

Submission to the Law Admissions Consultative Committee - Redrafting of the Academic Requirements for Admission

30 September 2019

To: Law Admissions Consultative Committee

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NSW Young Lawyers

NSW Young Lawyers is a division of The Law Society of New South Wales. NSW Young Lawyers supports practitioners in their professional and career development in numerous ways, including by encouraging active participation in its 15 separate committees, each dedicated to particular areas of practice. Membership is automatic for all NSW lawyers (solicitors and barristers) under 36 years and/or in their first five years of practice, as well as law students. NSW Young Lawyers currently has over 15,000 members.

This submission is the result of the efforts of a number of members across various committees within NSW Young Lawyers and, in particular, members of the Special Committee of Law Student Societies, the Human Rights Committee, the Public Law & Government Committee and the Civil Litigation Committee.

NSW Young Lawyers welcomes the opportunity to make a submission to the Law Admissions Consultative Committee (**LACC**) on the Redrafting of the Academic Requirements for Admission (**the LACC paper**) and the (proposed) Prescribed Areas of Knowledge set out in Appendix A to that paper.

Summary of Recommendations

In summary, NSW Young Lawyers recommends that:

1. The (proposed) Prescribed Areas of Knowledge be expanded to enhance graduates' Indigenous Cultural Competence by:
 - a. requiring relevant principles of Indigenous Cultural Competence as an element of, at minimum:
 - i. Criminal Law and Procedure, including the relationship between Aboriginal and Torres Strait Islander Peoples and the criminal justice system;
 - ii. Evidence, including the issues arising in practice and procedure for Aboriginal and Torres Strait Islander Peoples; and
 - b. Inclusion of Indigenous Cultural Competence as a Teaching and Learning Outcome (**TLO**);
2. The (proposed) Prescribed Areas of Knowledge relating to Ethics and Professional Responsibility be expanded to expressly require an understanding of:
 - a. a practitioner's conduct obligations in respect of discrimination, sexual harassment and workplace bullying;
 - b. mental health, stress and wellbeing, and a capacity to respond appropriately to such issues within the context of legal practice (and/or possibly included as a TLO under TLO 5: Communication and Collaboration);
 - c. capacity, cognitive impairment and disability, including in respect of issues arising for Aboriginal and Torres Strait Islander Peoples (that is, furthering the TLOs and Prescribed Areas of Knowledge relating to Indigenous Cultural Competence);

3. The (proposed) Prescribed Areas of Knowledge relating to Administrative Law be expanded to enhance graduates' understanding of human rights law to cover "human rights and its relationship with administrative law", rather than "the impact of human rights legislation on administrative law, where such legislation exists";
4. The (proposed) Academic Requirements and the TLOs be expanded to enhance graduates' ability to effectively identify and navigate the interface between the law and relevant non-legal technical expertise;
5. TLO 3: "Thinking Skills" be expanded so as to require a demonstrated ability to critically evaluate law and its impact on individuals and communities, and be able to synthesise theory with practice by drafting legal documentation to develop solutions for different practical scenarios;
6. The LACC give consideration to the evolving nature of tertiary education and its impact on whether the (proposed) Academic Requirements (including the TLOs) are able to be effectively delivered given condensed teaching periods and varying modes of delivery;
7. Any changes be implemented with appropriate transitional arrangements to as not to disadvantage any students who have commenced studies under the existing requirements; and
8. There be ongoing consultation with stakeholders, including students and recent graduates, as well as regular monitoring of any redrafted versions of the Academic Requirements for Admission.

Submission

We acknowledge that the purpose of the LACC's review of the academic requirements for admission is the (proposed) Prescribed Areas of Knowledge set out in Annexure A of the LACC paper, rather than the TLOs adopted by the Council of Australian Law Deans. As the LACC paper notes, the purpose of the review is to consider whether the "Priestley 11" could be revised "to become more compatible with the wording of both the TLOs and the now-mature TEQSA regulatory regime."

However, given the interplay between the academic requirements and the TLOs, this submission makes a number of observations and recommendations regarding both the Prescribed Areas of Knowledge and the TLOs, and the implementation of same.

1. Indigenous Cultural Competence

The over-representation of Indigenous people within the criminal justice system, family, and care and protection matters as well as substantial historical realities can cause fear and distrust of the Australian legal system amongst Indigenous people. Lawyers should have the cultural competence to work with Indigenous clients including the differentiated skills necessary to take instructions, understanding language barriers, social behaviours, family relationships and the traumas associated with being an Indigenous person within Australia. In addition, it is useful to learn that Indigenous people are diverse and not one homogenous group,

but do share commonalities. Indigenous cultural competence is important for lawyers interacting with Indigenous people in various roles in all sectors of the profession, not just in the criminal justice system.

For instance, one area in which Indigenous cultural competence may be important is in the statistics relating to cognitive impairment and mental health issues, which Indigenous people suffer from at higher rates than non-Indigenous people. A survey carried out on these issues identified that 41.2% of Indigenous young people were in the borderline intellectual disability range and 59.8% of Indigenous young people in custody had severe difficulties in core language skills and 85% had severe difficulties in reading comprehension.¹ In court matters involving unrepresented litigants, lawyers often have limited time with clients to assess their capacity. The layered complexities could be remedied with appropriate cultural competency training that would delve into cognitive impairment and disability. This issue is relevant to the TLO on Ethics and Professional Responsibility.

