SUBMISSION

From: Council of Australian Law Deans
To: Law Admissions Consultative Committee
Regarding: Review of Academic Requirements for Admission to the Legal Profession
Date: 3 March 2015

Basis of submission
The Council of Australian Law Deans (CALD) welcomes this opportunity to comment on the limited Review of Academic Requirements for Admission to the Legal Profession (Limited Review) released by the Law Admissions Consultative Committee (LACC). CALD is the peak body of Australian law schools, and the Deans of all the law schools in Australia are members. CALD’s objectives include consultation on matters of mutual concern to members, the furtherance of legal education, and the maintenance of close relations between law schools and the legal profession. This submission reflects the views of CALD members in responding to the Limited Review, which raises matters of great significance to each of these core objectives.

Summary of submission
The key points in this submission are as follows:

1. CALD recognises the importance of reviewing the Academic Requirements for Admission to the Legal Profession (Academic Requirements) at intervals to ensure that an appropriate balance continues to be struck between consumer protection, the changing needs of the profession, changes in universities and the ability of law schools to cater to increasingly diverse student cohorts.

2. Given that a significant range of developments relevant to the matter of how best to regulate admission requirements have occurred since agreement on the current Academic Requirements was reached in 1992, CALD acknowledges that that there may be merit in a serious review of the Academic Requirements.

3. However, given the extensive structural ramifications that would flow on from changes to the Academic Requirements at all three levels of legal education, CALD submits that any proposals raised for consideration should adopt a more rigorous evidentiary basis for change than the high level overview offered in the Limited Review.

4. CALD further submits that the consultation period has been too short to allow for serious consideration of the proposals put forward by the range of stakeholders which should be involved in any serious review.

5. Therefore, while CALD is not opposed to a comprehensive national consultative review of the Academic Requirements for Admission in context of the broader structure of Australian legal education, at this stage CALD does not support any of the proposals put forward in the Limited Review.
Introduction

1. CALD recognises the importance of reviewing the academic requirements for admission to legal practice at appropriate intervals. A broad range of developments relevant to the matter of how best to regulate admission requirements have taken place since the current Academic Requirements were mandated in 1992. Indeed, the legal profession itself has changed appreciably in the interim, with the shift to obtaining practical legal training (PLT) through PLT courses conducted by specific providers rather than through articles of clerkship, the increased globalisation of both law firms and legal matters, and the increasing diversity of law graduates. CALD also acknowledges the significance of the shifts in the broader context of legal education referred to in the Limited Review – namely, the adoption of the PLT Competency Standards for Entry-Level Lawyers, the request from senior Victorian judicial officers to review the Academic Requirements in order to ensure that statutory interpretation is given appropriate prominence and priority at the academic level, the development of the Threshold Learning Outcomes (which CALD itself initiated), the recent Productivity Commission report, the ‘globalisation’ of legal practice, and the release of the LETR Report in the UK.

2. CALD notes further that the introduction of the Australian Qualifications Framework (AQF) also warrants consideration, in that it has raised questions at the academic level of which aspects of regulation of law schools should reside with legal admissions bodies, and which aspects with other regulators at the state and Federal level. Law Schools are subject to multiple, overlapping regulatory processes and any review of the questions raised by the Limited Review would need to include serious consideration about the appropriate type of regulatory oversight provided by the profession as compared to other regulatory bodies (and as compared to respecting a level of autonomy and individuality for law schools).

3. Given these significant developments in the broader context of legal education, CALD acknowledges that this may be an appropriate time for a systematic review of the Academic Requirements. The process that has been adopted for this Limited Review, however, and some of the proposals that are implicit in the questions asked and the background paper mean that this is not the appropriate mechanism by which serious changes to the Academic Requirements should be contemplated.

