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31 March 2015

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

Dear Sir/Madam

LACC

Please find attached the Queensland Law Society's submission in relation to the LACC review of the Academic Requirements for Admission, specific to the question of whether or not Ethics and Professional Responsibility should be removed from the Academic Requirements for Admission.

This response has been sent separately as it was prepared by the Queensland Law Society's Ethics Committee; I confirm that the Society supports the Committee's submission.

Yours faithfully



Michael Fitzgerald
President

E-mail: president@qls.com.au

QLS SUBMISSION TO LACC

LACC REFORM OF ACADEMIC REQUIREMENTS FOR ADMISSION TO THE LEGAL PROFESSION-ETHICS & PROFESSIONAL RESPONSIBILITY

The Queensland Law Society plays an integral role, via its Ethics Centre and Ethics Committee, in the development and promotion of ethical standards, extending beyond its regulatory function to include educational resources and practical guidance.¹ The QLS Ethics Centre received in 2013/14 2603 enquiries from practitioners, most of which related to ethical and professional obligations.

The Society also provides formal post-admission vocational training to practitioners via its Practice Management Course and continuing professional development programs.

In view of the above, the Society is especially well placed to assess the appropriate emphasis on ethics in undergraduate, vocational and postgraduate courses in the context of the ethical knowledge, skills and standards which are demanded of solicitors by the Courts, the regulatory authorities and, importantly, the community.

It is submitted that the inclusion of Ethics and Professional Responsibility in the 11 Academic Requirements is essential to maintain the integrity of the undergraduate degree and the admissions process. Indeed, the Society finds it curious, at a time when practitioners are subject to unprecedented public scrutiny and the profession is rising to the task of advocating and supporting the highest professional standards, that the compulsory ethics content of the undergraduate degree is under review.

The Society comments on certain of the 'contextual changes' and other observations identified in the LACC review:

1. The inclusion of Ethics & Professional Responsibilities as both an Academic Requirement and a PLT Required Competency does not, in the Society's view, represent an unnecessary duplication.

The LACC review explains, among other things, that the Legal Education and Training Review (LETR) undertaken in England and Wales:

- (a) Is set in the context of a 12 month PLT course in that jurisdiction, by contrast with a significantly truncated period in Australia, about which more is said below;
- (b) assumed "*the lack of an overall and coherent legal education system as such*"; and
- (c) "*refrained from suggesting that Legal and Professional Ethics and Procedure be added to the Foundations of Legal Knowledge, notwithstanding **their recent ranking above all other areas of knowledge by legal practitioners***" (emphasis added).

These are not convincing reasons for excluding Ethics and Professional Responsibility from the undergraduate program in Australia.

The Society submits that:

¹ Please refer to the Ethics Committee website: www.ethics.qls.com.au

- (a) The most common route to admission in Australia is a 6 month PLT course. Given the other demands on content, the Society doubts this course could also adequately deliver the knowledge and skills objectives of even a basic ethics education.
- (b) The Australian legal education system has a higher level of coherency than that of England and Wales.
- (c) The 2011 Boon Report was commissioned by the Law Society of England and Wales to recommend the best way of including ethics in the undergraduate law degree curriculum. Written by Professor Andrew Boon, who was then Dean of the School of Law at the University of Westminster, the report recommended (as its preferred option) that:

*"A substantial core of the legal ethics curriculum should be delivered discretely, preferably as a full foundation subject."*²

- (d) The LACC review notes the LETR did recommend the enumeration of "appropriate learning outcomes in respect of professional ethics". This objective is presently well met in Australia by the Teaching and Learning Outcomes. The review also notes the LETR acknowledgement that the research data "did not reveal a consensus to include professional ethics as a discreet [sic] element of the Foundations of Legal Knowledge, notwithstanding it was rated as more important than any other area of knowledge by legal practitioners in 2012". Unsurprisingly, the Society notes that the research data relied upon to found that consensus is peculiar to the stakeholders and conditions in that jurisdiction. The complex research methods invoked to represent and balance the interests of a myriad of local stakeholders and the significantly different legal industry conditions, educational systems and economic frameworks in the UK severely limit the transferability of such conclusions to Australia.
2. Assuming that there is no reason for Australia to slavishly follow the lead of England and Wales, then the LACC review seems to place some emphasis on the perceived desirability of uniformity and ease of co-recognition of qualifications. Although a move towards uniformity would benefit a minority of practitioners and firms in the Australian context, the Society is inclined to preserve the retention of ethics as an Academic Requirement in the interests of the wider profession, the courts and the community.
 3. Whilst recognizing that legal services should be based on efficient and competitive business models, the Society is equally focused on the 'profession' of law and the interests of the community that the profession serves. The centrality of ethical lawyering to the protection of those interests is reflected in the present treatment of Ethics and Responsibility. The Hon Michael Kirby AC CMG wrote in 1998, that:

