for example: Reckitt Benckiser (Australia) Pty Limited v Procter & Gamble Australia Pty Limited [2018] FCA 378 at paragraph 8 where Justice Lee commented in proceedings regarding a dishwasher tablet commercial: “the commercial lasts for 15 seconds; it is neither subtle nor multi-layered and deconstructing it like it was an early work of Ingmar Bergman would be as unproductive as it would be misconceived.”
7 Ibid at 526.
The LDO Programme

The Law Day Out (LDO) is a court visit legal education experience in NSW developed by Australia’s Magna Carta Institute and The Rule of Law Institute Australia. This experiential learning programme shows students how courts operate and links that observation to their study of the foundations upon which the Australian system is built.

The Institute runs these observational and experiential education programmes for senior high school students in four courts in New South Wales. 8

During a LDO students receive a guided court tour, undertake court observations and attend debriefing sessions with judges or magistrates, lawyers and court staff, which link to the school curriculum. The LDO aims to develop stronger trust and respect for the legal system and a greater understanding of the impact of court proceedings on individuals and their families.

The New South Wales judiciary has been very supportive of the programme and of the importance of maintaining the rights of all to observe court proceedings.

...the students whose attendance yesterday has prompted this assertion of a right were participating in an excursion offered by the Rule of Law Institute, an independent not-for-profit body formed for the object of upholding the rule of law in Australia. Their perseverance and that of the Court watchers in remaining to observe the proceedings, although they were required to stand, paid service to that object. To have excluded them for the benefit of journalists would have provided a sorry lesson on the failure of the rule of law.

McCallum J - Supreme Court of NSW, Transcript, Gayle v Ors - 26/10/17.

The Impact of Law in Practice

The classroom or lecture theatre allows the community and the understanding of the rule of law to be taught. This is because it is in practice. A survey of students, after they have attended a LDO, reports that 87% better understand the consequences of making bad life choices. This demonstrates that the education experience in NSW developed by Australia’s Magna Carta Institute and The Rule of Law Institute Australia has been effective in teaching students about the importance of the rule of law in practice.

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The programme has succeeded in educating young people about the law, so that they understand it and hopefully make good life choices. There is, however, a greater mission to teaching young people about the law, which is not often considered. This is that teaching young people about the rule of law will hopefully make them better citizens. As the Honorable Sandra Day O’Connor, Retired Justice of the Supreme Court of the United States succinctly put it, the knowledge of being a good citizen is not handed down through the gene pool. Our rules and mores must be taught in each generation. 13

Australian democracy, with its roots in the Magna Carta and founded in the Australian Constitution, has provided us with stability, security and peace since Federation. However, it is possible that we can become complacent and not focus our energies on reminding ourselves and our young people of the benefits of the legal system and the crucial role of both upholding the rule of law and maintaining a public dialogue about it. It is important to remember that “the law can only truly rule when people (both government actors and “ordinary” people) believe that it ought to”. 15 It cannot rule without the support of our community and that support requires our focus on the education and engagement of young people, as well as the funding to support education programmes. 16

9. Andrew Quick, The Rule of Law: An Assumption of the Australian Constitution, transcript, Gayle v Ors - 26/10/17


15. See https://www.icivics.org/ as an example of civic education in America.
Wilful inaction, ambiguity on the road to Indigenous reconciliation

Despite a series of landmark reviews, and progress in some areas of reconciliation and ‘closing the gap’ government effort, Indigenous Affairs policy remains largely off the mainstream political agenda. Outcomes from the Uluru Statement of the Heart, and the 2018 Closing the Gap report provide evidence that points to an ambiguous future, previously seen as promising for Indigenous communities.

In early May 2018, Treasurer Scott Morrison handed down the Turnbull Government’s third federal budget. Apart from reforms to an existing Indigenous housing policy from Indigenous Affairs Minister Nigel Scullion, there were no other announcements in the way of substantive policy or funding for the Indigenous Affairs portfolio. Furthermore, the Federal Opposition provided little more than a chorus of disdain in response to ongoing spending cuts.

This is only the latest in a series of missed opportunities to adequately address existing Indigenous Affairs policy issues.

Prime Minister Malcolm Turnbull released the annual Closing the Gap report 2018 in early February this year, to match the 10th Anniversary of the Apology to the Stolen Generations, which was delivered in 2008 by then Prime Minister Kevin Rudd. The report is considered a barometer of success in Indigenous Affairs, with measures ranging from health to education and employment.

In terms of overall outcomes, there has been mixed success.

