

REGULATING ADMISSIONS – ARE WE THERE YET?

by

Sandford D Clark*

Establishing appropriate threshold competencies for entrants to a disrupted legal profession is challenging. Helping various providers in the continuum of legal education to impart those competencies, in complementary ways and to comparable standards, is even more difficult for regulators. While much progress has been made in establishing and applying standards in recent years, we need to develop and apply many new and possibly unpalatable professional education policies if the legal profession is to maintain the privilege of self-regulation in a rapidly changing society.

When Professor Dennis Pearce began his distinguished career as a student at the Adelaide Law School there were 3 full-time members of staff. By the time I joined him in 1958, the Bonython Professor had gone into practice to prepare for his subsequent memorable contribution to the *terra nullius* doctrine in *Milirrpum v Nabalco*¹; another was on leave; and the third, Leo Blair, taught us Introduction to Law. At the end of Term 1, however, Leo plucked his little son Tony out of the Unley Primary School and took him back to England to become Prime Minister. We were left largely to fend for ourselves with the odd part-time lecturer, until a search-and-rescue expedition from Melbourne was mounted in the following year.

Things were very different then. There were only 8 law schools. We now have 5 times that number, with significant complements of full-time and sessional teachers, researchers and myriad law students.

As any system expands, it invariably differentiates. The differing aims, aspirations, resources and capabilities of 40 educational institutions, their respective faculties or schools, their numerous teachers and researchers, and their manifold students, necessarily create difficulties for peak bodies that purport to be representative of any of those groups; for potential students making educational choices; for prospective employers of graduates; for academic regulators; and for those responsible for setting and monitoring the professional standards of those wishing to enter the relevant profession. So it is with law.

The enduring problem is, how can threshold admission standards best be expressed and their attainment reliably and consistently measured, particularly in a time of rapid change? My brief is merely to explain what admitting authorities have done, and what remains to be done, to try to establish common threshold qualifications and consistently measure their attainment. I also want to explore some of the looming challenges.

In so doing, I don't mean to contest the wider academic and educational purposes of at least 38 of our 40 law schools. I profoundly agree with Professors Harold Koh and Michael Coper that law schools are not just professional schools, they are institutions of moral purpose; and that all law schools face the dilemma of whether their primary task is training lawyers for professional practice or educating them in the discipline of law.² I also agree with Professor Nussbaum that we must ensure that law is taught in a rich interdisciplinary culture, and resist pressures to truncate the academic stage of legal education.

1. **ACADEMIC REQUIREMENTS**

Forty-one years ago, give or take a month, a comparable National Legal Education Conference was held at the new College of Law building in St Leonards.³ Justice Charles Bright, then the Chancellor of Flinders, noted the work of the Ormrod Committee in England which had reported in 1971, and suggested a comparable committee to develop a consensus among law schools on a compulsory core for a law degree. The Australian Legal Education Council ('ALEC') was jointly convened by the Law Council and the Australasian Law Schools Association⁴ in 1977, under the Chairmanship of

Justice Gordon Samuels. Professor Horst Lucke chaired a committee charged with preparing a report on proposed core subjects for all academic law courses.

In 1979, Sir Laurence Street convened the Law Admissions Consultative Committee (LACC)⁵ for the first time. It first sought to obtain agreement between jurisdictions about the qualifications required of overseas practitioners. In September 1980, it proposed that overseas practitioners seeking admission in Australia should have "substantially equivalent qualifications" to local applicants; and, particularly, knowledge of Australian Constitutional Law, Criminal Law, Torts, Contract and Property (including elements of Trusts and the Torrens System).

When ALEC reported in March 1882, it added Evidence, Procedure, Professional Conduct and Trust Accounts to that list, as the subjects which any local person seeking to practise should take in a law degree. While the law schools could not agree to make these subjects compulsory in their degrees, with the exception of Company Law and a discreet subject of Equity (including Trusts) the bones of the present 11 academic requirements were thus already in place in 1980.

It is important to realise that the regulatory requirements for admission at this time were often significantly more demanding than they now are. Thus, in 1979 the Victorian Council of Legal Education ('COLE') made rules that required a local applicant for admission to acquire "a basic understanding and competence in relation to" the subjects later suggested by ALEC plus Statutory Interpretation, Case Analysis, Legal Research, Legal Writing, Company law, Administrative Law, Concepts of Proper Law and Amenability to Jurisdiction.⁶

Without LACC's intervention, then, things could have remained significantly more intrusive, limiting the effective academic choice of students who wish to practise even more than at present.

The most significant development at this time was the work of the Academic Course Appraisal Committee of the Victorian COLE, chaired by Justice R E McGarvie. Building on the previous work of ALEC and LACC, it recommended limiting the number of required areas of knowledge⁷. Its primary reasons reflect the fundamental changes to law schools, their view of themselves, and their influence that had occurred in the previous 20 years. They were as follows -

First, if the regulator prescribed more, rather than less, subjects the effect would be to turn subjects which the law schools considered to be optional, into *de facto* compulsory subjects for those seeking admission.

Second, "advancement in an academic career in law requires nowadays a substantial degree of specialisation and a production of published research in the academic's special area. It is not practicable to defeat or impede these expectations by suddenly switching staff into areas in which they have not specialised."⁸

Third, if available teaching resources had to be diverted into subjects designated by the regulator, it may not be possible to teach certain optional subjects.

Fourth, "in all kinds of ways" university law schools lack the flexibility to adjust their teaching and course arrangements, because they have to work within highly systematised university structures.

Fifth, it may be difficult to get students to maintain "a proper attitude towards learning subjects which *they* do not regard as necessary or important and which they have chosen only because" they are required, in order to become eligible for admission to legal practice.⁹

The Committee asked whether an area of law was "of such basic potential importance to the great majority of practitioners today that no law graduate should be permitted to practise without it?" In so doing it was conscious of the other side of its question, "[s]hould a person be authorised in law to handle all of the legal affairs of clients without the particular area of legal knowledge?"¹⁰

In the event, the Report recommended 12 not 11 academic requirements for admission. It included Legal Process and Accounts, but the majority of the Committee excluded Company Law.

In due course, however, Company Law was substituted for Legal Process, and Accounts combined with Professional Conduct. This is how the present 11 academic requirements evolved.

The Report also set out "topics which will *ordinarily* be treated as necessary parts of the required area of knowledge."¹¹ These were drawn from the current handbooks at Melbourne and Monash. Importantly, however, they were only meant to help law schools know what an admitting authority would 'ordinarily' look for and were offered in an attempt to help law schools meet its expectations more easily than it might otherwise do.¹² But the lists were intended merely to be indicative, not prescriptive. Because Professor Jack Goldring, then Head of School at Macquarie, thought it was necessary to guard against the possibility that they would be wrongly interpreted as prescriptive, a second, more general formula was added to each description to ensure the intended flexibility.¹³

Unfortunately, Professor Goldring was right. Despite the more general formula, the list of topics is still treated as prescriptive by both some law schools and some admitting authorities.

An indicative description of topics might nevertheless be helpful in some circumstances. In England, the prescribed Foundations of Legal Knowledge are described solely by reference to subject names. This led the English LETR report in 2013 to recommend that "[a] broad content specification should be introduced for the Foundation subjects".¹⁴ Indeed, a prescription "akin to the level of content description provided by the 'Priestley 11' would seem desirable."¹⁵

The McGarvie Report also recommended that all specified areas of knowledge and topics should be reviewed every 7 years. For this reason, and because of the desire to retain flexibility, it proposed that the topic descriptions should not be set out in the relevant Rules, but should remain as resolutions that could be easily altered as required. In some jurisdictions, the list of topics is included in Rules rather than more-easily-amended resolutions. The Uniform Admission Rules 2015 has the best of both worlds. Although the list of topics is set out in Schedule 1, its contents can be altered by a determination of the LSC Admissions Committee made after consulting the admitting authorities in Victoria and NSW.¹⁶ It used this power to alter the descriptions of Civil Dispute Resolution and Evidence in 2016.