Process and Consultation

4. While this review is described as ‘limited’, the questions that it asked are wide ranging, complex and have the potential to ground the most profound change to legal education and admission to practice in several decades. The questions raise some specific subjects for deletion from the curriculum and one for inclusion but also open up questions as to any other inclusions or deletions. In addition, they contemplate different ways of articulating the Academic Requirements, different types of requirements (eg skills or attributes), and more regulation of assessment. Any of these ideas may or may not have merit as a matter of substance, but their potential cumulative effect could be substantial and far-reaching. This is
not simply a genuinely limited review of, for example, the precise wording of the current Academic Requirements. It requires serious consideration of a range of very significant issues.

5. In light of this, the process adopted and the time for consultation were manifestly inadequate. The Limited Review was only made public a few weeks before the Christmas close-down at many Law Schools (and, indeed, law firms, courts etc). Only a few months were provided to respond, despite the complexity and importance of the issues being discussed. For law schools to take these issues with the degree of rigour and seriousness they deserve required a proper period to consult internally with those who teach the relevant subjects and others with extensive experience in curriculum development. We would also have wished to consult with some of our key stakeholders (eg some of the larger employers of law graduates) and make sure that they were also aware of the Limited Review and could either respond directly or through some law school submissions. Many law schools would also have liked to consult with students and student bodies as it is they who will be most directly impacted by any changes, yet students do not return to most universities until a few weeks before final submissions were due.

6. There was an even more substantial difficulty in a body such as CALD responding in the timeframe. Our final meeting for the year was over by the time that the Limited Review was released and the next one was not scheduled until two weeks before final submissions were due. A body with a diverse group of members and a consensus decision-making style where possible could not be expected to develop a substantial response over this time. We are concerned that some other representative bodies that only meet 3-4 times a year might be in the same position and that the responses will therefore not reflect a good cross-section of interested parties. A review of such significance would usually include a substantial plan for stakeholder engagement rather than simply providing a paper for comment.

Lack of Coherence and Rigour

7. Building on these process concerns, CALD is concerned that the Limited Review raises a series of possible changes but does not engage in rigorous evidentiary analysis of these changes raised that would properly ground the potentially major amendments to the Academic Requirements it contemplates. The Limited Review lacks appropriate characterisation and evidence of the problem which it purports to address, and credible analysis of how the proposed changes would improve on what is currently offered. This lack of firm analytical grounding is demonstrated in the following areas:

a. The Limited Review is unclear in framing the problem(s) being addressed: it is unclear from the analysis included in the Limited Review the extent to which the problem being addressed is the changing nature of the skills required in the profession (for example, the inclusion of statutory interpretation or the inclusion of skills and personal attributes relevant to the profession) or the fact that many law graduates do not go on to be admitted to the profession (for example, the removal of some core subjects central to legal practice) or concerns about the hurdles faced by foreign lawyers wishing to practice in Australia. Certainly, it is appropriate to
address all of these issues in a comprehensive review. However, the limited analysis offered leaves unclear the specific intended benefit of the proposed changes to the Academic Requirements. Indeed some of the questions raise ideas that appear to be in tension with one another, particularly with respect to whether it is envisaged that the Limited Review is anticipating a result that leaves students better prepared for practice or given a more general education that might not be as relevant to practice.

b. **The Limited Review is unclear with respect to the basis for suggesting removal of subjects:** the question of whether Civil Procedure, Company Law, Evidence and/or Ethics and Professional Responsibility should be removed from the Academic Requirements seems to arise from a concern that content taught at the academic level not overlap with content taught at the practical level. However, there is insufficient consideration of the full extent to which law school and PLT curricula currently overlap or complement each other. Without this evidentiary context, the suggested removal of these four subjects appears ad hoc and of uncertain implications with regard to the flow on effects to both law schools and PLT providers (and to legal employers if neither law schools nor PLTs teach these subjects). The omission of consideration other subjects that might be taken out of the Academic Requirements makes it difficult to assess the proposed removal of the four subjects listed against the full range of possible (and potentially preferable) alternatives. There is some evidence of the needs of the profession in the United Kingdom taken from the LETR Report in the UK (some of which would suggest that at least some of these subjects are valued by the profession) but no equivalent examination of the views of the profession in Australia.