*"...it [is] timely to urge an intensified interest in law schools in the teaching of legal ethics. This is not just a rudimentary training in the provisions of the local professional statute, rules of etiquette and, where applicable, book-keeping and trust account requirements, offered in a few lectures thrown in at the end of the law course. It is a matter of infusing all law teaching with a consideration of the ethical quandaries that can be presented to lawyers in the course of their professional lives".*³

4. Moreover, as the Hon Justice Patrick Keane recently highlighted:

² See <https://www.lawsociety.org.uk/policy-campaigns/articles/report-on-legal-ethics-at-the-initial-stage/>

³ Kirby, Michael, "Legal Professional Ethics in Times of Change" (1998) 72 Australian Law Reform Commission Reform Journal 5.

"No doubt, all professions are experiencing challenges to the idea of professional service; but no other profession shares responsibility for the government of the community. If lawyers are incompetent, or over-charge their clients, or are seen to exploit their clients in other ways, there is not just a personal lapse from desirable standards; there is a failure of governance."⁴

There are advantages in the current model of teaching ethics in the context of fiduciary duties, professional values and ethical decision-making at the undergraduate level, followed by more practical and compliance based ethics at the PLT level. The teaching of ethics mirrors the practice of 'good lawyering' and involves more than a study of professional rules and procedures:

"The first and perhaps the most important, thing to be said about ethics is that they cannot be reduced to rules. Ethics are not what the [lawyer] knows he or she should do, ethics are what the [lawyer] does. They are not so much learnt as lived. Ethics are the hallmark of a profession, imposing obligations more exacting than any imposed by law and incapable of adequate enforcement by legal process. If ethics were reduced merely to rules, a spiritless compliance would soon be replaced by skilful evasion."⁵

5. The status of the subject as an Academic Requirement since 1992 has encouraged the development of a body of academic work and expertise from which the profession and the community have benefited. Given Australia's achievements in this area, the Society sees no merit, for the sake of uniformity, in following the position in England and Wales. Moreover, it is possible that England and Wales might in the future embrace the debate over the inclusion of compulsory ethics at the undergraduate level.⁶ LEFR acknowledges that the review is a work in progress.
6. The Society notes that the LACC review does not comment on the position in the US, where the study of ethics by law students has been an American Bar Association law school accreditation requirement since 1974;⁷ in New Zealand, where legal ethics has been mandated since 1977; or in Canada, where a recent national review has resulted in the introduction of a compulsory course on ethics and professionalism in the 'national requirement' for common law degrees. The systems adopted in these jurisdictions are surveyed in the LETR report.⁸
7. The Society sees merit in providing training in ethics to all undergraduates, even those who do not intend to apply for a practising certificate. Graduates may undertake employment in the public or corporate sectors and exercise legal skills without requiring a practising certificate. The Society is concerned that the undertaking of work of a legal nature, particularly in the corporate context, without the benefit of any training in legal ethics, may present a risk to corporate governance and the wider community.

⁴ Hon Justice P A Keane, 'A True Profession' (speech delivered at the Queensland Law Society's Legal Profession Dinner, Brisbane, 20 February 2015), 7.

⁵ Sir Gerard Brennan, Bar Association of Queensland, Continuing Legal Education Lectures No 9/92 – 3 May 1992

⁶ Barnett, "Lawyers falling short on ethics – study" in *The Guardian*, 25 November 2014, at www.theguardian.com/law/2014/25/lawyers-falling-short-ethics-study

⁷ Laurel S Terry, 'A Survey of Legal Ethics Education in law Schools' in SK Majumdar, HS Pitkow, LP Bird and EW Miller (eds), *Ethics in Academia* (Pennsylvania Academy of Science, 2000), 65.

⁸ LETR, *Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales*, June 2013 http://www.lettr.org.uk/the_report, at paragraph 4.23.

8. Finally, the Society makes no excuses for strongly advocating the retention of the study of legal ethics in the compulsory undergraduate program. The privileges bestowed and the fiduciary and professional responsibilities placed upon lawyers are daunting. The profession owes it to the welfare of its members and in the public interest to ensure that practitioners are well equipped from day one of practice to meet those proper expectations:

"To be a member of the practising legal profession is a great privilege. It offers the opportunity to serve the community in a profoundly important way. The administration of justice according to law lies at the heart of the community's health and wellbeing. In social terms, there can hardly be a more important function that a citizen may perform than to participate in that process.

.....but if the profession of the law is to maintain its capacity to serve the community in the way described, its practitioners must accept that they are subject to rigorous ethical standards. They must merit the trust and confidence in their propriety, of their clients, other legal practitioners, the courts and the community as a whole."⁹

⁹ Murray & Beech JJ in *Legal Complaints Committee v Pepe* [2009] WASC 39, [36]-[37]