The recommended 7 year reviews of knowledge areas and topics failed to materialise. In practice, so far no one seems to have had the ticker for the fight that would inevitably ensue from a general review of the academic requirements. In response to recurrent criticism, then primarily from academia, LACC suggested such a review in 1998. When asked for their views, however, none of the admitting authorities, the law schools, the LCA and its constituent bodies considered that such a review was required!

In 2008 the requirement relating to Professional Conduct and Trust Accounting was amended, with the consent of all stakeholders, to a description for Ethics and Professional Responsibility, and Accounts was relegated to the PLT Competencies for Entry-level Lawyers. In 2016, overdue amendments were made to the descriptions of Civil Dispute Resolution and Evidence on the recommendations of working groups comprising people nominated by CALD.

LACC made other attempts to realign the academic requirements for admission with current academic developments. A LACC Discussion Paper in 2010¹⁷ reviewed the McCrate, Stuckey and Carnegie Reports¹⁸ in the USA, developments in the UK and Scotland, and the emergence of outcome measures as criteria for reviewing and accrediting professional courses. It noted current Australian work being done on outcome measures for the LLB; the numerous criticisms that had been made of the 11 academic requirements; and the likelihood that the recently-adopted CALD Standards for Australian Law Schools and the foreshadowed TEOSA might incorporate, or rely upon, the proposed outcome measures. One of its 16 conclusions was that "[i]t is apparent that Admitting Authorities, as well as legal professional bodies, need to be closely involved in the enunciation of any law-specific outcome measures, both:

- (a) to ensure that they accurately reflect the knowledge, skills and values required of entry-level practitioners; and

- (b) to avoid the prospect that law schools might be required to satisfy conflicting criteria for *professional accreditation* purposes."

The admitting authorities failed to take up any of the Discussion Paper's conclusions. The notes to the Threshold Learning Outcomes ('TLOs'), when they emerged, acknowledged that the "fundamental areas of knowledge" referred to in TLO 1 had been drafted to encompass the 11 prescribed academic requirements.¹⁹ In response, in February 2011, LACC considered a proposal to reconcile the academic requirements with the TLOs, which would adopt the TLOs as academic requirements for admission; adopt simplified descriptions of the 11 other academic requirements; and embed those descriptions as "fundamental areas of legal knowledge" to be acquired by all applicants for admission in the course of satisfying TLO 1.

Although CALD and at least 3 admitting authorities had expressed support for the model, one admitting authority was concerned that, as TEQSA had not yet been established, it was uncertain whether and how TLOs might be changed or deployed, either in law or in other disciplines. Further, no TLOs had yet been determined for the numerous JD qualifications that had emerged. That admitting authority considered that the existing 11 academic requirements were "necessary and sufficient" for admission purpose; and that to incorporate the TLOs would import 6 new sets of skills that were not presently required for admission.²⁰ A further reason for rejecting the proposal was that many presently competent and practising lawyers could not, or were not inclined to, "collaborate effectively". They would thus not meet all of the TLOs, but were undoubtedly good practitioners!

In contrast, in 2017 the Law Society of NSW's FLIP Commission found that "[c]larity, practicality, understanding your client, being prepared to work collaboratively across disciplines and closely with the client are timeless qualities. As budgets shrink and competition grows, they are increasingly the attributes of successful lawyers of the future."²¹

LACC's response to the possibility of adopting outcomes as measures of academic competence was strange, given the admitting authorities' uniform endorsement of the national PLT Competency Standards for Entry-level Lawyers, as long ago as 2000, and the reasons LACC gave at that time for supporting those standards.²² This opportunity to make significant changes to the admission requirements, which would have more closely reflected emerging educational values and anticipated the findings of the FLIP Commission, thus failed because it was not possible to forge consensus between the admitting authorities themselves.

A further proposal for a limited review of certain areas of knowledge in 2015 was however, staunchly opposed, not by any admitting authority, but by CALD, APLEC and others²³, on the grounds that a wholesale, rather than a limited review was necessary; but such a review could not be conducted without a great deal more basic research in Australia. It would be unsafe or inappropriate to draw on the extensive (and expensive) research underlying the 2013 English LETR Report to support conclusions about Australian circumstances.²⁴

A number of professional bodies made submissions that suggested that entry-level lawyers lacked certain knowledge and skills vital to modern legal practice; and that these should be imparted during the pre-admission phase of legal education.²⁵ Similar concerns had already been expressed to LACC and admitting authorities by the Council of Chief Justices. More recent work by the FLIP Commission has identified at least 4 areas of substantive knowledge, 8 sets of skills and 8 personal values or characteristics which every entry-level practitioner now requires.²⁶ However, submissions and testimony before the Commission "were in favour of the traditional black letter law areas of knowledge and lawyer skill sets being maintained.... No existing areas of law or skills were identified as being able to be removed from the law degree, PLT or CLE."²⁷

It is, however, unrealistic to assume that law schools or PLT providers can readily include all of these proposed new requirements in their existing programs. Rather, we need to re-conceive legal education as a continuum, and allocate responsibilities for sequential components to other elements of the profession, after law schools and PLT providers have made their initial threshold contributions. Further, we may need to regulate each part of that continuum consistently.

Where can additional knowledge, skills and values best be acquired by entry-level lawyers? When can this realistically occur? How can we make it happen? What is feasible in the prevailing evolving and uncertain circumstances?

Manifestly, we need to find another way for law schools to reset their priorities and to elect whether or not to join the challenge of preparing those who wish to offer legal services in the future.

2. PRACTICAL LEGAL TRAINING

In 1992, LACC proposed some rudimentary common elements for PLT. Shortage of articles in the 1970s had already led to the development of a PLT course in NSW, and similar courses had sprung up elsewhere. In due course, the prospect of mutual recognition prompted a quest for uniform PLT principles and standards between jurisdictions to dispel the spectre of the least rigorous standards becoming dominant.²⁸ In November 1992, SCAG asked the various legal professional bodies to reach agreement on these matters, foreshadowing that it would refer the matter to LACC if they could not agree.

Ten days after SCAG's request, a meeting between the President of the LCA and the presidents of its constituent bodies agreed to support the proposed academic requirements set out in the Discussion Paper prepared by LACC. They also agreed on the need for a defined scheme of PLT as a pre-admission requirement comprising a formal course of PLT instruction, or on-the-job training, or a combination of both. They further agreed to support the adoption of common conditions limiting the practising rights of a newly-admitted practitioner. But they failed to agree on the details of the last two proposals.

In the month following SCAG's request, NSW and Victoria released competitive bids. The Law Society of NSW proposed to accredit applicants to deliver pre-admission PLT courses for periods of 5 years.²⁹ Without blinking,³⁰ it proposed that the Board of Governors of the already existing College of Law would determine a Master Curriculum; would also determine whether any course proposed by its potential competitors complied with the Master Curriculum; and would have power to amend the general prescription for practical training, applicable to all providers and students, at any time. In addition to undertaking such a course, a NSW applicant for admission would need to acquire the equivalent of 33 full-time weeks of practical experience in a legal workplace *before* becoming eligible for admission.

In contrast, the Law Institute of Victoria's Education Committee proposed that all law graduates should *immediately* become eligible for admission if they had previously undertaken pre-admission training in communication techniques, legal drafting, negotiation and practical legal research – presumably in a Summer School which was then being jointly conducted by Melbourne and Monash on behalf of the Victorian COLE. Their rights of practice would, however, be restricted for 3 years, during which time they would be supervised and required to undertake specified Continuing Legal Education (CLE) obligations.³¹

South Australia preferred a shorter pre-admission course of instruction followed by a requirement to undertake post-admission work experience and defined CLE obligations for a further 2 years, although it subsequently amended its view to a further 1 year. The South Australian Supreme Court judges, however, subsequently made it clear that they were not in favour of any period of restricted practice following admission.

In contrast, Queensland continued to require 2 years of articles prior to admission, with no specified substantive study obligations.

There was thus no agreement between the LCA's constituent bodies about –

- (a) whether there should be structured practical training courses for entry-level lawyers;
- (b) what any such structured practical training should include;

- (c) whether it should occur before or after admission, or partly before and partly after;
- (d) whether there should be a post-admission period of restricted practice; or
- (e) whether there should be any additional training requirements specified for any period of restricted practice.