The target to halve the gap in child mortality by 2018 is on track, with rates falling 35% from 1998 to 2016 thanks to increased focus on immunisation.

The target for 95% of four-year-olds enrolling in early childhood education by 2025 is also on track, with the latest estimates pointing to 91% as enrolled.

The target to halve the gap in Year 12 attainment by 2020 is on track, with the proportion of Indigenous 20-24 year-olds increasing to 65.3% in 2016, and the overall gap narrowing to 23.8%.
The target to close the gap in life expectancy by 2031 is however not on track, despite a 16% decline in circulatory disease mortality rates.

Closing the gap in school attendance by 2018 lags behind, despite 2017 Indigenous school attendance rates at 83.2%, compared to 93% for non-Indigenous students.

Closing the gap effort in reading and numeracy by 2018 has also failed, despite a narrowing of the gap between Indigenous and non-Indigenous secondary school children in NAPLAN reading and numeracy figures.

The effort to halve the gap in employment by 2018 lags behind too, improving 4.2% over 10 years to 46.6% for Indigenous Australians only, compared to 71.8% for non-Indigenous Australians.

Among the States and Territories, the ACT has seen the greatest success in targets so far, tracking to meet three out of seven targets. Northern Territory in comparison is tracking to meet the Year 12 attainment only. Sadly no jurisdiction or collective federal measure has succeeded in closing the gap in school attendance, while lack of reliable data continues to hinder increasing life expectancy targets.

The interconnectedness of policy outcomes has brought some silver linings. Reductions in smoking and alcohol consumption rates during pregnancy have had a direct impact on declining rates of child mortality. This is due to a joint focus on health, education and employment outcomes over the past decade; however, little of it attunes for the fact that the last time all seven targets were on track to be met for the year was in 2011.

While the establishment of the Makarrata Commission would not require any constitutional changes, a nationwide referendum in the affirmative would be needed to add a First Nations Voice. It is this change to the Constitution of Australia that critics were most concerned about, with fears that a First Nations Voice would lead to the creation of a third chamber of Parliament.

In his speech to the lower house, the Prime Minister Malcolm Turnbull acknowledged the status of the targets, using the chance to outline his Government’s focus on Indigenous business success through federal government contract procurement. The sector has experienced colossal growth, contributing directly to community development under the Indigenous Affairs Minister Nigel Scullion. Beyond this however, and despite collaboration and events with various Indigenous interest groups in the past year, there was little to no recognition of the path to strategic success in the four failed targets.

Opposition Leader Bill Shorten referred to the unfinished business of the Apology in his speech-in-reply. In recognising the forgotten individuals of the Stolen Generation who are yet to receive an agreement for compensation, he stopped short of fully committing to a policy, or an implementation timeframe. The speech featured very little if any in the way of evaluation or criticism for missing targets detailed in the report.

This sanguine attitude toward policy outcomes and direction in closing the gap mirrors another area of inefficiency by both the Federal Government and the Opposition. Formed in 2015, the Referendum Council was appointed by both, Prime Minister Turnbull and Opposition Leader Shorten. While the Council began with bilateral support for ‘advising the next steps towards a successful referendum to recognize Aboriginal and Torres Strait Islander peoples in the Constitution’, its final report and subsequent response proved much more divisive.

Released in May 2017, the ‘Uluru Statement from the Heart’ called for two broad changes. The first was to add a ‘First Nations Voice’ to the Australian Constitution, proposing a formal body made up of Indigenous peoples who would be consulted on legislation that would potentially affect their communities. The second was the establishment of a ‘Makarrata Commission’, to ‘supervise a process of agreement-making between governments and First Nations and truth-telling about our [Indigenous] history’.

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Despite repeated refusals to say his Government was giving up on constitutional recognition, the Prime Minister also repeatedly voiced concerns about a third chamber, citing lack of support from the nation as cause for skepticism, and saying that the proposal for a First Nations Voice would have ‘no prospect whatsoever’ of being successful at a referendum. In October 2017, Turnbull formally rejected the idea, dismissing it as neither ‘desirable nor capable of winning acceptance’.

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No surprise this was derided by advocacy groups such as Reconciliation Australia as a ‘missed opportunity’ and labeled ‘disturbing’ by the National Congress of Australia’s First Peoples. Opposition Leader and Shadow Minister for Indigenous Affairs Bill Shorten led the charge on behalf of Labor.

