20 March 2015

Ms Frances McMurray
Law Council of Australia
19 Torrens Street
Braddon ACT 2612

By email – frances.mcmurray@lawcouncil.asn.au

Dear Ms McMurray

The Law Admissions Consultative Committee (“LACC”): Review of Academic Requirements for Admission to the Legal Profession – Submission by the Bar Association of Queensland (“BAQ”)

We refer to the LACC’s written invitation to the BAQ to provide submissions on the Review of Academic Requirements for Admission to the Legal Profession. Specifically, we note the ten questions listed in Item 6 of the written invitation and respond accordingly below.

The questions raise the important issue of what knowledge a law student should have as a foundation prior to entering into any practical legal training or utilising their law degree in other professions. A working knowledge of areas that form the foundation of our legal system, economic society and the legal profession is fundamental in the view of the BAQ.

1. Should any or all of the following areas of knowledge be omitted from the Academic Requirements:

   (a) Civil Procedure

   The BAQ is opposed to the omission of Civil Procedure from the Academic Requirements.

   It is important for all students to obtain a working knowledge of the procedures upon which our Courts operate, even if they do not strictly practise in litigation. The Courts and the discharge of their role forms a critical part of the foundation of our legal system. Any law degree should educate students of how the Courts operate so that, in practice, they can inform a client if necessary and also appreciate the importance of the implications of steps they take and documents they create if a matter may end up in litigation. Specifically, it is important for students to acquire knowledge about:

   • Jurisdiction;
   • Relevant parties to litigation;
- Pleadings, particulars and notices to admit;
- Obtaining evidence – discovery, interrogatories and subpoenas;
- Interlocutory applications;
- Alternative dispute resolution;
- Appeals;
- Enforcement of judgment.

It is noted that Civil Procedure is not a mandatory academic requirement in England but, rather, intending solicitors or barristers must study civil procedure as part of the twelve month full-time Legal Practice Course or Bar Professional Training Course (as the case may be). The same approach should not be followed here in Australia because of the significantly less onerous postgraduate study and/or training required for eligibility for admission to the legal profession.

In England, following completion of the twelve month full-time Legal Practice Course, intending solicitors are required to undertake a two-year training contract as an employee of a legal office before becoming eligible for admission.\(^1\) Similarly, an intending barrister is required, following completion of the Bar Professional Training Course, to undertake pupillage with a set of chambers for one year before becoming eligible for admission as a barrister.\(^2\) The opportunity to acquire the knowledge and skills of civil procedure for students in England is omnipresent in the requisite postgraduate education and supervised work prior to eligibility for admission.

The opportunity to acquire such knowledge and skills in Australia prior to eligibility for admission is not so readily available. While Civil Procedure and Alternative Dispute Resolution are both included in the compulsory practice area of Civil Litigation Practice in the *PLT Competency Standards*, the value of its inclusion in all PLT programs is undoubtedly improved by the fact that students presently enter the PLT program with a basic level of understanding of civil procedure obtained from an undergraduate degree. It may even be the case that some PLT programs are designed and taught on the assumption that incoming students possess a certain level of knowledge and skills in this particular area. If that is the case, a more global approach in conjunction with PLT program providers ought be adopted in respect of any proposed changes to the Academic Requirements.

(b) Company Law

The BAQ is opposed to the omission of Company Law from the Academic Requirements.

It is important for all students to acquire knowledge about:

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\(^2\) Bar Standards Board: https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/pupillage/
• Corporate personality;
• The company constitution;
• Administration of companies and management of the business of companies;
• Duties and liabilities of directors and officers;
• Share capital and membership;
• Members' remedies;
• Company credit and security arrangements;
• Winding up of companies.

Whilst Company Law is now included in the compulsory practice area of Commercial and Corporate Practice in the PLT Competency Standards, the value of its inclusion in all PLT programs is undoubtedly improved by the fact that students presently enter the PLT program with a basic level of understanding of company law obtained from an undergraduate degree. The underlying legal principles which form company law need to be understood and cannot be compensated for by practical training on aspects of its operation in the context of a PLT program. Corporations are the most common vehicle used by business, profit-making and non-profit making, in Australia.

The less onerous postgraduate study and/or training required for eligibility for admission to the legal profession in Australia (compared to England), places significant importance on the inclusion of areas of knowledge such as Company Law in the Academic Requirements. It may even be the case that some PLT programs are designed and taught on the assumption that incoming students possess a certain level of knowledge and skills in this particular area. If that is the case, a more global approach in conjunction with PLT program providers ought be adopted in respect of any proposed changes to the Academic Requirements.

(c) Evidence

The BAQ is opposed to the omission of Evidence from the Academic Requirements.

It is important for all students to acquire knowledge about:

• Competence and compellability;
• Privilege;
• The examination of witnesses;
• Disposition and character;
• Similar fact evidence;
• Burden and standard of proof;
• Documentary evidence;
• Opinion evidence;
• Hearsay;
• Admissions and confessions in criminal matters;
• Illegally obtained evidence;
• Res gestae;
• Corroboration evidence.
Whilst elements of Evidence are now included in the compulsory practice area of Civil Litigation Practice and Criminal Law Practice in the PLT Competency Standards, the value of its inclusion in all PLT programs is undoubtedly improved by the fact that students presently enter the PLT program with a basic level of understanding of evidence obtained from an undergraduate degree. Again, while Evidence is generally the tool of those who practise in litigation, it is one of the pillars of the common law and an understanding of the principles from an academic perspective is necessary for the well-rounded calculation of any damages and particularly as a prerequisite to training on the practise and operation of evidence law.