In February 1993, LACC sought a meeting with the LCA's Working Group to discover what progress had been made in reaching the agreement sought by SCAG. After that meeting, the LCA and all its constituent bodies (other than the Law Institute of Victoria) agreed that the common minimum standards for practical legal training should be expressed in terms of 12 nominated areas of practice. Apart from Victoria's reservations, South Australia noted that some of the proposed areas would need to be "handled at the post-admission restricted practice stage because of the absence of appropriately funded practical legal training courses." As a consequence, the LCA proposed that

- (a) there should be a restricted right of supervised practice for a period of two years "except, perhaps, for members of independent Bars for whom one year's pupillage would be sufficient"; and
- (b) no-one should be granted an unrestricted right of practice before completing training in each of the 12 specified "areas of practice".

There was also agreement "that there should be accreditation (of PLT courses) by the profession by a body including representatives from academia, the practical legal training institutions and the practising profession." The LCA subsequently proposed that the National Legal Admission Council, which LACC had previously suggested, should have the function of accrediting *both* academic and PLT courses.³²

As the professional bodies had not reached agreement on many details, LACC obtained the consent of the Council of Chief Justices to try to forge a consensus.³³ With the assistance of Mr Chris Roper, LACC proposed descriptions of the topics for each of the 12 proposed PLT requirements. These were, however, drafted in broad, indicative terms because it seemed impossible to obtain agreement between admitting authorities on matters of detail and emphasis. In view of this difficulty, SCAG advised the Council of Chief Justices in 1994 that, in its view, it was now a matter for each admitting authority to consider whether to implement the recommendations of LACC. None did. Thus, in 1996, LACC reported to the Council of Chief Justices that "each admitting authority has gone its own way in regard to practical training. The differences are too numerous to summarise in this report." It concluded that uniformity would not be achieved "unless further positive steps are taken."³⁴

APLEC moved first. It proposed "a single prescription to regulate the content and learning outcomes of all programs of vocational legal training leading to first admission."³⁵ It suggested 9 fields of training, covering 45 specified competencies, to be achieved by all PLT programs. It thus re-packaged the LACC 12 PLT requirements, without making any significant changes to their content. However, it sought broadly to specify the skills, values and practical abilities which each student should be able to demonstrate upon completion.³⁶

In 1998 APLEC further decided to specify performance criteria for each element or outcome, in accordance with the National Training Board's National Competency Standards Policy and Guidelines (1992).

In 1999, in light of APLEC's proposals, LACC asked stakeholders whether LACC's 12 PLT requirements should be reviewed? The overwhelming response was that the LACC requirements were too ill-defined to help PLT providers design satisfactory programs, devise appropriate assessments, or form judgments about whether students had developed appropriate threshold competence to be admitted.

LACC therefore sought to facilitate and assist APLEC in its endeavours to describe each component of PLT in terms of outcomes. In LACC's view, this would assist trainers, assessors of competence and students for the following reasons.

- (a) Developing a curriculum is simpler if the skills and values which the curriculum is to impart are known at the outset.
- (b) It assists a trainer to decide how to go about the task and to monitor progress.
- (c) It helps assessors to devise exercises to test compliance, if explicit criteria are set out.
- (d) It concentrates the minds of students and helps them to monitor and to adjust their progress.

LACC therefore endorsed, and assumed joint responsibility with APLEC for drafting, the national PLT Competency Standards for Entry-level Lawyers. It recommended their adoption to all admitting authorities at the end of 2000. Despite the prior difficulties in obtaining agreement about how and when an applicant must satisfy PLT requirements, the proposed Standards were endorsed by all admitting authorities, professional bodies, APLEC and the Council of Chief Justices.

Before distributing the document to admitting authorities, however, LACC added a preface which set out 11 propositions in normative terms, but which were subsequently considered to have regulatory effect. The propositions sat uncomfortably in their context. In 2014, in consultation with APLEC, the Competency Standards were thus revised to add an additional optional practice area and to spell out a number of regulatory provisions as well. The revised document came into effect in all jurisdictions on 1 January 2015.³⁷

The most recent addition proposed by LACC, and adopted by all admitting authorities, are the Standards for PLT Workplace Experience 2016.³⁸

3. STATUTORY INTERPRETATION

Before 1982, the Victorian COLE Rules expressly required an applicant for admission to have acquired "basic understanding and competence in relation to Statutory Interpretation", Case Analysis and Legal Writing, which were all elements of the ubiquitous Legal Process courses of the time. The ALEC Subcommittee report had not expressly specified a course in Legal Process as a prerequisite for admission, but contemplated that any law school would have "an inevitable introductory course".

Although the McGarvie Report noted that no such course existed in Tasmania, it concluded that a Legal Process course should be required, which included consideration of both the legislative process and Statutory Interpretation. In the minds of some, this was insufficient. In a colourful submission forming Appendix 6 of the McGarvie Report, Dr CL Pannam QC noted that the Committee's proposal submitted for public comment "ignores the crucial impact on the legal system of legislation in all forms during this century. Legislation is the dominant source of law in this century...And yet I look at the curriculum and where do I find the basic education a lawyer needs to grapple with statutory and regulatory provisions? Surely not in I.L.M....It is far too important for that. The potted rules of construction one presumably learns in such a course are not what I am talking about. I am talking about the stuff of Craies and Maxwell and even of Odgers and locally Pearce. *But mainly in books unwritten for want of courses to be taught and teachers to teach them.*" (Emphasis added).³⁹

The McGarvie Committee's response was merely to invite law schools to do more than merely teach an introductory course including elements of Statutory Interpretation. It considered that there "should be some shift in emphasis from the study of judge made law to the study of legislation....We consider that it would be desirable that there be a much deeper and more extensive study of the creation, operation and construction of legislation than the elementary study of statutory interpretation normally included in an introductory subject in legal process."⁴⁰

LACC, like the APLEC committee before it, subsequently adopted the then conventional view that an introductory course, which included an introduction to legislation and Statutory Interpretation, was inevitable. It accordingly omitted such a requirement from the 11 areas of knowledge required for admission.

Few, if any, law schools took up the McGarvie Report's invitation to expand its teaching of Statutory Interpretation. In 1980, Melbourne had introduced a later-year optional course in Legislation which concentrated more on the legislative process than on interpretation; but this option petered out after some 10 years. It seems that no comparable action was taken by other law schools at that time.

This failure, both of LACC to require a course in Legal Process or Statutory Interpretation, or of law schools to increase their emphasis on statutory interpretation possibly partly undermined one of the rationales of the McGarvie Report for omitting subjects from the 11 required areas of knowledge. One of its reasons for excluding each of Bankruptcy, Company Law, Consumer Protection Law, Conveyancing, Succession, Employment Law, Mercantile or Commercial Law, Social Security Law, Taxation and Town Planning from the proposed academic requirements, was that much of the relevant law was embedded in legislation;⁴¹ and a "practitioner will have developed a skill in statutory interpretation from Legal Process and other prerequisite subjects."⁴²

Twenty-five years later, the failure of law schools to place greater emphasis on knowledge and skills in Statutory Interpretation led the Chief Justice and President of the Court of Appeal in Victoria, with the support of the Chief Justices of Australia and NSW to ask LACC to "review the present academic requirements in the light of the prevailing practices in Australian law schools, in order to ensure that the teaching of statutory interpretation is given the prominence and priority which its daily importance to modern legal practice warrants. Indeed, statutory interpretation may be more significant to today's lawyers in practice, government or business than the existing requirement of Civil Procedure. While it is certainly important for students to have a general familiarity with civil procedure, we consider that the law of statutory interpretation has a far stronger claim to a separate, substantive place in the curriculum."⁴³

Acting on their request, LACC invited CALD to survey Australian law schools to discover how law students then learned about Statutory Interpretation. Twenty of an invited 29 law schools responded to CALD's enquiry. It appeared that most law schools taught some elements of Statutory Interpretation in an introductory course. Thereafter, most dealt with such matters "embedded" in the context of other substantive subjects. In the CALD survey presented to LACC, only Latrobe law school then had an elective dealing with statutory interpretation, thereby according it "a separate, substantive place in the curriculum" as advocated by the Chief Justices.