Upon the initial release of the Uluru Statement, Shorten appeared cautiously optimistic about the potential for constitutional change, refusing to outright commit but also vowing ‘not to shy away from the big questions’. Yet he remains light on policy, only repeating support for the Statement, and insisting on a bilateral approach as the best way forward.

It was not until his reply to the Closing the Gap report that he pledged to ‘move to finalize legislation which establishes the Voice and includes a clear pathway to constitutional change’. Since then, the commitment to ‘detailed design work’ towards establishing a Voice has not materialized, and fallen out of public discourse on both sides of the political spectrum.

On the sidelines, the Joint Select Committee on Constitutional Recognition relating to Aboriginal and Torres Strait Islander Peoples was established by a resolution of appointment that passed the House of Representatives on 1 March and the Senate on 19 March 2018. The Committee is due to produce an interim report by 30 July 2018, and a final report by 29 November 2018.

The overall trend is unmistakable. Indigenous Affairs have been shortchanged by both sides of politics so far. Until systemic policy issues such as the closing the gap targets, the referendum on constitutional recognition and a legislative voice are addressed, the Turnbull Government’s unremarkable record will continue to be matched by an unremarkable Shorten Opposition.
Sri Lanka is suffering the repercussions of a three decade-long civil war between the Tamil minority and the Sinhalese majority government. The "Tamil national question" was "resolved" in 2009 with the government restoring control over the country. In the subsequent nine years, Sri Lankan civilians have suffered uninterrupted human rights violations, largely perpetrated by the military against the Tamil minority.

The United Nations Human Rights Council
The Office of the United Nations High Commissioner for Human Rights instigated an investigation into these violations in 2014. The United Nations Human Rights Council passed Resolution 30/1, entitled ‘Promoting reconciliation, accountability & human rights’, in October 2015. Resolution 30/1 was renewed in March 2017, with the passing of Resolution 34/1. Resolution 34/1 reaffirmed, renewed and extended the mandate of the first resolution. Both resolutions were co-sponsored by the Sri Lankan delegation, indicating the government’s support, and their intended compliance.

In these resolutions, the government made ambitious commitments to uphold the rule of law through four core transitional justice mechanisms which will be outlined in this article.
However, the continued absence of transitional justice mechanisms indicates that, for the Sri Lankan government, these commitments are about mitigating reputational damage and about being a responsible state in the eyes of the international community.

This article contends that the government engaged with the Human Rights Council to placate the international community and to present a façade of cooperation.

Rule of Law Mechanisms
Resolutions 30/1 and 34/1 laid out a suite of recommendations to the Sri Lankan government. In co-sponsoring the resolutions, the Sri Lankan government committed to their implementation.

The resolutions established four pillars of transitional justice which would operate together to implement the rule of law in post-conflict Sri Lanka.

1. Judicial mechanism
A judicial mechanism would be a formal system, comprised of independent international judges and prosecutors to rule on specific cases of human rights violations.

The Human Rights Council has advocated for international judges to preside over such a system to ensure independence and transparency.

2. Office of Missing Persons
The issue of enforced disappearances is a significant area of concern in Sri Lanka’s rehabilitation. During the period of civil war, thousands of people disappeared. Not only does this cause emotional trauma to families, but property and custody disputes may arise which destabilise the implementation and maintenance of the rule of law.

3. Office for Reparations
An Office for Reparations would be an independent institution capable of handling claims to victims of the civil war and their families.

4. Commission for Truth, Justice, Reconciliation and Non-Recurrence
A Truth Commission is a central element of a system designed to build the rule of law. Such a Commission would ensure accountability for violations of human rights. The Commission would be a framework for victims to confront the crimes committed against them and act as a channel for investigation, prosecution and the provision of reparations.

Progress
There has been limited progress on the implementation of these four recommendations.

According to rumours, some of the Commissioners are ex-military, which was news not welcomed by the Tamil civilians. The lack of transparency is problematic, as is the suggested political interference in the appointment process.

The Office for Missing Persons was established by legislation in August 2016. A cynic might point out that this Office was established in the weeks immediately preceding the sitting of the Human Rights Council, where Sri Lanka would be open to criticism had no progress been made. This being said, the Office is not functional. Again, prior to the sitting of the 37th Human Rights Council earlier in 2018, the Sri Lankan government reportedly appointed Commissioners to supervise the Office. This has not been confirmed nor published publicly. According to rumours, some of the Commissioners are ex-military, which was news not welcomed by the Tamil civilians. The lack of transparency is problematic, as is the suggested political interference in the appointment process.