Law students in Australia should be aware of the historical context of Indigenous disadvantage, and the how this manifests in Indigenous people's interactions with lawyers, the justice system and government. An informed understanding of Indigenous issues arising across various areas of law is integral in order to provide law students with the knowledge and skills to advise and represent Indigenous clients and organisations in their legal careers. In particular, given the structural issues affecting Indigenous communities in key areas such as Constitutional Law, Native Title, Criminal Law and Evidence, it is vital that these subjects include prescribed areas of knowledge covering these Indigenous issues.

Accordingly, we support the (proposed) Prescribed Areas of Knowledge to the extent that:

1. Under Constitutional Law, the proposal requires an understanding of "the broad theoretical basis, and the social and historical context, of Australian constitutional law, including the relationship between Aboriginal and Torres Strait Islander Peoples and the Australian constitutions;"
2. Under Property Law, the proposal requires an understanding of "the principles of indigenous Australian law that form the basis of Aboriginal and Torres Strait Islander claims to land."

We recommend that the (proposed) Academic Requirements be expanded to enhance graduates' Indigenous Cultural Competence in the following ways:

1. Expand the (proposed) Prescribed Areas of Knowledge in Attachment A by requiring relevant principles of Indigenous Cultural Competence as an element of, at minimum:
 - a. Criminal Law and Procedure, including the relationship between Aboriginal and Torres Strait Islander Peoples and the criminal justice system;
 - b. Evidence, including the issues arising in practice and procedure for Aboriginal and Torres Strait Islander Peoples; and
2. Inclusion of Indigenous Cultural Competence as a Teaching and Learning Outcome (TLO).

¹ <https://www.indigenousjustice.gov.au/wp-content/uploads/mp/files/publications/files/research-brief-24-final-31-8-17.pdf>

2. Ethics and Professional Responsibility

Rule 42 of the Australian Solicitors' Conduct Rules prohibits discrimination, sexual harassment and workplace bullying. Despite this professional conduct requirement, sexual harassment and workplace bullying occurs in legal workplaces. In 2019 the International Bar Association published its report titled *'Us Too? Bullying and Sexual Harassment in the Legal Profession'*. This report revealed that a significant number of respondents working in Australian legal workplaces reported experiencing sexual harassment or bullying in the workplace.²

Additionally, it is well known that the legal profession has significant issues with mental health, stress and wellbeing. As noted in the *'Being Well in the Law'* Guide published by the Law Society of NSW, NSW Young Lawyers and the Australian National University, "solicitors and barristers exhibit higher levels psychological distress and disproportionately higher experiences of depression than members of the general population."³

Doctors have taken steps to recognise the importance of mental health as an ethical issue within the context of the medical profession. The Australian Medical Association Code of Ethics, for example, requires doctors to "Recognise colleagues who are unwell or under stress. Know how and when to respond if you are concerned about a colleague's health and take action to minimise the risk to patients and the doctor's health" ([3.2.2]).

It is certainly important for students/practitioners to self-manage their own wellbeing, and this would fall within the scope of the present TLO 6. However, the prevalence of mental health problems within the legal profession suggests that the problem is not principally one of individuals engaging in unusually poor self-management, but rather, a structural problem that requires a structural response.

The TLOs should include a statement to the effect of the following: "graduates of the Bachelor of Laws will demonstrate an awareness of mental health, stress and wellbeing, and a capacity to respond appropriately to such issues within the context of legal practice". This could be included under "TLO 2: Ethics and professional responsibility" or under "TLO 5: Communication and collaboration", however, should not be included under "TLO 6: Self-management".

These issues are not only harmful to individual students and practitioners, but also create legal and reputational risks for clients, legal workplaces and the legal profession.

Accordingly, we recommend that the (proposed) Prescribed Areas of Knowledge relating to Ethics and Professional Responsibility be expanded to expressly require an understanding of:

1. a practitioner's conduct obligations in respect of discrimination, sexual harassment and workplace bullying;
2. mental health, stress and wellbeing, and a capacity to respond appropriately to such issues within the context of legal practice (and/or possibly included as a TLO under TLO 5: Communication and Collaboration);

² <https://www.ibanet.org/bullying-and-sexual-harassment.aspx>

³ Citing Sharon Medlow, Norm Kelk and Ian Hickie, 'Depression and the Law: Experiences of Australian Barristers and Solicitors' (2011) 33 Sydney Law Review 771.

3. capacity, cognitive impairment and disability, including in respect of issues arising for Aboriginal and Torres Strait Islander Peoples (that is, furthering the TLOs and Prescribed Areas of Knowledge relating to Indigenous Cultural Competence).

3. Human Rights Law

The (proposed) Prescribed Areas of Knowledge heading of 'Administrative Law' includes "the impact of human rights legislation on administrative law, where such legislation exists." We submit that this should be expanded to ensure knowledge of human rights protections afforded by legislation, the Constitution, the common law and international law.

