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Australian Legal Education Sector: Key Metrics

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Introduction

This paper introduces four reports prepared for the College of Law during 2014/15, three of which were updated in 2017 with a fourth update pending. It is intended as a reference point for policy makers, regulators and researchers seeking statistical and other information about the Australian legal education system, in particular the Practical Legal Training (PLT) sector within it. The reports are:

- 1. Economic Review: Ernst & Young**
An Economic Analysis of the Australian Legal Education Services Sector, with a Focus on Practical Training, dated 10 December 2014/26 June 2017
- 2. Regulatory Review: Creative Consequences, Steve Mark and Tahlia Gordon**
The Regulation of Practical Legal Training in Australia dated May 2015/3 July 2017
- 3. Curriculum International Review: Savage Hutchinson**
Report on Standards of Legal Education and Pre-admission Requirements in Common Law Jurisdictions dated 16 December 2014
- 4. Curriculum Comparative Review: College of Law, Kay Smith and Tania Digges**
Evaluation Report (Part 1) and Key Metrics Matrix (Part 2) dated 25 June 2015/9 August 2017

Background

The College of Law is the largest provider of post-initial legal education and training in Australia and New Zealand. It operates across eight jurisdictions in a geographic spread from Wellington in New Zealand to Kuala Lumpur in Malaysia, servicing many different regulatory prescriptions across the range. During 2014 the College's Board of Governors became concerned about the increasingly high level of disparity in PLT course prescriptions in the Australian jurisdictions and associated high variability in costs and fee structures. Increasingly, there were complaints from students, law firms and other stakeholders addressing a variety of issues best summarised in terms of three main areas of concern; uncertainty, unevenness and unfairness.

In April 2014 the Board commissioned a Stakeholder Consultation intended to investigate the basis for these concerns, to provide reliable evidence of perceptions of need and a fact-based evaluation of the key issues. Ultimately, its purpose was to inform recommendations to regulators about priorities for a national review of the PLT sector.

Senior executive staff at the College subsequently participated in more than one hundred consultation meetings involving regulators, firms and other employers, professional associations, students, teachers, courts and government. The volume of qualitative information arising from the process was large. Surprisingly, the main themes which emerged were almost entirely about time, cost, flexibility, clarity and utility of the system. Project leaders had expected that, consistent with history, the dominant concerns of stakeholders would be about “standards” in various dimensions, ultimately sourced in opinions about the relative capabilities of the graduates. However, in a post GFC-world, it was plain that the concerns of the stakeholders of the Australian legal education system were very different, essentially economic and logistical in nature.

In response to outcomes of the consultation meetings the College determined that any future review of the PLT sector could only occur in a reliable way if there was much better availability of quantitative data as to key sector metrics; precisely what is the PLT sector, after all, as a national enterprise, in economic and logistical terms, and how does its multi-jurisdictional regulatory regime actually operate to effect particular curricula and learning outcomes?

The economic context of legal education has always been a matter of special interest for the College. Fully funded for many years as a regulatory monopoly in NSW, the College made the difficult transition into financially autonomous national operations during the late 90’s and early 00’s, eventually generating surpluses sufficient to start the slow process of incremental investment in structures and systems to enable its long term growth. The College has managed this transition with high success but has learned from its history that there is always a compromise to be struck between quality and cost in education. In responding to the outcomes of the consultation process the College was concerned to ensure that any next stage PLT review was supported by evidence to enable clear comprehension of both sides of the quality/cost equation.

Economic Metrics: Ernst & Young

Ernst and Young were commissioned in October 2014 with terms of reference which included:

- economic analysis of the overall legal education system; market segments, market size and market growth drivers.
- demand analysis; quantifying student movements (and associated revenue) into, between and out of various phases including main leakage points before and after each phase.

The first report was delivered on 10 December 2014, more recently reviewed and updated on 26 June 2017.