LACC considered it prudent to consult more widely about the proposals made by the Chief Justices. It established a working group, chaired by President Maxwell, to develop for the purposes of wider discussion, an outline of possible understandings and competence which might reasonably be expected of a law graduate; and a general description of matters which ought to be dealt with in the process of developing that understanding and competence. The resulting Discussion Paper sought views on 5 particular questions relating to possible future arrangements for assuring that law graduates attained the requisite understanding and competence.⁴⁴ Numerous comments were received from law schools and others. In the light of these comments, and with the assistance of Dr Jeffrey Barnes from Latrobe, the working group proposed a Statement on Statutory Interpretation in 2010⁴⁵, couched in terms of expected student outcomes. It adopted this course, rather than recommending that Statutory Interpretation be added to the 11 academic requirements, because of staunch opposition from certain law schools. They apparently feared that, if Statutory Interpretation were added to the academic requirements, they might be required to alter their existing course structure.

In 2012 admitting authorities asked law schools what effect the Statement had subsequently had on law school practices? Eventually, the various responses were made available to LACC which closely analysed them. Permission was also obtained for LACC to circulate all responses received to other Law Deans.

In June 2013 LACC considered a report on the responses received from 31 of the 37 law schools which had been invited to respond to LACC's questions. Of those, 19 responses were either brief or superficial. Only 9 really attempted to answer the particular questions asked by LACC. From the results received, LACC felt unable to conclude that its Statement on Statutory Interpretation had had a marked effect on either the structure or the content of the teaching of Statutory Interpretation in most law schools. It reported this conclusion to the Council of Chief Justices, also noting that "the overwhelming majority of responses would not justify conclusions that law schools which 'embed' the teaching of statutory interpretation in later substantive subjects:

- (a) separate out particular techniques of interpretation for special, precise analysis as *techniques*, or consider the limitations placed on their use by accumulated judicial application; or
- (b) set out to forge the interpretative examples given to students into a coherent body of knowledge and skills about statutory interpretation; or
- (c) *effectively assess* whether students have, indeed, acquired a coherent body of knowledge and skills about statutory interpretation which they may immediately deploy with confidence, when they are admitted to the legal profession or are otherwise employed as lawyers."⁴⁶

That meeting also considered a good practice guide for teaching Statutory Interpretation that had been published by the Australian Learning & Teaching Council.⁴⁷ LACC noted a number of surprising and potentially disturbing views reported in that guide about student and staff attitudes to the teaching of statutory interpretation, and the availability of appropriate teachers and teaching resources. "Commentators have ... observed that law faculties can experience difficulties in finding appropriate staff to teach statutory interpretation subjects. Reasons identified for this include that teachers find having to deal with a number of disparate substantive areas of law and even political theory intimidating ... and the fear of career repercussions resulting from uncomplimentary teacher evaluations attributable to students' dislike of the subject content."⁴⁸

Concerned by these reported difficulties, LACC therefore sought suggestions from law schools and others about what further steps might be taken -

- (a) to enhance resources that will assist law schools to improve both the teaching and the assessment of knowledge and skills relating to statutory interpretation;
- (b) to improve student understanding of the importance of the area to their future professional lives;
- (c) to improve the pool of teachers with appropriate interests and skills effectively to teach and assess statutory interpretation; and
- (d) to induce law schools that may be reluctant to alter their existing approaches to teaching and assessment of statutory interpretation to examine and, where appropriate, to adjust their programs to meet the contemporary skill requirements for properly informed legal service providers.

In the light of responses received from law schools. LACC considered whether it might be possible to alter certain of the 11 academic requirements to specifically mention Statutory Interpretation, as this may accord more closely with the preference of many law schools to teach the area embedded in other substantive law subjects. It concluded that this would not be appropriate. It noted, however, that although LACC had been counselled to couch its Statement on Statutory Interpretation as 'outcomes' expressed in very general terms, that "at least some law schools would find it useful to have an indicative list of entry-level knowledge and skills in Statutory Interpretation expected by Admitting Authorities." While LACC could produce such a document, it would be preferable to encourage and assist CALD to undertake the task, if it were willing to do so.

This led, in turn, to CALD financing and publishing a much more comprehensive and helpful Good Practice Guide to Teaching Statutory Interpretation than the earlier guide produced by the Australian Teaching & Learning Council.⁴⁹ Its impact on law school teaching practices has yet to be determined. One admitting authority review conducted earlier in 2017 certainly took account of the CALD Good Practice Guide, the LACC Statement on Statutory Interpretation and the relevant requirements of the LACC Accreditation Standards for Australian Law Schools. A summary of that review provided to me notes –

"The assessors were provided with a report by the university containing a description of how statutory interpretation is taught in Priestley and other units. The assessors requested detailed examples from the university, drawn from Priestley subjects, which were indicative of opportunities for the iterative learning of statutory interpretation. Although the examples provided clearly showed that the selected subjects were statute based, the assessors did not have the impression that the subject matter was dealt with in a manner envisaged by the Good Practice Guide. The assessors formed the view that the university took a casual approach to the teaching of statutory interpretation, which was fortified by the fact that none of the participating faculty members had read the Good Practice Guide.

The assessors recommended that the university undertake a thorough review of the teaching of the law and principles of statutory interpretation, informed by (inter alia) the LACC Statement, the LACC Standards and the CALD Good Practice Guide. This recommendation was accepted by the admitting authority and communicated to the university."

The university was apparently given 3 years in which to respond to these concerns.

More may also emerge from the 2 other trial reaccreditation reviews of law courses proposed for 2017. These will be undertaken in accordance with the LACC Accreditation Standards for Australian Law Courses 2016. They require a law school's compliance with the LACC Statement on Statutory Interpretation to be taken into account in several ways.

4. ARRANGEMENTS FOR PROFESSIONAL ACCREDITATION

4.1 PLT Providers and Courses

Rules 3.02 and 3.03 of the Legal Profession (Admission) Rules 2008 (Vic), expressly empowered the COLE to "approve", "monitor and, if it considers it reasonable to do so, from time to time to review" PLT providers and their courses. The Victorian Government proposed that the Leo Cussen Institute should be reviewed. Accordingly, in 2012 - 2013 the COLE sought to develop appropriate Standards for PLT Courses and Providers to be deployed in that review. It produced draft Standards which sought to state a relevant standard, then, in a comment, encourage a PLT provider to supply particular information that would assist the reviewers to determine if the Standard had been met.

Certain elements of the draft received vigorous criticism, particularly from the College of Law. The draft was modified to meet those criticisms, deployed for the proposed review, and revised in the light of that experience.

LACC subsequently endorsed the revised Standards and commended them to other admitting authorities. They were subsequently published on the LACC website in 2015 as the Uniform Standards for PLT Courses and Providers.⁵⁰

The College of Law and all admitting authorities for jurisdictions in which the College operates, have agreed to conduct a co-operative national review of the College employing these Standards during 2017. Following that review, the Standards will be revised, if it proves to be necessary.

4.2 Academic Law Courses

The need for independent professional accreditation processes for law schools is still contested by some. They variably argue that periodic reviews to satisfy University requirements, or certification

of compliance with the CALD Standards for Australian Law Schools by the CALD Standards Committee, or periodic reaccreditation by the Commonwealth's TEQSA for academic purposes, should either supersede or satisfy any requirements for separate professional accreditation by an admitting authority.

Most admitting authorities fully appreciate the costs in time, resources and patience that multiple accreditation hurdles place on law schools. For this reason, in May 2011, the Victorian COLE advised LACC that it had decided to make use of appropriately-constituted and independent 5-yearly reviews conducted by Universities of their law schools for admission accreditation purposes; but to request that any such review should include both the way in which the 11 academic requirements, and the various matters set out in the LACC Statement on Statutory Interpretation, are being taught.⁵¹ LACC endorsed, and drew the attention of other admitting authorities to, the COLE decisions. There may, however, be other ways of reducing the accreditation burden on law schools.

