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Law Admissions Consultative Committee  
GPO Box 4958  
MELBOURNE VIC 3001  
By email: [Frances.McMurray@lawcouncil.asn.au](mailto:Frances.McMurray@lawcouncil.asn.au)

Dear Sir/Madam

## LACC

The Queensland Law Society appreciates the opportunity to contribute to the Law Admissions Consultative Committee's review of the Academic Requirements for admission to the legal profession in Australia. The review is timely as this has become an area of significant concern to the Society and the Queensland Legal profession in general.

I should say at the outset that the unequivocal feedback from the profession is that there exists a deep concern that law degrees are being 'dumbed down' and that graduates are generally ill-prepared for a transition to working practitioner. Even graduates who have been through a Practical Legal Training course are rarely, in the reported experience of the Society's members, possessed of a capability to undertake even simple tasks associated with legal work. Most require a great deal of training before they can become productive fee-earners, and the incentive to hire graduates is much diminished as a result.

In these circumstances, there is no appetite or support within the profession for any move to make academic requirements even less rigorous, especially in the fundamentals. Many tertiary institutions already offer law degrees which do not qualify the holder for admission, reducing the degree itself to a generalist, non-vocational qualification of dubious value.

It is debatable as to whether or not these sorts of degrees deserve recognition as law degrees at all, or if the profession is perhaps better served by regarding them as 'Diplomas' or 'Certificates' of law, thereby preserving some of the respect once given to a Bachelor of Laws. Given that law degrees have become a source of significant income for most institutions offering them, reform of this sort is highly unlikely.

This lies at the heart of the issue, as the goals of law schools are not necessarily the same as those of the Legal Profession. The Legal Profession looks to law schools to provide graduates who are ready for gainful employment as admitted lawyers; law schools, however, seek merely to provide a legal education which may be relevant in a variety of post-graduation pursuits, only one of which is admission. In the circumstances, it is the Society's view that the legal profession, rather than academia, is best-placed to determine what should be required for admission; making that determination properly requires knowledge of the actual practice of the law.

LACC

That being the case, I can advise that the Society strenuously opposes the removal of Civil Procedure, Company Law, Evidence and Ethics & Professional Responsibility from the Academic Requirements for Admission. Further, the Society strongly advocates for the inclusion of Statutory Interpretation and Succession Law in the Academic Requirements, as these are fundamental to the practice of law, and there is no confidence in the profession that any of these subjects will be adequately covered in Practical Legal Training courses. The Society's reasons are detailed in the attached annexure.

Yours faithfully



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**President**

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## ANNEXURE A

### 1. Introduction

The basis on which the proposal to remove the targeted subjects, as listed in 6.1 of the LACC Review Paper, from the Academic Requirements for Admission ('ARA') appears to rest is that the subjects in question will be covered adequately by Practical Legal Training ('PLT') courses, generally undertaken by those graduates who seek admission. These courses replaced the system of Articles, which were previously the path to admission.

The demise of Articles is understandable, as there existed no method of ensuring quality-some graduates received excellent training and mentoring from experienced and knowledgeable practitioners, others did little more than court and registry filing. The PLT system was perhaps a necessary compromise-far better than the worst of the Articled Clerkships on offer, but vastly inferior to the good (and even moderate) training received. Ensuring that training was received in important core areas was achieved by reducing the time graduates spent in training-a formula repeated when Articles were eliminated, such that PLT courses now typically run between 24 and 28 weeks full-time.

In light of such short course durations, the Society has a real concern that the targeted subjects could be adequately covered if they were removed from the LL.B curriculum to PLT courses. In addition, a brief review of the courses available on-line reveals that Criminal Law Practice is not listed as compulsory for most PLT courses; as the proposal to remove evidence form the ARAs relies on these skills being delivered in PLT courses, it would appear to be quite unjustified in this regard.

This position is supported by feedback from some of the institutions providing PLT courses, which indicates that the training provided in Australian PLT courses is focussed on the development of practical skills and the practice of the law. These courses are not designed to provide technical training in specific legal subjects, and would not provide the in-depth knowledge required to practice law.

