

11 March 2015

Law Admissions Consultative Committee (**LACC**)
Submission by email: frances.mcmurray@lawcouncil.asn.au

Dear LACC,

RE: Review of Academic Requirements for admission to the legal profession

Thank you for the opportunity to respond to the limited review of academic requirements for admission to the legal profession in Australia. The UQ Pro Bono Centre recognises the difficult task for LACC in determining which areas of law to include in any future academic requirements for admission, and also notes the considerable work previously undertaken by LACC in this area.

In summary, this submission recommends that:

- Ethics and professional responsibility should be retained;
- Clinical legal education should be included;
- A course focusing on access to justice should also be included.

Context for this submission

1. The UQ Pro Bono Centre (*the Centre*) was established in 2009 as an initiative of the TC Beirne School of Law at the University of Queensland. The Centre's primary purpose is to create dynamic and meaningful opportunities for law students to participate in the delivery of pro bono legal services. This purpose is achieved largely through the Centre's administration of the UQ Law School's Clinical Legal Education Program (**CLE Program**), and through its creation of a wide range of pro bono activities in partnership with the private legal profession, community legal centres (**CLCs**), charities and statutory agencies.
2. The Centre facilitates the UQ Law School's attainment of the Council of Australian Law Deans (**CALD**) Standards for Australian Law Schools which requires it to, 'provide, so far as is practicable, experiential learning opportunities for students including clinical programs, internships, workplace experience and pro bono community service.'¹ As LACC is aware, the CALD Standards also require, 'law schools to engage with the wider community by encouraging its staff and students to use their knowledge and skills for the benefit of the community in outreach programs, including... clinical programs, law reform, public education, and other forms of pro bono community service.'²
3. The Centre's submission to this LACC Review is informed by:
 - a. Recent developments in legal education in Australia and debates about access to justice more broadly. In particular, the Threshold Learning Outcomes (**TLOs**) for the Bachelor of Laws, and the Productivity Commission Final Report on *Access to Justice Arrangements*;

¹ CALD Standards for Australian Law Schools at 2.2.4, formally adopted at CALD meeting 2009/3, Canberra, 17 November 2009: <<http://www.cald.asn.au/docs/CALD%20-%20standards%20project%20-%20final%20-%20adopted%2017%20November%202009.pdf>> Accessed 16 February 2015.

² Ibid, CALD Standards, 9.6.2

- b. The views and perspective of our pro bono stakeholders in the legal profession, especially CLCs with whom the Centre enjoys a strong and strategic relationship (a letter of support from the Queensland Association of Independent Legal Services is appended to this submission);
- c. Law students who participate in CLE and/or pro bono activities via the Centre;
- d. Relevant academic scholarship in the area of legal education. The Centre notes the large body of work dating from the Pearce Report in 1987 calling for the study of law to include more experiential learning opportunities and greater content about the connection between law and justice.³

Opportunity for harmonisation: Priestly 11 and TLOs

4. This review of the Academic Requirements is an exciting opportunity for LACC to harmonise the Academic Requirements with the TLOs, which now represent the most contemporary and ‘vitaly important’⁴ set of measures for Australian law schools.
5. Acquisition of legal content (Knowledge – TLO1) comprises only one of the six learning outcomes. The other learning outcomes deal with ‘softer’ skills (Ethics and Professional Responsibility – TLO2; Thinking Skills – TLO3; Research Skills – TLO4; Communication and Collaboration – TLO5; and Self-Management – TLO6), none of which will be achieved by requiring law students to simply learn copious amounts of legal content.
6. As stated in the Productivity Commission Final Report:

‘..the Priestly 11... stem from a time before advancements in information and communication technologies that have led to vast improvements in the ease of accessing information. Today, the challenge is not obtaining information, but rather knowing how to analyse it, use it, and place it in context.’⁵

7. The Centre agrees with this statement. Our view is that a contemporary legal education must have regard to the various social, economic and political contexts in which the law operates. TLO1 and TLO4 may be easily achievable in a classroom context, but other TLOs may be better taught in a clinical/experiential learning environment.

Clinical legal education as a future inclusion

8. We suggest that LACC give serious consideration to the inclusion of clinical legal education into the Academic Requirements. CLE is now a contemporary feature of most Australian law

³ D Pearce et.al, *Australian Law Schools: A Disciplinary Assessment for the Commonwealth Tertiary Education Commission: A Summary* (Canberra, AGPS, 1987). See also T Walsh, ‘Putting Justice Back into Legal Education’ (2007) 17 *Legal Education Review* 119; Andrew Goldsmith and David Bamford, ‘The Value of Practice in Legal Education’, in *Stakeholders in the Law School* (2010), edited Fiona Cowie, chapter 6; A Goldsmith, ‘Why Should Law Matter? Towards a Clinical Model of Legal Education’ (2002) 25(3) *University of New South Wales Law Journal* 721; L Lundy, ‘The assessment of clinical legal education: An Illustration’ (1995) *Law Teacher* 311; A Boon, ‘A working model for clinical legal education’ (1987) *Law Teacher* 21; M Knowles, *The Adult Learner, A neglected species* (1973) Gulf.

⁴ Rethinking academic requirements for Admission, 26 February 2010 at 1.