Our admissions system is based on the premise that it is the Court, alone, which determines who may be admitted to the privileges of legal practice. It does so after considering the recommendation of an admitting authority empowered by statute. As long ago as 1981, Professor Enid Campbell pointed out that the statutory responsibility for certifying a person's fitness for the practice of law does not rest with law schools; and that, for admitting authorities to accept law school "degree courses without question would be an abdication of their statutory responsibilities."⁵²

Ten years later, NSW law schools considered that they might well benefit from "a system of 'resource accreditation' similar to that carried out in the United States by the American Bar Association." Disturbed by the apparent imbalance in Government and University funding for science and law they thought the legal profession should emulate the engineering and accounting professions, which had effectively improved funding for their respective faculties "because they have made it clear that they will not recognise the degree awarded by institutions which do not meet minimum standards."⁵³

The LCA and LACC both saw the need to promote uniformity in admission practices, initially in relation to foreign practitioners. This led to a joint proposal to establish an Australian Legal Admission Council⁵⁴, one of whose tasks would be to accredit both academic and PLT providers in Australia. The initiative petered out when SCAG, although sympathetic to the proposal, refused to meet the costs of establishing a trial for such a body at the end of 1997.

By this time, however, the Council of Chief Justices, LACC, CALD and the International Legal Services Advisory Council had all seen the need to develop objective criteria against which each Australian law school might be measured. With the assistance of Mr Chris Roper, the enthusiasm and foresight of Professor Michael Coper, and the support of LACC, CALD developed draft Standards for Australian Law Schools. The consultant's final report "with input from the CALD Standing Committee on Standards and Accreditation", envisaged a Standards Committee whose tasks would include considering "applications from law schools for approval as complying with the Standards."⁵⁵

Discussions between LACC and CALD explored how a local admitting authority might be associated with any review of each law school to be undertaken by the Standards Committee, in order to examine how the 11 academic requirements were being complied with, and to satisfy any accreditation or re-accreditation requirements of that admitting authority. In September 2011, CALD advised LACC that, at its meeting in July of that year a request from LACC "that a member of a relevant Admitting Authority will be asked to join the panels involved in assessing individual law schools, was unanimously approved. We are pleased that firm progress has been made towards the work of overseeing the accreditation of law schools, and look forward to developing the process and getting under way."⁵⁶

The possibility of developing complementary or combined processes did not proceed further. Throughout the development of the CALD Standards, Deans had differing views about which

Standards were "core or minimum" and which were "merely aspirational". A similar division existed on how the Standards might be implemented, and the extent to which they might be used for accreditation purposes.⁵⁷ In practice, the CALD Standards Committee's task has not been one of accreditation. Rather, it has been one of "certification of a law school as being compliant with the Standards" instead. This happened "on the papers" by a collective process. All law schools who sought certification were invited to submit applications to the Standards Committee by the end of 2014.

As law schools were not individually and separately reviewed to determine their compliance with the 11 academic requirements, the process could not meet the particular needs of an admitting authority. Further, the CALD Standards do not apply to 2 Australian law schools. Nevertheless, those Standards were deployed by the Victorian COLE's Academic Course Appraisal Committee between 2013 and 2015, for the purpose of accrediting 2 new law schools and reaccrediting another. They were also deployed in a Northern Territory review in 2015. These reviewers found that, while the Standards helped them to identify matters that required examination, they failed to offer sufficiently precise criteria for a review committee to be confident of applying each standard consistently in all cases.

The Victorian COLE accordingly embarked on the task of producing Accreditation Standards for Australian Law Courses, in consultation with the Chair of CALD and its Executive Committee. Apart from positing more precise standards, the document accompanies each standard with an explanatory note to elaborate its requirements, and a paragraph suggesting how a law school can show how it has met the standard. The format is intended to make the task easier for both law schools and admitting authorities. In many instances, the document suggests that a law school provide the same information as it has previously used for the purpose of any recent TEQSA accreditation.

A version of these Accreditation Standards has now been approved by the Council of Chief Justices, all admitting authorities, LACC and the CALD Executive Committee and will be deployed in 2 further trial reviews of the Melbourne and UTS law schools later in 2017.

There are several reasons why other law school accreditation hurdles cannot be used as surrogates for accreditation or reaccreditation by an admitting authority. To take TEQSA accreditation as an example –

- (a) One of the country's oldest law schools is not subject to TEQSA accreditation. Of the 39 others, only one is subject to external accreditation by TEQSA itself.
- (b) All of the others are within institutions which are self-accrediting, subject to risk-based monitoring by TEQSA. Such a process could not satisfy the statutory accreditation obligations of most admitting authorities.
- (c) The 2015 Threshold Standards now deployed by TEQSA provide that it is a condition of accreditation by TEQSA that, where professional accreditation of a course of study is required for graduates to be eligible to practise "the course of study is accredited and continues to be accredited by the relevant professional body."⁵⁸ If a law school is *not* already accredited by the relevant admitting authority, it would thus not be eligible for reaccreditation either by TEQSA or by its self-accrediting host institution.
- (d) An admitting authority is only interested in the way in which a law course deals with the 11 academic requirements and Statutory Interpretation. TEQSA processes are more wide-ranging than an admitting authority's proper concerns.
- (e) Admitting authorities are usually unable to delegate their statutory accreditation function to others.

The last two factors also limit the ways in which greater cooperation and coordination can be structured between admitting authorities and other reviewing bodies, such as Universities or the CALD Standards Committee. There must, however, still be significant ways in which processes can be improved and resources shared which will reduce the burden on particular law schools. Accordingly, at its meeting in June 2017, LACC endorsed the suggestion that it explore with the CALD Standards Committee the possibility of closer cooperation or coordination between the work of that Committee in relation to the application and development of the CALD Standards, and the conduct of law school reviews for professional accreditation purposes.

5. **WHERE NEXT?**

Changes in the way society now seeks access to, and obtains, many legal services are profound. They challenge prevailing models of what legal practitioners do, how they organise their practice, how they are employed, how they interact with clients, how they charge for their services, what they need to know, how they keep up-to-date, their ethical obligations and, of course, how they need to be educated. Each of these also has implications for the processes of admission to the legal profession.

There is a real risk that, in the pending turmoil, a lawyer's ethical obligations to clients, the Court, and to colleagues may cease to be as dominant as they have been in the past. For some, the inaccessibility and spiralling cost of legal services already show that existing ethical obligations are being re-interpreted in a very lawyerly way!

I suspect that we need to devise entirely new organising principles for a very different legal profession. In so doing, however, ethical obligations to clients, the Court and to colleagues must be firmly stated, generously interpreted, and central to any new professional structure.

Here are some of the threshold challenges I see for the future structuring and content of legal education and for professional regulation.

5.1 **Structure of legal education**

The shortage of articles, which were served either concurrently with or after academic training, led to the introduction of PLT courses with elements of compulsory workplace experience. Differences between States about when in the educational continuum admission should occur, ultimately led to the present arrangement of admission *after* PLT training but *before* 2 years of supervised practice. While the importance of workplace experience to threshold competence is widely acknowledged, apart from very general CPD requirements, the required educational outcomes for, and the nature of, post-admission supervision are not prescribed.

This contrasts with the closely-regulated 2-year pre-admission training contract which every English solicitor presently must complete. In Queensland and Victoria, where pre-admission Supervised Legal Training may still be taken instead of a PLT course, a closely-regulated training contract between the supervising firm and its trainee is also required.

Against this background, there seems now to be wide recognition that entry-level practitioners need to be trained in numerous additional areas of knowledge and skills, and to have acquired new and different values. The FLIP Commission identified Technology, Practice Skills (including teamwork, collaboration, writing and drafting, presentation, advocacy and negotiation skills), Business Skills (including basic accounting and finance), Project Management, Internationalization and Cross Border Practice of Law, Interdisciplinary Experience (involving interaction with clients and another profession or occupation), and Resilience, Flexibility and Ability to adapt to change.⁵⁹

Law schools and PLT providers jostle to respond by trying to devise optional, often interdisciplinary, courses. Their degree or diploma programs are already overcrowded, however. Any additional courses will usually incur additional costs for students, not be taken as part of their academic qualification, and extend the period of their pre-admission legal education. I suspect that it might simply not be possible for law schools and PLT providers effectively to deal with all of the

proposed new areas, skills and values before a student graduates if – as the FLIP Commission suggests – all of the existing academic and PLT requirements must be retained. Certainly, any attempts to do so would effectively eliminate any optional elements in the pre-admission education of legal practitioners.