c. **The basis for suggesting inclusion of Statutory Interpretation is unclear:** CALD acknowledges the fundamental importance of the skill of statutory interpretation to contemporary legal practice, and our members have worked with LACC to report comprehensively on, and enhance the learning outcomes of, the delivery of this crucial skill. We are currently finalising a Good Practice Guide with respect to teaching Statutory Interpretation in collaboration and consultation with the profession. However, it is not clear why statutory interpretation is singled out in the Limited Review for potential inclusion in the Academic Requirements, given that there are numerous other subjects that are routinely recommended by parts of the profession for inclusion (including alternative dispute resolution, taxation law, and environmental law, for example). Furthermore, there is a range of legal skills commonly agreed to be fundamental to legal practice which are not currently included in the Academic Requirements (including common law method, case analysis, legal research, and legal writing, for example). The lack of acknowledgement or analysis of the potential inclusion of these knowledge areas and skills for inclusion in the Academic Requirements (other than in a generally phrased question (6.4) renders it difficult if not unwise to appraise the potential benefit, if any, of including Statutory Interpretation as a standalone Requirement.
d. The Limited Review makes an inadequate distinction between the roles of law schools and PLT providers: the seeming assumption of the interchangeability of law schools and PLT providers (or employers or CPD providers) as providers of foundational legal knowledge for the purposes of legal practice is not well founded. The sectors have structurally distinct modes of operation, course delivery and indeed distinct purposes. The failure to adequately distinguish between law schools and PLT providers seems an inevitable consequence of considering the Academic Requirements in isolation from the practical requirements for admission. Both levels of education are now fundamental to the process of preparing candidates for admission to the legal profession, and the proposals on the Academic Requirements raised for comment have potentially profound implications for PLT providers as well as law schools (for example, removal of even one of the four subjects raised for comment in order to shift its delivery to the practical level could lengthen the length and time commitment of PLT courses). The removal of subjects from both law schools and PLT providers may create an additional burden of training on already stretched law firms.

e. The Limited Review is over-reliant on comparison with the UK context: CALD agrees that there is analytical benefit to be gained in comparing Australian requirements with other common law jurisdictions, including the UK, and that recent LETR report warrants careful consideration in the task of reviewing the structure and regulation of legal education in Australia. However, comparison with the UK is not a substitute for detailed empirical analysis of how academic requirements for admission should be structured and regulated in the Australian context. Indeed, it is not clear that the findings of the LETR report indicate that the English Foundations of Legal Knowledge produce better learning outcomes, yet the absence of Academic Requirements like Evidence and Company Law from the Foundations seems to be put forward in the Limited Review as a reason as to why such subjects should be removed from the Australian Requirements. The logic of this reasoning is not made sufficiently clear. Nor is there any consideration of the different context of legal education in the UK where the impact of the European Union has been significant and requires space in the curriculum.

8. CALD is therefore at this time opposed to all of the proposals raised for comment in the Limited Review. While the review self-describes as ‘limited’ it is in fact significant in its implications. Our members wish to emphasise that we are not mindlessly opposed to change and are willing to be part of a serious, national consultation that looks at the full range of issues around accreditation of law schools with proper evidence and over a sensible timeframe. CALD submits that it is critical that any such review adopt a whole-of-structure approach of university, PLT and CPD education and not single out a few elements of the current system in an ad hoc manner.
Such a review would necessarily include reflection upon the appropriate roles of the various regulatory bodies and the appropriate scope of regulatory intervention in curricular design. Our members strongly prefer that a more rigorous and sophisticated review process be designed, in order to produce a sound evidentiary basis on which to make regulatory decisions with such significant ramifications for the structure of the law courses available to Australian students. Proceeding with changes to the Academic Requirements in the absence of serious consideration of the structure of legal education as a whole would be ill-advised and potentially contrary to CALD’s objective of furthering legal education in Australia. No doubt, if such a process is undertaken, different members of CALD will have different perspectives with respect to the merits of some of the proposals mooted here and other proposals that may be generated from a high quality discussion and consultation process. At present, however, all members are concerned that the process to date has been flawed and that far more work needs to be done before we can have a serious set of proposals for response by the wider legal community.