Accordingly we recommend that the (proposed) Prescribed Areas of Knowledge relating to Administrative Law be expanded to cover "human rights law and its relationship with administrative law."

4. Technology, non-legal expertise and the law

As new technologies emerge, a greater amount of specialised non-legal technical expertise is required to navigate legal issues involving such new technologies. Accordingly, we recommend that the (proposed) Academic Requirements be expanded to enhance graduates' ability to effectively identify and navigate the interface between the law and relevant non-legal technical expertise.

Interdisciplinary knowledge is also becoming increasingly important in legal practice, and law students should be equipped to work with emerging and disruptive technologies and provide legal advice to clients in these areas. This may necessitate learning how to collaborate and work effectively with people in cross-disciplinary fields.

Lawyers need to be able to:

1. identify when such non-legal expertise is required; and
2. understand how to effectively collaborate with experts in other disciplines.

For this reason, we consider that "the ability to effectively identify and navigate the interface between the law and relevant non-legal technical expertise" should be included as a TLO. As part of this TLO, the requirements should include an ability to demonstrate an understanding of:

1. how and when interdisciplinary knowledge and/or collaboration can:
 - a. assist with identifying and understanding legal issues; and
 - b. optimise the crafting of and application of the law,
2. the legal complexity that changes in technologies have introduced, and those which new technologies may introduce, to the subject matter of mandatory academic subjects,

3. how practice specific to areas of law which are designated as mandatory subjects have been or are likely to be disrupted by technology.

5. Thinking Skills

It is important for lawyers, from graduate level, to be able to critically examine and understand the practical impact of laws on individual clients and the broader community, including the legal implications of issues that arise outside of law. Being able to critically evaluate law and apply the law to realistic scenarios, beyond problem questions, will equip lawyers with the skills necessary to engage in broader work in the law, including advising clients, drafting and interpretation of legislation and regulations, and law reform advocacy.

It is also important for lawyers to be able to learn and demonstrate the practical ability to synthesise theory with practice by drafting instruments. For example, to be able to both draft an instrument such as a contract whilst also being able to critically think about the implications on the contracting parties, stakeholders, and society. Critical thinking skills and drafting skills need to be embedded across many areas of learning and accordingly are suited to become a TLO rather than a specific requirement of a Prescribed Area of Knowledge.

Accordingly, we recommend that TLO 3: "Thinking Skills" be expanded so as to require a demonstrated ability to critically evaluate law and its impact on individuals and communities, and be able to synthesise theory with practice by drafting legal documentation to develop solutions for different practical scenarios.

We consider the expansion of the requirements for critical thinking for students in this way will further develop and improve graduates' competency in legal practice.

6. Delivery of the Academic Requirements

We recommend that the LACC give consideration to the evolving nature of tertiary education and its impact on whether the Prescribed Areas of Knowledge and the TLOs can be effectively implemented to achieve the intended outcomes, given the changing modes of learning in tertiary institutions. NSW Young Lawyers is concerned that the various changes in delivery of law subjects at some universities are negatively impacting upon the ability for students to manage study loads, causing increased stress for law students and the impact on students' ability to acquire all the attributes and competencies envisaged by the Prescribed Areas of Knowledge and the TLOs.

Various universities in NSW have departed from the traditional model of course delivery in one or more of the following ways, which may impact upon the effective delivery of the academic requirements:

1. delivering courses in trimesters, rather than semesters;
2. the academic component of course delivery shortened to as few as 10 weeks, reducing course content, teaching time, and the time to consolidate learning;
3. mid-course reading weeks removed, or shortened to as little as 1 week, reducing time to consolidate learning and complete assessments;

4. end of coursework (study vacation) breaks before exams removed, or shortened to as little as 3 days, creating reported high levels of stress among law students; and
5. Over-reliance on online delivery to cover key content, limiting class discussion opportunities.

We recommend that the LACC give consideration to the evolving nature of tertiary education and its impact on whether the (proposed) Academic Requirements (including the TLOs) are able to be effectively delivered given condensed teaching periods and varying modes of delivery.

7. Transitional arrangements

We recommend that any changes be implemented with appropriate transitional arrangements to as not to disadvantage any students who have commenced studies under the existing requirements.

8. Ongoing monitoring and consultation

We recommend ongoing consultation with stakeholders and regular monitoring of any redrafted versions of the Academic Requirements for Admission .

The Academic Requirements for Admission and their descriptions should be amended as required with the ongoing assistance of a broader spectrum of stakeholders. We recommend this consultation include consumers of law degrees (students), practitioners and industry representatives. Further, at a minimum, cohorts of graduates with 0-2 years PAE should be consulted regarding whether the mandatory subject areas adequately correlate to the academic knowhow that has been required in practice, and whether the mandatory subjects may require any further modification, with the benefit of this understanding.

As consumers of mandatory academic subjects who then practise law, we suggest this group of stakeholders and their supervisors may be one of the groups most able to provide valuable insight into these questions.

Concluding Comments

NSW Young Lawyers thanks you for the opportunity to make this submission. If you have any queries or require further submissions, please contact the undersigned at your convenience.

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