⁵ Productivity Commission Inquiry Report on *Access to Justice Arrangements*, 5 September 2014, No. 72, Volume 1, Chapter 2 at 249 - 250.

schools. The quality and rigour of this method of teaching is illustrated by a set of nationally recognised Best Practices for CLE that were released in 2013.⁶

9. CLE delivers rich pedagogical benefits that are not merely vocational or skills-based. In addition to practical legal skills such as client interviewing and letter writing, legal clinics teach students the important professional skill of reflective practice (TLO6).⁷ Clinic students work collaboratively, often in a multidisciplinary context with students from other professions like social work or medicine (TLO5). Clinic students learn to recognise the intertwined nature of legal issues with a client's broader issues, and seek to devise a legal solution appropriate to the client's needs and in accordance with their instructions (TLO3).⁸ Important and sensitive ethical issues are also often raised in a clinical context, such as applying the legal test of capacity and deciding whether or not a client actually has capacity to instruct (TLO2).
10. The Centre recognises that clinical legal education may be viewed as inappropriate for those law students who do not intend to practise law. However, empirical research shows that the vast majority of law students do wish to qualify for admission to practice, and almost 90% of law graduates studied were engaged in legal practice.⁹ At UQ, the vast majority of LLB students (about 90%) opt to study evidence and civil procedure which are currently offered as electives despite being part of the Academic Requirements. Given the choice, students clearly do not wish to close the door to admission to the legal profession.
11. The cost to law schools of establishing CLE programs may also impede its inclusion as an Academic Requirement. However, the decision to fund CLE must not be seen as a mere quantitative exercise but rather as an issue of budget prioritisation. As Joy states, 'CLE should not be immune to cost constraints but neither should any other type of law school expenditure'.¹⁰ In our view, CLE is an ideal teaching method through which law schools will ably demonstrate their attainment of TLOs 2, 3, 5 and 6.

The perspective of our pro bono partners: access to justice

12. Legal problems amongst ordinary Australians are diverse and widespread. It is estimated that more than 15 % of the population have unmet legal needs which can have a moderate or severe impact on everyday life.¹¹ Legal assistance services including Legal Aid, Aboriginal Legal Services and CLCs provide vital legal assistance to ordinary Australians, many of whom are disadvantaged and who live with one or more form of impairment.
13. The importance of access to justice is underscored by the sheer number of reports generated on the topic in recent years. The Productivity Commission Final Report is the latest in a long

⁶ Adrian Evans et.al, *Best Practices: Australian Clinical Legal Education* (September 2012) Office for Learning and Teaching, Department of Industry, Innovation, Science, Research and Tertiary Education, Sydney NSW.

⁷ R Spence, 'Holding up the mirror: A theoretical and practical analysis of the role of reflection in clinical legal education' (2012) 18 *International Journal of Clinical Legal Education* 181-216 where the author provides an overview of the importance of reflection in clinical legal education.

⁸ A Evans and R Hyams, 'Independent evaluations of clinical legal education programs: Appropriate objectives and processes in an Australian setting' (2008) 17 (1) *Griffith Law Review* 52-86 at 53, where the authors suggest that 'the best [clinical] programs may be progressively humanising Australian legal education...'

⁹ S Vignaendra, *Australian Law Graduates' Career Destinations*, Canberra, Department of Employment, Education, Training and Youth Affairs, 1998.

¹⁰ P Joy, 'The Cost of Clinical Legal Education' (2012) *Boston College Journal of Law and Society* 32, 309.

¹¹ Productivity Commission, above n 5 and C Coumarelos et. al, *Legal Australia-Wide Survey: Legal Need in Australia*, Law and Justice Foundation of New South Wales, 2012.

line of inquiries on access to justice in Australia. These include the AGD (2009); the ALRC *Managing Justice* (2000); the Senate Legal and Constitutional Affairs Reference Committee (2009); the Senate Legal and Constitutional References Committee (2004); and the Victorian Law Reform Commission (2008). Given its importance to the national legal landscape, surely as legal educators we should require our students to learn about theories of access to justice as well as the everyday work of lawyers who assist the disadvantaged in our community. If we expect students to learn about the intricacies of company law, then we should equally expect students to understand the concept of access to justice.

14. The Centre therefore recommends that access to justice is an area of knowledge of such basic and fundamental importance to the study of law that no law graduate should be permitted to practise without it.

Retaining Ethics and Professional Responsibility

15. The Centre strongly recommends that Ethics and Professional Responsibility be retained.
16. Ethics and Professional Responsibility feature in both TLO1(c), as well as having a dedicated outcome in TLO2. This course introduces students to the concept of *pro bono publico* – legal work for the public good – which is a defining feature of the legal profession. In the England/Wales LETR report, UK legal service providers ranked ‘Legal and Professional Ethics’ as the most important area of legal knowledge.¹²
17. In our view it would be extremely short-sighted to remove Ethics and Professional Responsibility from the Academic Requirements. In its 2000 *Managing Justice* Report, the Australian Law Reform Commission noted that ‘...university legal education in Australia should involve the development of high level professional skills and a deep appreciation of the ethical standards and professional responsibility.’¹³ For many years Ethics and Professional Responsibility has been recognised as an essential part of a student’s entry into the profession, not least because these qualities underpin access to justice and maintenance of the rule of law.

I would be happy to answer any further questions by email m.taylor@law.uq.edu.au or phone (07) 3346 9351.

Yours faithfully,



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UQ Pro Bono Centre

¹² See Table 2.4 in LETR at page 34. Interestingly, statutory interpretation did not feature at all in the ranked list of knowledge items.

¹³ Australian Law Reform Commission, *Managing Justice*, Report no 89 (Sydney, Australian Law Reform Commission, 2000).