The other three mechanisms have seen less progress. None have been established, nor has a timeline been released for their future establishment. There has been political objection to the establishment of a judicial mechanism, with the President contradicting the commitments made in the resolutions, affirming that foreign judges should not be allowed to interfere in Sri Lanka’s domestic judicial system. The Office for Reparations and the Truth Commission have not been established, but it is rumoured that draft legislation has been prepared to establish them. It is unclear what the scope of these mechanisms will be, nor how they will function given the existing institutional structures within Sri Lanka.

The delays are largely inexplicable and represent the lack of political will to act on the commitments made in the resolutions. All of these delays obstruct the provision of justice in post-conflict Sri Lanka and preclude the maintenance of the rule of law.
Conclusion

Human rights continue to be further violated in Sri Lanka and impunity prevails. The preconditions for transitional justice, for the maintenance of the rule of law, and for society to function fairly and justly are not met in Sri Lanka.

Sri Lanka must genuinely act on the recommendations in Resolutions 30/1 and 34/1 for two reasons: firstly, to fulfil its commitments in the Human Rights Council; secondly, to ensure good governance. Sri Lanka must establish a clear timeline for when it will establish the four mechanisms recommended in the resolutions. It must continue to engage with the OHCHR, the Human Rights Council and UN special mandate holders. Finally, it must remain transparent and accountable to its citizens and to the international community. Sri Lanka’s transitional justice efforts must be characterised by local governance, strong institution and a focus on victim welfare.

In 2019, Sri Lanka will have met the Human Rights Council’s deadline for implementing the recommendations. Furthermore, domestic elections are looming. For these reasons, it is timely that the issues be addressed now.

Member states of the Human Rights Council must continue to hold Sri Lanka to account. Rhetorical engagement in the Human Rights Council itself has proven insufficient. States must engage with Sri Lanka bilaterally to pressure the government into compliance, and furthermore to assist the government in complying. The United Nations High Commissioner for Human Rights has referenced the potential for states to pursue universal jurisdiction to hold human rights violators accountable, and states may find the need to explore this option.

It will be critical for Australia to continue to monitor the situation, particularly considering Australia’s proximity, the geo-political impact of the conflict on the region, and the question of Tamil asylum seekers which would have a domestic impact on Australia. Additionally, due to Australia’s inaugural membership of the Human Rights Council, Australia plays a role in regional leadership in the forum, in voting such resolutions and in protecting and promoting human rights in the region.

This article deduces that globally there has been a shift in the discourse surrounding cooperation, with multiple state governments engaging in dialogue and cooperation at the Human Rights Council, purported to have the best intentions, but then failing to act on these intentions domestically. Some states are attempting to reshape the human rights discourse to focus on the importance of cooperation in international fora, rather than protecting individual human rights themselves as a priority. The implication of this is that Sri Lanka has focussed on the rhetoric surrounding its human rights record, rather than taking affirmative action to ameliorate it.

Emily completed an internship with the Australian Permanent Mission to the United Nations in Geneva during the 37th Human Rights Council session in March 2018. Her views do not necessarily reflect those of the Australian Government.
An initiative of the Macquarie University Professional and Community Engagement Program.

Introduction
The rule of law in Australia is generally comprised of two principles. Firstly, that individuals are all subject to the same laws and that those laws are transparent, fair and just; and secondly, that individuals are always guided by the law. Most countries, including Australia, have a legal system in place to ensure its citizens are equally subject to the law, but Australia is failing to ensure that youth are properly guided by the rule of law.

It may come as a surprise but the offending rate peaks for Australians during their late teenage years. The Australian Institute of Criminology noted that the offending rate for people aged 15 to 19 was three times that of all other offenders aged over 19 years. It begs the question, why do younger Australians commit more crimes and how can we prevent such juvenile law breaking?

Wagga Wagga Juvenile Crime Research Project
Seeking an answer to this question started an intensive investigative report into juvenile crime in Wagga Wagga, a major regional city of New South Wales, as part of a Macquarie Law School initiative. The experience of liaising with various Wagga Wagga local bodies including the City Council, the Police, and the Aboriginal Legal Service all highlighted a common theme: a growing juvenile crime rate.

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The NSW Bureau of Crime Statistics and Research diagrams below show that crime offences committed by juveniles in respect of assaults and theft were disproportionately high in Wagga Wagga, compared to NSW as a whole.

“I was part of a group that was primarily tasked with aiding the Wagga Wagga City Council in providing a report on how to address the large juvenile crime rate within the City,” Mr Djukic said.