If training in these new areas, skills and values is also essential, who should provide it, when should it occur, and must it happen before admission? Whether the relevant training is to be acquired before or after admission, we may need to re-think the educational continuum, who should provide what, and how the whole should be regulated.

It may be preferable for this supplementary knowledge, additional skills and values to be acquired by law graduates *in the context of a legal workplace*, rather than an academic law course or PLT program. It would be possible to set mandatory prescriptions for the period of supervised practice, in much the same way as now occurs for pre-admission Supervised Legal Training.

This would, of course, require law firms to assume responsibility for more regulated, mandatory training, at a time when many clients are refusing to meet costs attributable to young and inexperienced lawyers acquiring on-the-job training. It is not clear that all law firms would do this willingly. Some are already "rationalising" their former in-house educational programs for "business efficiency" reasons. Many lament the rapid "churn" rate of their graduate employees, whom they have previously financed through their PLT courses to the point of admission. Others respond by horizontally recruiting only those who have completed both their PLT and compulsory period of supervised practice. They no longer employ recent graduates. Such trends may increase if additional training obligations are placed on law firms – whether before or after admission.

If the legal profession and its constituent bodies are either not prepared or unable to shoulder these responsibilities, how should we respond? Following the lead of Newcastle, some law schools and PLT providers are now cooperating to devise competitive, integrated law-and-PLT courses, the primary aim of which is to reduce the length of a student's journey to admission (despite Professor Nussbaum's concern about reducing the duration of the academic stage of legal education.) It would undermine their aspirations if numerous additional areas of knowledge, skills and values must be acquired *before* admission.

Might it make sense to re-think what happens next? Perhaps we should require a *2-year pre-admission closely-regulated training contract*, rather than assuming that an unregulated post-admission period of supervised practice (if one is lucky enough to get it) will ready someone for unrestricted practice?

Such a change would certainly reduce the numbers seeking admission to the profession. That reduction would possibly mirror the significantly less work available for young practitioners, already attributable to technological and other changes in the nature of legal practice. It should also force law schools and their host institutions to confront the question whether they have ethical obligations to fully inform those students, induced by open-access, non-quota law courses, to embark on highly-priced ostensibly "professional" programs, that their prospects of a professional career in legal practice are demonstrably bleak? I suspect that it is no longer defensible for 40 law schools to argue that there are many other employment opportunities for law graduates outside the legal profession.⁶⁰ Data which demonstrate that many with legal training are presently employed outside the legal profession do not reveal how many have previously been admitted to legal practice, or how many of those would prefer to be practising law, but are unable to find employment in the profession.

In any event, introducing a pre-admission training contract would probably not promote equity, diversity and inclusion in the legal profession, which for some is now a supervening value.

Each of these possibilities has difficult consequences. Those attendant difficulties must not deter us from choosing. Patently we need to agree on one course of action if we are to ensure that future entry-level lawyers are properly prepared for legal practice.

5.2 Content of legal education

If there is still a lively market outside the profession to employ people with legal training, it may be the destiny of some law schools just to provide that training. After all, both Monash and Latrobe initially respectively offered a Bachelor of Jurisprudence and a Bachelor of Legal Studies, neither of which led to legal practice. Other law schools might choose to train limited licence specialist legal service providers, rather than legal practitioners, if we do acknowledge, devise, and regulate other paths for delivering legal services.

But for those that continue to educate the diminishing number of lawyers destined to practise, what will they need to teach?

As long ago as 1971, the Ormrod Committee remarked "[n]ew schemes of professional education and training must be based upon an accurate appreciation of the work that is actually done... and the functions which the practitioner will be called upon to perform... Some attempt must also be made to forecast the developments and changes which are likely to occur in the profession in the foreseeable future".⁶¹

As a result of the numerous challenges to present policies and practices that I and many others at this conference have noted, LACC with the support of the Council of Chief Justices each admitting authority and the Victorian Department of Justice, has proposed an Assuring Professional Competence development program, to extend over several years. The Victorian Department of Justice is seeking cooperative funding from all jurisdictions.

The Assuring Professional Competence Committee, chaired by the Honourable R S French AC, has summarised its mission in the following way –

"The Assuring Professional Competence development program will try to identify what a practising lawyer, in the foreseeable but uncertain future, will need to know and be able to do. With this information, we propose to try to develop a Competence Statement for Australian Legal Practitioners, as has recently been done in both England and Canada.

Then we propose to develop –

- (a) a Threshold Statement, derived from the Competence Statement, which entry-level lawyers will be expected to meet; and
- (b) a statement of Legal Knowledge and Skills that someone will need to acquire in order to meet the Threshold Standard.

From there, it should be possible to work out where, in the continuum of legal education, the relevant knowledge and skills can best be acquired; and how compliance with the Threshold Standard can reliably be assessed.

This should allow academic and PLT providers to identify what elements they can contribute and how best to organise their programs.

It should also allow decisions to be made about the future of legal workplace experience; whether that should occur before or after admission to the legal profession; and whether the content of that experience should be more closely regulated.

Similarly, it should be possible to work out what Continuing Professional Development programs will be required to maintain practitioner competence and to develop specialist expertise; and to decide whether this phase of legal education needs to be more closely regulated.

Each stage of this work will require extensive consultation with, and contributions from, various people and groups interested in the legal profession, the way its members are educated and trained, and the way it delivers its services. We seek their help."

LACC, the LCA and others also need to consider whether we can safely identify other pathways for educating and accrediting people to provide discreet types of legal service, not merely to promote equity, diversity and inclusion in providing legal services. In 2014 the Productivity Commission strongly advocated the creation of 'limited licences' to "allow appropriately qualified professionals to perform select tasks in particular areas that are currently the exclusive domain of lawyers."⁶² We may need to extend the scope of our current regulatory arrangements to such legal professionals, much as we currently do to the wide variety of health professionals. This will be necessary, if only to ensure that all law professionals have comparable ethical obligations to clients, the Court and other law professionals; and to ensure discipline when they are breached.⁶³

Such a re-arrangement of law-related services would also present real opportunities for innovation by law schools and other legal education providers.

Another possible approach to ensuring the threshold attainments of entry-level lawyers are assessed consistently is to require them all to undergo mandatory professional assessment prior to admission. The English Solicitors Regulation Authority's Qualified Lawyers Transfer Scheme already uses such assessments for all foreign lawyers and English barristers who wish to become solicitors. In 2015 the Victorian COLE commissioned Professor Paul Maharg to consider how a similar system of mandatory professional assessment might be used to help Australian admitting authorities assess overseas applicants for admission. Because of the cost of developing, maintaining and administering such a test, LACC decided not to pursue the idea further, at this stage. It does not, however, necessarily preclude the development of a comparable system for assessing the threshold competence of all applicants for admission in Australia. On the other hand, the inability of the Federation of Law Societies of Canada to obtain agreement on a national regime to replace provincial bar exams illustrates the difficulties of developing a national professional assessment scheme in a federation.

The English Solicitors Regulation Authority (SRA) has now resolved to introduce a 2-part Solicitors Qualifying Examination for all those seeking admission as a solicitor. In 2015, it suggested that "one of the key benefits of the approach is that it could lead to a greater integration of academic, professional and work place learning and that this could provide a richer academic experience, as well as the development of more sophisticated practical skills... We recognise that more traditional universities may wish to continue to operate exclusively within the academic stage of training – and that is entirely a matter for them. However, the design of our assessment could have the result of encouraging more universities to adopt an integrated approach."⁶⁴

Whether these benefits will materialise must now be questioned. As it turns out, the SRA's planned change was only partly motivated by its conclusion that it could not rely on legal education providers to measure the attainment of applicants for admission consistently. Equally important was the political imperative to promote equity, diversity and inclusion in the legal profession. To do this, the SRA ultimately decided it will be necessary to –

- (a) accept any tertiary qualification as a prerequisite to qualification, rather than just a legal one;
- (b) abolish the requirement to complete the one-year full-time Legal Practice Course;
- (c) abolish the 2-year closely regulated pre-admission training contract;
- (d) abolish the Professional Skills Course taken during that period;
- (e) substitute an unstructured requirement of 2 years pre-admission Qualifying Work Experience to be "as flexible as possible to avoid creating unnecessary barriers to qualification"⁶⁵; and
- (f) require every applicant to pass the 2-part Solicitors Qualifying Examination.