The LACC submission also places a great deal of reliance - indeed, almost *sole* reliance - on the *Foundations of Legal Knowledge* which students in England and Wales are required to undertake prior to admission in those countries. With respect, this is a flawed analogy as the PLT courses undertaken in England and Wales are full-year courses of intensive study, which cover subjects in sufficient depth to allow even those without a law degree to be qualified for admission.

Whilst the similarities between the Australian and English legal systems are acknowledged, it is also worthy of note that the systems are not identical and are in fact growing further apart - a fact further evidenced by the requirement placed on English and Welsh graduates to undertake the Law of the European Union, something of little use to Australian lawyers.

Although the Society does not suggest ignoring the *Foundations* entirely, it is clear that there are other factors more relevant to local circumstances, especially given that the LACC paper cites a report<sup>1</sup> in which even English and Welsh practitioners call into question the dictates of the *Foundations*.

<sup>1</sup> LETR, *Setting Standards: The Future of Legal Services Education and Training in England and Wales*, June 2013

It is the Society's position that the ARAs should be determined by examining what skills and knowledge are necessary to be an effective practitioner across a range of disciplines broad enough to allow a graduate to pursue a career in law. It is clear that such a question is one for practitioners, not academics.

## **2. Response to LACC comments on specific areas of knowledge.**

### **(a) Civil Procedure**

The LACC discussion paper identifies that practitioners rate Civil Procedure second only to Legal and Professional Ethics in its importance to legal practice,<sup>2</sup> and the Society agrees on the importance of this area of knowledge; in view of that importance, the Society opposes the removal of Civil Procedure from the ARAs.

The proposal to remove Civil Procedure from the ARAs appears to be based on the fact that it has been included in the *PLT Competency Standards for Entry-Level Lawyers* (the 'Competency Standards'), with the implication being that entry-level lawyers will receive sufficient training in a PLT course to be competent in Civil Procedure; this is a position which the Society believes is not sustainable.

As noted above, PLT courses in Australia are not designed to provide in-depth knowledge and skill in a particular area, as evidenced by the level of training specified in the Competency Standards, which states:

*"PLT must be provided at a level equivalent to post-graduate training and build on the academic knowledge, skills and values about the law, the legal system and legal practice which a graduate of a first tertiary qualification in law should have acquired in the course of that qualification."*<sup>3</sup>

This statement specifically pre-supposes that academic knowledge and skills have been obtained during the course of a tertiary law degree. Removing Civil Procedure from the ARAs means that these skills will not be acquired and it would not be possible for an applicant for admission to demonstrate competency in the area.

The Society notes that the LACC has cited an excerpt from a 2007 letter from Warren CJ and President Maxwell to the Chairman of the LACC<sup>4</sup> in support of removing Civil Procedure from the ARAs, apparently on the basis that it is less relevant than Statutory Interpretation. Whilst the Society recognises the importance of Statutory Interpretation (which is addressed in greater depth below) it does not see the two as mutually exclusive. In the Society's submission there is room for both in the ARAs, and indeed a need for both. With the greatest of respect to the Chief Justices, the undoubted importance of Statutory Interpretation in no way diminishes the importance of Civil Procedure, nor does it justify the exclusion of Civil Procedure from the ARAs.

### **(b) Company Law**

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<sup>2</sup> LACC Review of Academic Requirements for Admission to the Legal Profession, 3(a) at page 5

<sup>3</sup> LACC Practical Legal Training Competency Standards for Entry-Level Lawyers 1 January 2015, at 4.3

<sup>4</sup> LACC Review of Academic Requirements for Admission to the Legal Profession, 3(a) at page 6

As with Civil Procedure above, the Society rejects the proposition that completion of a PLT course will provide a practitioner with sufficient knowledge of Company Law to practice competently as a lawyer. The Society reiterates the objections above and notes again-as conceded by the LACC<sup>5</sup>- that the PLT courses in England and Wales are 12-month, full-time courses, which is not the case in Australia.

Additionally, it is the experience of the Society's members that Company Law is becoming increasingly important in legal practice, as the use of corporate structures becomes widespread. For example, any lawyer practice in Property Law - which is one of the ARAs<sup>6</sup> - will inevitably encounter corporate structures and will require knowledge and skills in Company Law to adequately advise clients, transfer property and practice competently. Feedback from members of the Society practising in Family and Succession Law also confirms the need for understanding of Company Law concepts, and would be unlikely to employ a graduate lawyer who has not completed the subject.