“The solution for us became apparent once we realised why such high crime rates were reported in multiple categories of juvenile crime. While undertaking investigations about why juveniles committed a high proportion of crime in Wagga, we found there was a potential relationship between school suspension and juvenile crime.” The suspension rates in Wagga were in line with the rest of New South Wales, but they were related to how youth spent their time once suspended. Further investigation found that youth in Wagga who were suspended from school had no avenue to continue their education, or access to personal or developmental guidance during their suspension period, which could be up to 20 days.

Project Findings
Education is vital for the development of young minds and the research group set out on drafting a program that would allow continued education while youth are suspended. Research conducted on student suspensions, especially in rural areas, tends to suggest that suspended students have less parental supervision at home. They are also at increased risk of developing behavioural issues. A main feature of the program was to devise a plan for successful re-entry into schools. The program would run on a compulsory basis for five days a week where students can engage in various education and skill development activities.

The program would be flexible rather than methodological or structured as most successful youth reintegration programs are centred on the ability to build positive relationships, and improve decision making. The main benefit of such a program is that it would help youth at risk reintegrate back into school and society.

The local Wagga Wagga Council took the research project into consideration. However, due to feasibility issues the project findings were not adopted at the time, but that is not to say that future initiatives aimed at reducing juvenile crime will not consider the project findings.

Conclusion
Australia needs to acknowledge that the law and existing justice infrastructure are not always a holistic system that solves all of the nation’s problems. Instead, the law is there to guide individuals, and the largest group of individuals that need to be guided is Australia’s youth. The Wagga Wagga project was just one of the ways that successful youth programs can reintegrate troubled teens back into society without succumbing to punitive measures.

“Dusan Djukic is currently undertaking a Bachelor of Arts (Majoring in Criminology and Philosophy) with the degree of Bachelor of Laws (First Class Honours) at Macquarie University.

Mr Djukic: “I would like to thank all the organisations in Wagga Wagga that helped make this project. In addition, it would not have been possible without the hard work of Macquarie Law School, the multi-award winning Professional and Community Engagement Program, and Convenor Dr Kirsten Davies who made it all possible through her Riverina contacts.”
The Workplace Gender Equality Agency’s 2016-17 data shows that, despite being a female-dominated industry, the legal sector has a high gender pay gap and a lack of women in senior roles. But many employers in the industry are taking action to change this situation.

Six years ago, the Workplace Gender Equality Agency (WGEA) was created to collect data for a world-leading reporting scheme and to improve and promote gender equality in Australia’s workplaces.

Under the Workplace Gender Equality Act 2012, non-public sector employers (large private sector companies and NGOs) with 100 or more employees must submit a report annually to the Agency against six gender equality indicators including workforce composition; gender composition of boards; equal pay; support for flexible work and caring and sex-based harassment and discrimination. In its fourth year of data (2016-17), WGEA covered over 4 million employees in more than 11,000 organisations.

What the data shows is that progress is being made in Australian workplaces. The gender pay gap is steadily closing, and the representation of women in management has been increasing in the last couple of years. In the most recent dataset, there was a significant increase in employer action on gender equality, a big jump in the number of employers conducting a pay gap analysis, and over two-thirds of employers now have either policy or strategy to support gender equality or promote flexible work.

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However, there still is a long way to go. The gender pay gap is not closing quickly enough, there’s still a lack of women in management and leadership roles, and organisations need to make their leaders and managers more accountable to ensure that gender equality policies and strategies are embedded into their workplace cultures. For example, although over 70% of employers in the dataset have a flexible working policy or strategy, less than 5% set targets for engagement in flex work, and less than 2% set targets for men’s engagement in flex work.

The Agency’s data also shows mixed results when looking at the legal services sector.

Women in the legal industry are paid on average 30% less than men – well above the national average gender pay gap of 22%. This gap includes additional remuneration on top of base pay, like bonuses and superannuation, and equates to a massive difference of $41,884 every year. This has declined by nearly 6 percentage points since WGEA’s first year of reporting but it remains far too high.

One reason for the gender pay gap in the legal industry is very clear – the lack of women in senior roles. Women make up only 10% of CEOs or managing partners in law firms but account for 70% of employees in the industry. This partly reflects the fact that women dominate administrative positions in legal services. But the data also shows that women comprise the majority of junior professional levels. Women are not moving into senior management and leadership roles at the rate they should be.

The good news is that employers in the legal industry are taking action. Six out of ten legal employers now have an overall gender equality policy, which is slightly better than the national average. Over 60% of legal employers have also analysed their payroll for pay gaps, which is far higher than the national average.