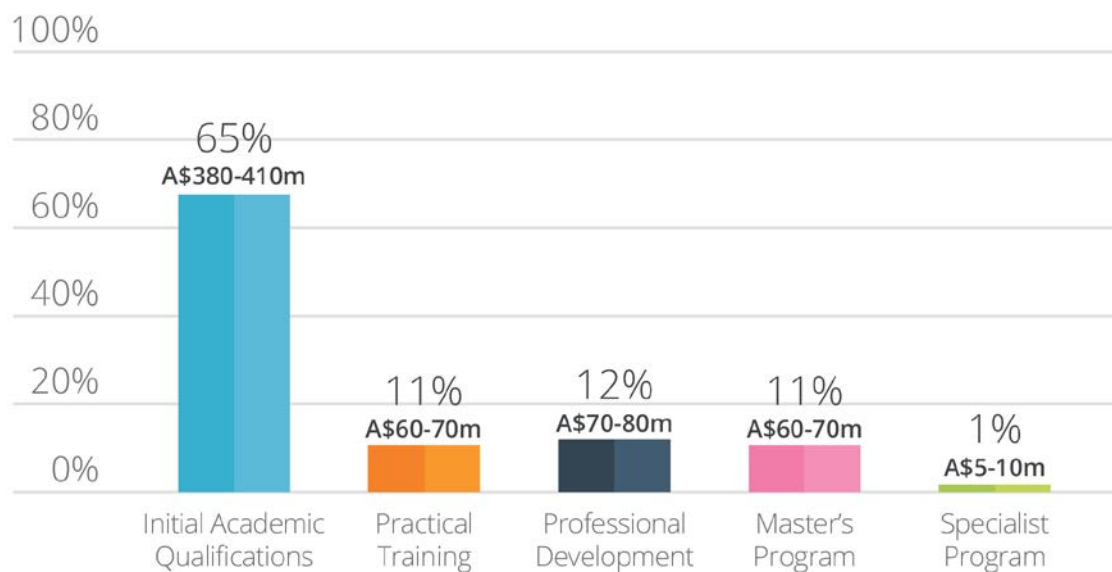
The method adopted was based on creation of a “training path” 0-56 years, tracking the progression of a law school commencer through all stages of the legal education journey through to retirement. The distribution of training load across various stages was measured in dollars, aggregating into an assessment of the overall economic size of the market, with attendant commentary on market growth rate and its distribution among competitors in the PLT sector.

Among a large number of economic metrics arising, the following three groups merit special mention:

Overall Legal Education Market

Market value	\$580 – 640m p.a.
Front-loading	76% of all sector spend occurs by year 6 24% of all spend occurs over the next 50 years
Market growth p.a.	CAGR 7%

Explained by the graph below, the legal education market in Australia has become a substantial national enterprise generating up to \$0.65bn p.a. across its five key sectors. Any regulatory review process needs to take carefully into account that this is a sophisticated and complex enterprise involving multiple institutional providers within disparate structures of regulation, constitution and authority. Any change process associated with it needs to be well resourced and managed, with careful planning and precise execution over long lead-in times.



Entrants and Leavers

Graduates p.a.	7,650
Entry cohort	6,510
Departing cohort	50% by 12 th year

These findings demonstrably support separate research recently conducted by the Council of Australian Law Deans (CALD)¹ about law graduate numbers. They are emphatically dismissive of widespread public commentary in recent years about “12,000 law graduates flooding the profession each year”².

The Ernst and Young findings with respect to departing cohorts at various stages are also of special interest. Contradicting long-held assumptions that 50% of any legal profession entry cohort will have passed through within 3-5 years, they show a much longer transition period, at least 12 years.