According to the SRA, the Solicitors Qualifying Examination will be "a world-leading assessment of which solicitors can be proud and which will underpin their standing at home and abroad. The

public expects a common assessment standard and we hope that the SQE will become a gold standard for consumer protection."⁶⁶

It is by no means clear what implications these changes will have for law schools, PLT providers, and the programs they offer. The SRA asserts "that good assessment drives good learning" and thinks "there may be a place for signposting training providers to candidates."⁶⁷ But that is all. The continuing role for law degrees and post-graduate diplomas in law are uncertain, as are the roles that present legal education providers will play in preparing potential applicants for admission as solicitors.

5.3 Continuing Professional Development

We also need to consider the appropriate future role of CPD in the legal education continuum; and whether it needs closer regulation to ensure an integrated approach to assuring professional competence. If the educational outcomes for supervised legal practice are clearly specified, part of the "compliance" component of CPD will become clear. Other aspects of that component might be derived from any Competence Statement for Australian Legal Practitioners.

Some of these needs will presumably also be met by postgraduate programs in law schools or by PLT providers through supplementary programs like the College of Law's Plus program.⁶⁸

5.4 Regulatory arrangements

Only Western Australia presently seems to have a unitary system of legal profession regulation. Others divide the pre- and post- admission phases between separate bodies. In some of those, the post-admission regulatory tasks of issuing practising certificates, certifying compliance with CPD requirements (such as they are), and discipline are further shared between organisations which self-regulate their constituent solicitors or barristers.

If professional legal education is conceived of as a continuum, it seems sensible that academic law courses, PLT courses, any pre-admission workplace training, training during supervised practice, and CPD should also be regulated consistently by one body. Further, if the academic and PLT components are regulated by an independent body, supervised practice and CPD may also need to be independently administered, rather than entrusted to the self-regulation of barristers and solicitors. If CPD responsibilities are shared between providers within and out of law firms, it seems inevitable that familiar problems of comparability and appropriate standards will arise. It seems particularly important to confront these issues as the traditional business models of both arms of legal practice increasingly come under stress; past assumptions about the capabilities of each legal service provider cease to be valid; and limited licences to deliver discrete legal services are devised and introduced.

Because of the need to re-imagine legal education as a continuum and develop solutions to these difficulties, LACC has recently asked the Council of Chief Justices to amend its Charter so that it can consider and make recommendations not just related to admission to the legal profession, but also about how to ensure the continuing competence of its members.

It is possible that we could deploy the experience acquired in developing consistent standards for the accreditation and content of academic and PLT courses to establish similar standards for supervised practice and CPD, again in the light of any agreed Competence Statement for Australian Legal Practitioners. Any such regulation would, of course, need to be both sensitive and proportionate – but some independent body needs to be able to determine whether, say, a program of 10 minute grabs to be consumed on a daily bus ride is now sufficient to displace a more sustained existing face-to-face CPD encounter?⁶⁹

There are separate questions about how best to ensure that unbundled and limited-licence legal service providers are under appropriate ethical obligations to clients, the Court and other legal service providers. The FLIP Commission explored some of the implications of a new model being examined by the Nova Scotia Barristers Society.⁷⁰

Three of the skills which professional bodies now seek in entry-level lawyers are resilience, flexibility and sensitivity to a client's needs and expectations. Similar skills will be needed to determine the future of the legal education continuum and the way it is regulated. I agree with the FLIP Commission that the "regulatory touch" must continue to be "light but judicious, serve the interests of the public, and foster innovation". It also concludes, however, that "[I]aw firms of the future will need to be sustainable as businesses and not just cost-effective for the consumer".

If we are to retain the privilege of self-regulation, however, striking the right balance will be critical. The warnings are already out there. As the Productivity Commission has noted, "[i]n some circumstances, self-regulation will allow industries to find the level of regulation that suits them best, based on their own expertise. In other circumstances, allowing the incumbents in an industry to set standards can act as a barrier to entry, favouring incumbents at the expense of consumers."⁷¹

ENDNOTES

* Counsel, Ashurst; Emeritus Professor, The University of Melbourne; Chairman, Law Admissions Consultative Committee; Inaugural Chair, Admissions Committee, Legal Services Council.

¹ (1971) 17 FLR 141.

² M Coper, 'Legal Knowledge, the Responsibility of Lawyers, and the Task of Law Schools' (ALTA Conference paper 5 July 2006) [2006] ALRS 2.

³ See Proceedings of National Conference on Legal Education 1976, *An Overview of Legal Education in Australia* (Australian Law Council Foundation 1978).

⁴ Subsequently known as the Australasian Law Teachers Association.

⁵ Until 1989 LACC was cumbrously called the Consultative Committee of State and Territorial Law Admitting Authorities. It comprised nominees of each of the State and Territory Chief Justices and had advisory responsibilities to the Council of Chief Justices. In 1998, representatives of Law Council of Australia ('LCA'), the Australasian Professional Legal Education Council ('APLEC') and the Council of Australian Law Deans ('CALD') attended a meeting as observers. The Council of Chief Justices subsequently approved their membership of the committee, which then changed its name to LACC. I shall use this name to signify both the earlier and current committees. Its general function is to endeavour to forge consensus on issues relating to admission and to advise the Council of Chief Justices, which appoints the Committee's chairman and approves its annual work plan. LACC is not, however, a committee of the Council.

⁶ Rules of the Council of Legal Education (Amendment No. 3) 1979, rule 20(a)(ii) (SR 29 of 1980). See too Rules of the Council of Legal Education 1980, rule 19(a)(ii).

⁷ Academic Course Appraisal Committee, Council of Legal Education, *Legal Knowledge Required for Admission to Practise* (14 October 1982) ('McGarvie Report').

⁸ *Ibid* [8].

⁹ *Ibid*.

¹⁰ *Ibid* [22].

¹¹ *Ibid* Appendix 7.

¹² *Ibid* [54].

¹³ The new description of Evidence, developed by a working group nominated by CALD and adopted in 2016, contains no similar general formula.

¹⁴ *Legal Education and Training Review, Setting Standards* (2013) Recommendation 10, xv ('LETR Report').

¹⁵ *Ibid* [4.103].

¹⁶ Uniform Admission Rules 2015, rule 5(1)(c). A similar rule applies to the PLT Competencies for Entry-level Lawyers, set out in Schedule 2: see rule 6(1)(b).

¹⁷ 'Rethinking Academic Requirements for Admission' (Discussion Paper, LACC, February 2010). <<https://www.lawcouncil.asn.au/files/web-pdf/LACC%20docs/Re-thinkingAcademicRequirementsforAdmission.pdf> >

¹⁸ Respectively, American Bar Association Section on Legal Education and Admissions to the Bar, *Legal Education and Professional development – An educational continuum* (1992); R Stuckey and others, *Best Practices for Legal Education: A Vision and a Road Map* (Clinical Legal Education Association 2007) and W M Sullivan, A Colby, J W Wegner, L Bond and L S Shulman, *Educating Lawyers: Preparation for the Profession of Law* (Carnegie Foundation for the Advancement of Teaching 2007).