Clearly, the framework for change is there but having strategies and policies in place only goes so far. To embed gender equality in their offices, law firms have to change the way they work and the cultures they tolerate.

So what can law firms do?

The first and most obvious way to help women in the legal industry is to pay them appropriately and fairly. Law firms need to analyse their pay gaps, report the results to their managing partners and, most importantly, take action based on the results.

Although six out of ten legal employers have analysed their payroll for pay gaps, it still means four out of ten employers do not know if a pay gap exists in their firm. Of the legal sector employers who did do a pay gap analysis, only six percent set targets to reduce organisation-wide gaps and just over one in three went on to report the results to either their executive or their board.

Simply analysing pay data for gender pay gaps will not close them. Employers need to take targeted action on the results and hold executives accountable for progress.

The importance of leadership accountability in improving pay equity outcomes is illustrated by the findings of recent research by the Bankwest Curtin Economics Centre. The research analysed pay data from WGEA’s reporting organisations and found that taking action to correct gender pay gaps is three times more effective when combined with reporting pay data to the board or executive. A firm’s leadership must know where their pay gap is and the reasons for it in order to close it.

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While accountability and action on pay equity are vital to any framework for change, they also need to be incorporated into a holistic approach to gender equality. Pay gaps are not the only problem. Other aspects stopping women from moving into senior positions in law firms are issues such as billable hours, client demands and commitments at home.

Flexible working arrangements could be the key to overcoming this as they have the potential to help lawyers balance their work and caring commitments without sacrificing their career ambitions.

WGEA data shows that over eight out of ten law firms have a flexible working arrangements policy, which is much higher than national average. However, it’s likely that some law firms and lawyers simply do not see using those policies as compatible with building a client network and developing a practice. This needs to change.

Australia’s population is gradually ageing which means the fabric of our society is being transformed. Balancing work commitments with caring for the elderly, the disabled and the young is becoming the norm for many people. Law firms cannot expect talented lawyers to sacrifice their family life for their job in the future. If they want to remain competitive and attract and retain experienced associates and partners, then the all-hours culture has to change, particularly for younger practitioners.

Attitudes towards male lawyers also have to change. WGEA data shows that, on average, secondary carers in the legal services industry receive just 1.8 weeks parental leave. If we are serious about encouraging flexible working, then men as well as women need to be able to fulfil their responsibilities at home and in the office.

A law firm’s clients have a part to play in changing this culture. They need to understand that, just as they promote flexible working within their own organisation, so they should expect flexible working in their law firm. But senior lawyers also have to establish the expectation that junior staff members can access those flexible working policies. The idea that ‘I did the long hours so you can do them too’ is no longer acceptable in our modern society.

As the data shows, change is happening in the legal industry and progress is being made towards gender equality. But it also shows that action and accountability, not just strategies and policies, are what leads to improved outcomes and meaningful change. It is now up to law firms and their partners and managing partners to take responsibility for making this happen.

The Workplace Gender Equality Agency is an Australian Government statutory authority, committed to improving gender equality in Australian workplaces. Explore how the legal services sector compares with other industries using WGEA’s comprehensive workplace gender data at data.wgea.gov.au.
Gender Pay Gap
How it adds up over a woman’s lifetime

1. Full-time working women in Australia earn on average over $250 a week less than full-time working men.

   Full-time average weekly earnings of women: $1,387.10
   Full-time average weekly earnings of men: $1,638.30

   Australia’s full-time gender pay gap 15.3%
   (Women earn on average $251.20 per week less than men)


2. The gender pay gap starts when women enter the workforce and widens with age, peaking in their 40s and 50s.

   Data source: ABS (2016) Employee Earnings and Hours.

3. But most women don’t work full-time. Women work part-time at three times the rate of men – further reducing their income and savings capacity.

   Data source: WGEA (2016) WGEA Data Explorer, data.wgea.gov.au

4. Women are also more likely to take time out of the workforce, due to unpaid caring and domestic responsibilities. For every hour of unpaid work a man does, a woman performs an average of one hour and 46 minutes.

   Women’s total work hours 56.4 (weekly average, aged 15-64)
   Men’s total work hours 55.5 (weekly average, aged 15-64)

   Unpaid care work 64.4%
   Paid work 35.6%

   Data source: OECD (2014) Unpaid care work, Gender, Institutions and Development Database.

5. After a lifetime of working and caring, women retire on average with just half the superannuation balance of men.

   52.8% less for women

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