The less onerous postgraduate study and/or training required for eligibility for admission to the legal profession in Australia (compared to England), places significant importance on the inclusion of areas of knowledge such as Evidence in the Academic Requirements. It may even be the case that some PLT programs are designed and taught on the assumption that incoming students possess a certain level of knowledge and skills in this particular area. If that is the case, a more global approach in conjunction with PLT program providers ought be adopted in respect of any proposed changes to the Academic Requirements.

(d) Ethics and Professional Responsibility

The BAQ is opposed to the omission of Ethics and Professional Responsibility from the Academic Requirements.

A breach of ethical rules in the practise of law has a significant effect on the public, other members of the profession and the confidence of the community in the legal system. While there is no doubt the PLT courses provide valuable training, the fundamental nature of ethics and compliance with those ethical standards needs to be instilled in law students and continue throughout their practising lives whichever area of the profession.

It is important for all students to acquire knowledge about professional and personal conduct in respect of a practitioner’s duty:

- to the law;
- to the Courts;
- to clients, including a basic knowledge of trust accounting;
- to fellow practitioners; and
- in the case of barristers, the cab-rank rule.

Whilst Ethics and Professional Responsibility is a compulsory subject in the PLT Competency Standards, the value of its inclusion in all PLT programs is undoubtedly improved by the fact that students presently enter the PLT program with a basic level of understanding of Ethics and Professional Responsibility obtained from an undergraduate degree. The less onerous postgraduate study and/or training required for eligibility for admission to the legal profession in Australia (compared to England), places significant importance on the inclusion of areas of knowledge such as Ethics and Professional Responsibility. It may even be the case that some PLT programs are designed and taught on the
assumption that incoming students possess a certain level of knowledge and skills in this particular area. If that is the case, a more global approach in conjunction with PLT program providers ought be adopted in respect of any proposed changes to the Academic Requirements.

2. If so, why?

As above.

3. Should statutory interpretation be included as an Academic Requirement?

The BAQ recognises the importance of statutory interpretation and supports its compulsory inclusion in legal education particularly given the continuing amount of new legislation in Australia. Its inclusion as a dedicated stand-alone subject is perhaps unnecessary provided it is an area which is compulsorily embedded into other substantive subjects by way of content, skill and assessment. Without an assessment of the content of other subjects, it is difficult to form a view on whether statutory interpretation is being given a sufficiently prominent note in the academic teachings in such subjects. If it is not sufficiently embedded in other subjects, then the BAQ believe statutory interpretation should be made a separate subject in the Academic Requirements.

4. Is any other area of knowledge, not presently included in the Academic Requirements, now of such basic potential importance to the great majority of practitioners today, that no law graduate should be permitted to practice without it?

The BAQ acknowledges the importance of restitution law and supports its compulsory inclusion in legal education. However, it is difficult to form a view on whether it is already being sufficiently taught in legal education and/or whether it should be a stand-alone subject without a review of the content of the other subjects.

5. If so, should any such area be added to the Academic Requirements?

As above.

6. Should the drafting technique used in the Academic Requirements be amended in any way?

The BAQ supports the LACC's preliminary view that the Academic Requirements should continue to be expressed in a way that encapsulates the minimum substantive content of fundamental areas of legal knowledge. Whilst such an approach may be prescriptive, it is paramount that law graduates from every Australian university have demonstrated comparable minimum knowledge and skills upon graduation.

7. If so, how?

As above.
8. In light of the development of the TLOs, should the Academic Requirements be altered or supplemented also to take account of intellectual skills and personal attributes necessary to process and deploy areas of knowledge prescribed by the Academic Requirements in legal practice?

The BAQ is of the view that it is unnecessary to alter or supplement the Academic Requirements to take account of intellectual skills and personal attributes necessary to process and deploy areas of knowledge. Such skills and attributes are undoubtedly critical for legal education and for eligibility for admission to the legal profession. However, provided all universities provide regular, consistent and varied methods of assessment for law degrees (eg., exams, assignments, moots, group work, tutorial participation), then satisfactory attainment in such assessment is sufficient to ensure that each law graduate possesses the requisite skills and attributes necessary.

9. How might the Academic Requirements be altered or supplemented to resolve some or all of the problems of consistency of standards referred to above?

The Academic Requirements might be supplemented with:

- Universities engaging in some process of moderation to ensure that equal standards in terms of assessment and objective to be achieved are applied across the board (even though this is not uniformity in the way matters are assessed);
- Random external audits of assessment to monitor standards.

10. In particular, how might the Academic Requirements be altered or supplemented to ensure that appropriate and consistent assessment regimes exist to certify that each successful student has demonstrated the common required knowledge and skills in each Academic Requirement to a common minimum standard?

As above.

Yours faithfully

Shane Doyle QC
President