

Your Ref:

Our Ref: Practice Development and Management Committee: 343-1

18 September 2012

Elizabeth H Loftus  
APLEC Secretariat  
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GPO Box 853  
MELBOURNE VIC 3001By email: [REDACTED]

Dear Ms Loftus

**REVIEW OF NATIONAL COMPETENCY STANDARDS**

The Queensland Law Society would like to thank the Australasian Professional Legal Education Council (APLEC) for providing it with an opportunity to comment on the "Review of the APLEC & LACC Competency Standards for Entry-Level lawyers" Discussion Paper.

We have used this opportunity to reiterate and expand on the comments made in our submission to APLEC dated 6 October 2011 responding to an earlier version of the Discussion Paper, which I **attach** for your reference.

The Discussion Paper seeks the input of stakeholders on various propositions and we propose to deal with each in turn.

**Proposition 1 – That the standards prescribed for entry level lawyers, and therefore for PLT providers, should continue to be primarily outcome-based with only a minimum of necessary inputs specified.**

QLS agrees with this proposition, subject to the comments which follow this section concerning assessments.

**Proposition 2 – That the *Standards* continue to describe the required outputs of practical legal training in terms of 'competencies' unless it is considered desirable to describe them in terms 'learning outcomes' to be consistent with other higher education standards.**

QLS offers no views on this proposition other than the overriding need for any characterisation of the Standards to fulfil admission requirements **and** to prepare a lawyer for legal practice.

**Proposition 3 - That the *Standards* should not prescribe or limit the approaches to teaching and learning that PLT providers may use to enable their students to achieve the prescribed competencies.**

QLS does not object to this proposition but does caution that assessment frameworks and practices need to be robust and rigorous enough to ensure that an entry-level lawyer has actually achieved the prescribed competency. This point is expanded upon in the following section dealing with assessments.

**Proposition 4 - That there should be no special regulation of online delivery modes. Rather the emphasis should be on course outcomes irrespective of delivery method.**

As discussed in the following section regarding assessments, the Society is of the view that recently admitted solicitors will be best prepared for practice if their competence is assessed in an environment that is as close as is possible to a real legal office environment. At present the occurrence of law firms operating as virtual offices is quite rare and the QLS is concerned that newly admitted solicitors who have not been sufficiently exposed to a legal office environment during their pre-admission training may be unprepared for the realities of legal practice. We have some significant concern that many of the skills which need to be acquired under the Standards may not be properly assessed in an online environment.

The Society deals with the issue of work placements in some detail below but remains unconvinced that unstructured work placements could 'remedy' the artificiality of an online learning environment.

An online study system may be quite appropriate for students who are working in a law firm while undertaking a PLT course but may be quite inappropriate for students who are not having such exposure to a legal office environment. Furthermore online delivery modes necessitate very rigorous assessment procedures to ensure that online learning has been successful.

QLS calls for a further and more detailed consideration of the online delivery method and the circumstances where it is appropriate to achieve the object of the Standards: to fulfil admission requirements **and** to prepare a lawyer for legal practice.

**Proposition 5 – That the *Standards* should require PLT providers to make students aware of resources available to them relating to cultivating wellness, developing resilience and dealing with depression.**

QLS supports this recommendation and notes that this has been a focus for professional continuing legal education for some time.

There is much to be gained, however, from PLT providers going beyond merely making students aware of available resources and doing more to equip students with an understanding of the issues associated with wellness in a legal professional context. Research is demonstrating that there are particular stressors which underpin mental health issues in the profession and it would be greatly beneficial if PLT providers placed a greater emphasis upon strategies to meet time management issues and prioritising, dealing with difficult people and avenues to develop mentoring relationships and other assistance structures to enable students to cope with practice. It is also very important for students to receive time recording productivity training prior to admission.

**Proposition 6 - That the core practice areas remain as Civil Litigation Practice, Commercial and Corporate Law Practice and Property Law Practice but that the content of each of these areas be reviewed to remove any ambiguities and check that they do not require students to demonstrate competence beyond that which might normally be expected of an entry-level lawyer.**

QLS questions whether the core elements should as closely as possible replicate the most common practice of a recently admitted solicitor and accordingly could include commercial, property, criminal and family law practice areas. In Queensland, succession law is also extensively practised and might be considered as a core element of the Standards.

The proposition assumes that the tasks undertaken and the responsibilities of entry-level lawyers is generally consistent across the profession. This is not the case, an entry-level litigation lawyer working for a large metropolitan firm may have a very different experience from an entry-level litigation lawyer working for a small regional firm. Both entry-level lawyers need to be prepared for practice from their PLT experience, although the circumstances in which they will practice will be very different. This highlights the difficulties in directing the Standards to perceived or statistical norms.

Another way of looking at the selection of core practice areas may be to weight more heavily those practice areas which are carried out in firms that have lower levels of direct support for entry-level lawyers, that is those firms that are not of sufficient size to have a formal graduate intake and support program. While it is difficult to generalise about the needs of entry level lawyers in those firms, they are more likely to be directed to meeting the legal needs of individuals and small businesses. Therefore, core practice areas that reflect this type of practice are desirable. It may even be the case that within a core practice area, for example Commercial Law, or Property Law, the emphasis is on those matters most likely to arise in practice in smaller law firms.