The JD/LLB Mix

2014 Report	900 (10.8%) / 7250 (87.3%)
2017 Report	1260 (16.5%) / 6260 (81.8%)

The continuing growth in student demand for graduate entry programs, particularly the JD, is a significant issue likely to have long term impact on the overall cost and quality of the legal education system. At the time of the first Ernst and Young Report in 2014 the overall proportion of JD graduates was only 10.8%. Three years later the proportion is 16.5% and rising. Neither necessarily positive or negative, the trend changes the way curriculum leaders need to think about target audience in economic as well as pedagogical terms. JD students make conscious decisions about careers in law and have high expectations about the courses which will lead them there. They inevitably carry large accumulated HECS debts into their second phase of study, regularly maxed-out against caps and obliged to borrow privately. As the JD continues to grow in popularity these economic realities will require careful consideration toward new, more efficient modes of delivery.

Regulatory Metrics: Creative Consequences, Steve Mark and Tahlia Gordon

The firm Creative Consequences was commissioned in two stages, September 2014 and April 2015, with terms of reference directed to the detailed investigation, analysis, organisation and tabulation of all the various principles, regulations, rules, prescriptions and guidelines affecting the PLT sector. This was intended to involve consideration of national as well as State and Territory arrangements, on the legal side, as well as the operations of the parallel requirements of the higher education authorities, notably the TEQSA.

The research approach was essentially a literature review, taking into account legislation, reference papers, published articles and websites together with a number of in-person and telephone follow-ups with key representatives of individual regulators for the purpose of clarification of issues as they arose. Necessarily there was a strong historical aspect to this work as researchers strived to understand how the current diversified national system came to be, extending the scope of enquiry to events over the previous 25 years.

¹ CALD: Data regarding law school graduate numbers and outcomes, November 2016

² Australian Financial Review, Lack of jobs for law graduates has been greatly exaggerated, 25 Nov 2016

The final report was in five parts commencing with an historical overview of the large effort over many years by organisations such as the LACC and APLEC toward national harmonisation, including in more recent years the Legal Profession Uniform Law, the creation of the Legal Services Council with its Admissions Committee, and draft Admission Rules then being developed. Other parts of the report included a comprehensive description of the national regulatory framework, powers and functions of various bodies associated with it and the PLT course structures emerging from them. The authors also provided expert commentary on a series of key regulatory issues.

Conclusions reached from the extensive data and metrics gathered were clear. The multiplicity of regulators involved in the overall national process (more than 16) and the multiplicity of rules and regulations (in 9 main stages over the past 25 years) have produced a national regulatory potpourri characterised by:

- lack of uniformity of standards
- lack of uniformity of monitoring and review
- general uncertainty and confusion

The first report of May 2015 was reviewed and updated on 3 July 2017 with few changes to the original findings. Both reports emphasise the immense effort and good intent which have been invested over many years by dedicated reformers, but as yet without clear prospect that any comprehensively explicable national regulatory regime is soon to emerge.

PLT Curricula, Australia Key Metrics: College of Law, Kay Smith and Tania Digges

The initial research to develop a common set of metrics for PLT courses Australia-wide was led by former College PLT Director, Kay Smith, supported by College lecturer, Tania Digges. Having been in PLT leadership roles since 1983, with senior appointments which included New South Wales, New Zealand, Hong Kong and United Kingdom, Kay was ideally well positioned to investigate comparative curricula across the ten PLT providers in Australia:

- The College of Law (**College**)
- Australian National University (**ANU**)
- University of Technology (**UTS**)
- University of Newcastle (**UON**)
- Queensland University of Technology (**QUT**)
- Bond University (**Bond**)
- Leo Cussen Institute (**Leo Cussen**)
- University of Adelaide/Law Society of South Australia (**Adelaide**)
- Flinders University (**Flinders**)
- University of Tasmania (**UTAS**)

The report was delivered on 25 June 2015 in two parts. The first part was an evaluation and commentary supported by a second part in the form of a detailed matrix of course information. The matrix documented highly comprehensive information about each PLT offering by reference to criteria which included:

- Award
- Mode
- Assessment
- Instructional hours
- Work experience
- Teacher:student ratio
- Student numbers and quotas
- Course fees
- Detailed course content

The highly precise and reliable content of the report was made possible by the goodwill and co-operation of all APLEC members. The report itself has become a valuable resource for the APLEC organisation and its members in ongoing curriculum development.