-
- ¹⁹ Australian Learning & Teaching Council, Bachelor of Laws, Learning and Teaching Academic Standards Statement (December 2010) 12.
- ²⁰ 'Reconciling Academic Requirements and Threshold Learning Outcomes' (Discussion Paper, LACC, June 2011). <<https://www.lawcouncil.asn.au/files/web-pdf/LACC%20docs/20110624-ReconcilingAcademicRequirementsandThresholdLearningOutcomes-DiscussionPaper.pdf> >
- ²¹ Law Society of NSW, Commission of Inquiry, The Future of Law and Innovation in the Profession (March 2017) 16 ("FLIP Report").
- ²² See item 2 below.
- ²³ See Submissions to the LACC Review of Academic Requirements by CALD (23 and 31 March 2015), APLEC (31 March 2015) and the LCA (24 March 2015). <<https://www.lawcouncil.asn.au/resources/law-admissions-consultative-committee/review-of-academic-requirements> >
- ²⁴ Calling for more research, and then challenging the methodology of the resulting work, are tried and tested temporising techniques. In my experience over 33 years, studied delay in producing promised or requested research has repeatedly beset the work of LACC and of the Admissions Committee of the Legal Services Council.
- ²⁵ Ibid n 23, Submissions by Large Law Firms Group (30 March 2015), Queensland Law Society (30 March 2015), Law Institute of Victoria (30 March 2015).
- ²⁶ FLIP Report n 21, 77 – 78, Table 6.1.
- ²⁷ Ibid n 21, 77.
- ²⁸ The States, Territories and the Commonwealth entered into Mutual Recognition Agreement on 11 May 1992 and released a draft Mutual Recognition (State) Bill.
- ²⁹ Law Society of NSW, A blueprint for the preparation of legal practice as a Solicitor in New South Wales (December 1993).
- ³⁰ The National Competition Policy Review, National Competition Policy had been presented to Heads of Government on 25 August 1993.
- ³¹ 'Qualifications for legal practice as a barrister and solicitor in Victoria' (Discussion Paper, Legal Education Committee, Law Institute of Victoria, December 1993).
- ³² Minutes of meeting between representatives of LACC and the LCA Mutual Recognition Working Group (21 May 1993) [3]. The two bodies accordingly eventually made an unsuccessful joint submission to SCAG to establish and fund the trial of an Australian Legal Admission Council, which would have an accreditation function for both law schools and PLT providers, and for their respective programs. LACC and LCA, Proposal for an Australian Legal Admission Council (December 1997). <<https://www.lawcouncil.asn.au/files/web-pdf/LACC%20docs/ProposalforNationalAppraisalCouncil1997.pdf> >
- ³³ SCAG had previously resolved that, if no satisfactory arrangements were concluded at the proposed meeting with the LCA, the matter should be referred to LACC. See letter from L Glanfield, Attorney-General's Department NSW to P Levy, LCA, 8 February 1993.
- ³⁴ LACC, Report on feasibility of arriving at common Standards of Admission throughout Australia (October 1996) 2.
- ³⁵ N Carter, Briefing Paper to Council of Australian Law Deans (8 April 1997) 1.
- ³⁶ APLEC, Standards for the Vocational Preparation of Australian Legal Practitioners (1997).
- ³⁷ LACC, PLT Competency Standards for Entry-level Lawyers (2015). <https://www.lawcouncil.asn.au/files/web-pdf/LACC%20docs/Competency_Standards_for_Entry-Level_Lawyers_-_1_July_2015.pdf >
- ³⁸ <https://www.lawcouncil.asn.au/files/webpdf/LACC%20docs/240769433_8_Standards_for_PLT_Workplace_Experience.pdf >
- ³⁹ He went on also to note the importance of being aware of different legislative drafting techniques, wryly remarking "[h]ow much easier would be the task of approaching Commonwealth legislation if the basic techniques employed by the Commonwealth Parliamentary Draftsman and his staff were understood."
- ⁴⁰ McGarvie Report, n 7, [71].
- ⁴¹ Ibid Appendix 3.
- ⁴² Ibid [8].
- ⁴³ Letter from Chief Justice Warren and President Maxwell to Professor S D Clark, Chairman of LACC, 26 August 2007.
- ⁴⁴ 'Approaches to Interpretation' (Discussion Paper, LACC, 2009). < <https://www.lawcouncil.asn.au/files/web-pdf/LACC%20docs/ApproachestoInterpretationLawSchools.pdf> >
- ⁴⁵ < <https://www.lawcouncil.asn.au/files/web-pdf/LACC%20docs/StatementonStatutoryInterpretation.pdf> >
- ⁴⁶ LACC, Teaching Statutory Interpretation: An Overview (8 July 2013).
- ⁴⁷ C Brown, J McNamara, C Treloar, Good Practice Guide (Bachelor of Laws) Statutory Interpretation (Australian Learning & Teaching Council 2011).

-
- ⁴⁸ Ibid 4.
- ⁴⁹ J Barnes, J Dharmananda, J Goldsworthy, A Steel, Good Practice Guide to Teaching Statutory Interpretation (Council of Australian Law Deans 2015). <<http://www.cald.asn.au/assets/lists/resources/gpgsi-june15.pdf>>
- ⁵⁰ <https://www.lawcouncil.asn.au/files/web-pdf/LACC%20docs/212001734_8_Standards_for_PLT_Providers_and_Courses_-_February_2013.pdf>
- ⁵¹ Letter from R Besley, CEO of COLE to Professor S D Clark, Chairman of LACC, 30 May 2011.
- ⁵² E Campbell, 'Undergraduate Law Curricula in Australian Law Schools', (Australasian Universities Law Schools Association Conference paper 1981).
- ⁵³ Response by NSW Deans and Heads of Schools to Law Society of NSW Task Force Issues Paper, Undergraduate Legal Education and Practical Legal Training (May 1991) [3.3].
- ⁵⁴ LACC and LCA, n 32.
- ⁵⁵ C Roper, Standards for Australian Law Schools, Final Report to Council of Australian Law Deans (March 2008) [3.2].
- ⁵⁶ Letter from Professor J McKeough, Chair of CALD to Professor S D Clark, Chair of LACC, 28 September 2011.
- ⁵⁷ M Coper, A Brief History of the CALD Standards Project (9 March 2008)http://www.cald.asn.au/docs/Standards_History.pdf
- ⁵⁸ Higher Education Standards Framework (Threshold Standards) (2015) [3.1 5.].
- ⁵⁹ FLIP Report, n 21, 77-78, Table 6.1.
- ⁶⁰ In one jurisdiction, government lawyers, who have previously often not been admitted, are apparently now being required to seek admission in order to ensure that their advice to government is immune from FOI requests through lawyer/client professional privilege.
- ⁶¹ Report of the Committee on Legal Education (Cmd 4595, 1971) as quoted in G P Wilson, 'Reflections on the Ormrod Committee Report' (1971) 34 *Modern Law Review* 635.
- ⁶² Productivity Commission, Access to Justice Arrangements Inquiry Report, vol 1 (5 September 2014) 235.
- ⁶³ The FLIP Report notes some of the ethical dimensions of innovation and technology, including the unbundling of legal services and a practitioner's ethical duties in relation to technological competence. See FLIP Report, n 21, 7, 23, 102-103.
- ⁶⁴ SRA, Response to consultation paper The Future of Training for the Bar: Academic, Vocational and Professional Stages of Training consultation (18 November 2015).
- ⁶⁵ See generally SRA, A new route to qualification: the Solicitors Qualifying Examination (SQE) Summary of responses and our decision on the next steps (April 2017); SRA, Consultation: A new route to qualification: New regulations (May 2017); SRA, Solicitors Qualifying Examination Draft Assessment Specification (June 2017).
- ⁶⁶ SRA, A new route to qualification: the Solicitors Qualifying Examination (SQE) Summary of responses and our decision on the next steps (April 2017) 7.
- ⁶⁷ Ibid 10.
- ⁶⁸ This new program comprises 10 hours of 10 modules dealing with business, client-related and personal skills which law firms now seek in entry-level practitioners.
- ⁶⁹ See video evidence of J Christie, President Continuing Legal Education Association of Australasia, to the Law Society of NSW FLIP Commission (29 March 2017). <<https://youtu.be/1a7IKHBX0UM>>
- ⁷⁰ FLIP Report, n 21, 103.
- ⁷¹ Productivity Commission, n 62, 255.