**Proposition 7 - That the Performance Criteria for Trust & Office Accounting should be modified to emphasis the fiduciary duty to the client and the relevant statutory requirements. More detailed compliance with this skill should be incorporated into a mandatory Practice Management Course required prior to the issue of a full practising certificate.**

QLS strongly opposes the removal or watering down of teaching of trust and office accounting in the *Standards*. We consider that it is important and necessary for newly admitted solicitors to have a detailed knowledge and understanding of all aspects of professional responsibility. A trust account is a fundamental and unique part of legal practice, imposing serious obligations on practitioners which need to be well understood by all in the profession.

The *Legal Profession Regulation 2007* (Qld) section 37 empowers any law practice employee to be authorised to sign trust account cheques to make disbursements from a general trust account. It is inconceivable that newly admitted solicitors should be placed in this position without a detailed knowledge of compliance obligations with respect to trust money, including the liability which may accrue to them personally under section 259 of the Act for causing deficiency to any trust account or ledger.

Further a detailed knowledge of trust and office accounting being held by all admitted solicitors may safeguard the profession at large by permitting greater oversight and vigilance in law firms regarding unusual practices. This both safeguards the reputation of the profession and the public at large. Given the demographics of the profession across all Australian jurisdictions, a great number of entry-level

lawyers will work in small firms, where it is likely they will have some responsibility for handling trust money from time to time.

**Proposition 8 - That there be a further discussion by stakeholders to determine the electives to be included in PLT.**

QLS supports this recommendation and is supportive of elective offerings being as broad as possible to permit solicitors who intend to specialise to commence on that path as soon as possible.

**Proposition 9 - That PLT training should continue to be provided at the end of the degree qualification or within currently approved integrated courses.**

QLS supports this recommendation.

**Proposition 10 - That there be no change to the work experience requirement for institutional courses.**

The QLS does not support this recommendation and proposes that there be a significant reconsideration of the duration and efficacy of the work experience requirements. The QLS considers that candidates for admission need a greater structured exposure to working in a legal practice. This is both a preparatory measure for the new solicitor and also an opportunity for the entry-level lawyer to experience first-hand the realities of practice prior to engaging in a private practice career.

One issue which the QLS recommends be further considered is whether the work experience component should be a part of a PLT course or on a wider view be a stand-alone workplace experiential element of the admission requirements. It is acknowledged that there is difficulty of obtaining placements, but there must be more structure to placements, and they must be in a legal practice.

We note that the current work experience component of the Standards is not directed in any way to the Skills, Practice Areas or Values but is based on attendance at a law or law related work environment. We understand that the workplace supervisor does not have to certify that any particular experience has been provided to the entry-level lawyer or that they have demonstrated any competency at all.

The Society apprehends that workplace learning is one of the most valuable preparatory exercises a student can undertake to prepare them for legal practice. We note that many of the Universities currently undertake legal clinic subjects as a part of their undergraduate degrees and have high requirement for supervision. We understand that in these clinical subjects supervisors do actually grade students on achievement of competencies in the workplace (letter writing, client communication, workplace team skills etc). This approach is to be commended and is undoubtedly invaluable.

The research conducted by the Society into the rates at which recently admitted solicitors leave the legal profession would suggest that those admission methods which have a greater period of worthwhile workplace experience have a lower attrition rate.

The Society is not a proponent of a return to the old system of articles as the method by which entry-level lawyers gain their practical legal training. It is true that under the old system of articles some clerks

received excellent training and others were not provided with such opportunities. The variability of the experience of articulated clerkship ultimately, and appropriately, lead to that method of admission being revised into the current supervised traineeship which brings a higher degree of rigor and assessment to the placement. Many smaller firms today find that they cannot meet the Standards in a supervised traineeship given the constraints on their practice.

The Society is cognisant of the difficulties involved in a purely work experience based practical legal training program but remains strongly of the view that entry-level lawyers need to spend significantly more time in law practices prior to admission. More time in a law practice will bring a number of benefits:

- permit entry-level lawyers to make an informed choice about whether they want to enter the private legal practice;
- provide entry-level lawyers with greater exposure to a professional office environment to synthesise appropriate behaviours and standards of personal conduct;
- provide entry-level lawyers a better sense of the practical demands of legal practice and the issues associated with managing client expectations;
- give entry-level lawyers a greater opportunity to actively practice their communication and interpersonal skills;
- provide entry-level lawyers with exposure to a greater variety of legal and factual scenarios than can be covered in a structured PLT course; and
- better equip entry-level lawyers with the knowledge, values, attitudes and skills required to practise law competently.

The Society does not consider that the current arrangements relating to work placements are in the main working well and need to be reconsidered to ensure that the Standards both fulfil admission requirements **and** prepare a lawyer for legal practice.

Thank you for providing the Queensland Law Society to provide these comments. If you require any further clarification or information, please contact our Principal Policy Solicitor, Mr Matt Dunn, on [REDACTED] or via email on [REDACTED]

Yours faithfully

  
Dr John De Groot  
**President**