Kay Smith died in August 2016 and Tania Digges conducted the 2017 update of the report which was delivered on 9 August 2017. This second iteration not only updated its predecessor but further extended and strengthened the store of information available to those working on curriculum reform in the sector. Unsurprisingly, given the diversified nature of the regulatory regime, the report identified some quite stark differences and inconsistencies across courses and jurisdictions variably at “lowest” and “highest” levels, as for example:

	LOWEST	HIGHEST
Academic Award	Non-Award	LLM (Leg Prac)
Overall program time	100 days	195 days
Curriculum time	75 days	130 days
Wk/exp time	15 days	80 days
Assessment standard	Competent/NYC	F/P/C/D/HD
Tuition fee	\$8,750	\$18,975

PLT Curricula, International Key Metrics: Savage Hutchinson

Savage Hutchinson were commissioned in October 2014 with terms of reference directed to comparative analysis of pre-academic/pre-admission requirements for legal professions in 8 major common law jurisdictions as follows:

- Canada
- Hong Kong
- Malaysia
- New Zealand
- Singapore
- South Africa
- England & Wales
- USA

The report was delivered on 16 December 2014, organising voluminous international information for each jurisdiction across a series of criteria which included:

- Entry requirements
- Course award
- Length
- Delivery mode
- Content and subjects
- Assessment method
- Number of providers
- Cost to student
- Number of students
- Size of profession
- Lawyer:population ratio
- Special requirements eg. ethics

Among the more relevant points of comparison from this research were:

- 2 of 8 jurisdictions with a comprehensive national competency framework
- 2 of 8 (not the same two) with a formal national ethics prescription
- 2 of 8 where State-based admission requirements exist within a national system
- 2 of 8 where entry to academic qualifications is exclusively at graduate level
- 6 of 8 where there are formally prescribed online study options
- 6 of 8 where there exists some form of articles of clerkship or supervised pre-admission work experience requirements

When comparing system-wide dimensions of quality and cost one set of important metrics from this research related to lawyer/population ratio. As a matter of interest, the current Australian lawyer/population ratio by comparison, is estimated at around 1:366.

USA	Can	NZ	E & W	HK	Sing	Mal	SA
1:247	1:342	1:366	1:380	1:780	1:1205	1:1838	1:2272

A principle focus for the ongoing review of the 2015 Savage Hutchinson research is the jurisdiction of England and Wales where very extensive changes of education prescription are occurring in a way likely to have very major impact on the overall legal education system in that jurisdiction. Professor Savage working with consultants Hook Tangaza is currently in the process of updating research data in that context.

A Fifth Stage of Research

The College is currently developing a plan for a fifth major research project intended to focus closely on the workplace destinations of the entry cohort of 2017 and the new styles of legal work for which they are being prepared. This work will be driven by the College's newly established Centre for Legal Innovation under the leadership of new Director, Terri Mottershead. Terri's separate paper on this important work is separately published with the conference papers.

Conclusion

The four reports the subject of this paper were commissioned in support of best practice principles of evidence-based regulation. The College contends that such principles should be applied to any future review of Australia's national legal education system. In developing its research capabilities along these lines the College has been informed by the work of the Council of Australian Governments (COAG) in establishing its own best practice principles³, which might be summarised as:

- Case for action
- Feasible options
- Net benefit to community
- Competition principles
- Clarity and guidance
- Effectiveness over time
- Consultation
- Proportionality

The College's work in this area appears timely. On 6th June 2017 the LACC announced the report of its Assuring Professional Competence Committee which has recommended a broad-based national review of legal education leading to new competence standards, new statements of knowledge and skill requirements and a consistent national assessment regime. The College strongly supports this initiative and looks forward to the opportunity of supporting the review process.

³ Council of Australian Governments Best Practice Regulation, A Guide for Ministerial Councils and National Standard Setting Bodies, October 2017