It has also become common practice for almost any business, no matter its size, to be incorporated. This means that practitioners in areas which are historically unrelated to Company Law are now required to have a full knowledge of this area.

For example, consider the building industry. In Queensland, companies can hold building licences,<sup>7</sup> and consequently large numbers of builders now operate as incorporated entities. This means that lawyers representing holders of building and other trade licences, or their clients, suppliers or sub-contractors, now need to be well-versed in Company Law. The concepts involved in providing such representation go well beyond a basic understanding of Company Law; the legislative regime which applies to builders and their clients requires a practitioner to be conversant in quite complex areas of Company Law.<sup>8</sup>

The practice of incorporating even small operators is widespread across all areas of business endeavour, and without a thorough understanding of Company Law principles, graduate lawyers will have more limited opportunities for employment as a solicitor.

The reference in the LACC discussion paper to the opinions of respondents to the LETR research<sup>9</sup> is not particularly relevant, as the respondents do not appear to have been asked whether any subjects should be removed or included in the *Foundations of Legal Knowledge* (the equivalent of the ARAs).<sup>10</sup> To the extent to which that is relevant to Company Law, it is only in the high importance afforded to the subject by those respondents. Rather than provide any justification for the exclusion of Company Law from the ARAs, the LETR research clearly provides, in the Society's view, justification for its inclusion.

<sup>5</sup> LACC Review of Academic Requirements for Admission to the Legal Profession, 3(b) at page 6

<sup>6</sup> LACC Review of Academic Requirements for Admission to the Legal Profession, at page 5

<sup>7</sup> QUEENSLAND BUILDING AND CONSTRUCTION COMMISSION ACT 1991 - SECT 31

<sup>8</sup> See, for example, QUEENSLAND BUILDING AND CONSTRUCTION COMMISSION ACT 1991 - SECT 56AG

<sup>9</sup> LACC Review of Academic Requirements for Admission to the Legal Profession, 3(b) at page 6

<sup>10</sup> See Table 1.2, LETR, *Setting Standards: The Future of Legal Services Education and Training in England and Wales*, June 2013 (<http://www.lettr.org.uk/the-report/chapter-1/approach-to-the-study/index.html>)

**(c) Evidence**

The reliance on PLT courses to provide the necessary knowledge and skills in this subject is unjustified, for the same reasons as noted above for Company Law and Civil Procedure. PLT courses in Australian jurisdictions are simply not designed, or staffed, to provide in-depth subject knowledge. Their course structures assume that participants in these courses have already acquired knowledge of the subjects included in the compulsory areas of the PLT Competency Standards.

The LACC paper notes that in England (and presumably Wales, although that is not stated) barristers are required to study Evidence in the Bar Professional Training Course.<sup>11</sup> This statement would appear to contemplate that only barristers need knowledge of Evidence (or that Evidence is only relevant in courts, and that only barristers appear in court). If that is the case, it is the Society's submissions that these presumptions have no relevance in Queensland, where there significant court work is undertaken by solicitors; a graduate solicitor with no knowledge of Evidence is unlikely to have significant career options within the Legal Profession. This would particularly be so in a criminal law practice, but would not be limited to that.

Clearly, preparation work for court matters falls largely to solicitors even when counsel is engaged. An inability to accurately (at least initially) evaluate what material constitutes admissible and inadmissible evidence, would render a solicitor virtually incapable of preparing a brief for counsel.

As noted above, the LACC discussion paper does concede that Administrative Law does have a place in the ARAs<sup>12</sup> which renders Evidence even more crucial to the practice of law than it otherwise might be. The Administrative Review jurisdiction in Australia has grown and is likely to continue to do so, meaning that few solicitors will be able to practice without encountering such a review, which will necessarily require a knowledge of Evidence. Even where tribunals are not bound by the rules of evidence, lawyers must be able to advise their clients as to what must be put before that tribunal to make their case. Further, many legal employment opportunities now available are in government departments and instrumentalities, and given the growth in both the administrative and judicial review jurisdictions, it is clear that any graduate without a knowledge of Evidence will be unqualified for government lawyer roles.

Crucially, it is the Society's position that the evaluation of evidence is a fundamental requirement of all lawyers in any area of practice. Many clients consult lawyers specifically for advice on how to avoid the need to go to court, which inevitably involves a consideration of the evidence. For example, an advice about whether or not grounds exist to terminate a contract may well require an evaluation of whether or not certain material would be admissible should the matter find its way to court.

A lawyer who cannot advise a client in relation to evidentiary matters can never meet his or her duty to act in the client's best interests, and therefore should not qualify for admission.

**(d) Ethics and Professional Responsibility**

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<sup>11</sup> LACC Review of Academic Requirements for Admission to the Legal Profession, 3(c) at page 6

<sup>12</sup> LACC Review of Academic Requirements for Admission to the Legal Profession, 3 at page 5

This area is considered sufficiently fundamental that it is the subject of a separate submission from the QLS Ethics Committee. The Society supports the views expressed in that submission.

**(e) Statutory Interpretation**

The Society supports the inclusion of Statutory Interpretation in the ARAs, as it is considered fundamental to the practice of all areas of the law.

The LACC discussion paper refers to responses to a 2009 invitation to comment on the teaching of Statutory Interpretation.<sup>13</sup> That invitation was extended to the Council of Australian Law Deans and other 'relevant bodies' although it is not clear that the legal profession or its representative bodies were specifically invited or consulted; certainly, no responses from such groups are cited in the LACC paper.

Based on feedback from the Society's members, it is quite clear that had the profession been consulted, it is likely that overwhelming support for the inclusion of Statutory Interpretation in the ARAs would have resulted. As noted above, graduates are generally regarded as being unprepared to enter the profession to practice, even after the completion of PLT courses, and an inability to navigate and interpret legislation is a significant factor in any area of practice.

One of the ways a young lawyer can become informed about new or unfamiliar areas of law is by reading the legislation. Not training law students about the interpretation of legislation not only makes them inadequate as lawyers, but also deprives them of the specific skill needed to overcome that inadequacy.

It is not credible to expect that any lawyer can practise without encountering legislation and the need to interpret it, and it is naïve to believe that this skill will be acquired through the study of other subjects. To expect that students would understand the critical elements of Statutory Interpretation if it were taught as a minor part of other subjects is highly contentious, and without any evidence to support it. We also consider that there may also be issues in what is included relating to Statutory Interpretation, given the strict content of most law subjects. There is the additional issue of teaching loads and both capacity and capability.

The Society strongly supports the inclusion of Statutory Interpretation in the ARAs.

**3. Conclusion**

The Queensland Law Society opposes the proposal to remove Civil Procedure, Company Law, Evidence and Ethics and Professional Responsibility from the Academic Requirements for Admission for the following reasons:

- The subjects are fundamental to the practice of the Law;
- The proposal is based on the assumption that these matters are adequately covered in Australian PLT courses, which is not the case;
- The proposal represents a further diminishing of the Bachelor of Laws degree, which is already suffering a drop in regard due to falling standards as evidenced in the views of the employing profession;
- Law graduates holding a law degree which does not include the subjects in question would be unemployable in most (if not all) areas of legal practice;

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<sup>13</sup> LACC Review of Academic Requirements for Admission to the Legal Profession, 4 at page 8

- The proposal flies in the face of current trends in the legal industry, especially those towards greater use of corporate structures and the growth in Administrative Law;
- The proposal is based largely on what is done in England and Wales, jurisdictions which are not analogous to Australian jurisdictions, especially in the way in which Australian PLT courses are structured and delivered;
- The LACC discussion paper does not, at any point, identify any benefits which would flow from the elimination of the subjects in question.

The Queensland Law Society would also support the inclusion of Statutory Interpretation as an Academic Requirement for Admission, as it is fundamental to the practice of law and would return some intellectual rigour to law degree courses. Feedback from the Society's policy committees indicates strong support for the inclusion of Succession Law in the Academic Requirements, and the Society suggest that there may be benefit in the LACC increasing the scope of this review to include that possibility.