Griffith Law School
Submission to Law Admissions Consultative Committee
Review of Academic Requirements

Introduction
Griffith Law School welcomes the opportunity to respond to the paper released by the Law Admissions Consultative Committee (LACC). We have had the benefit of reading the Submission and Supplementary Submission of the Council of Australian Law Deans (CALD) and endorse its overall approach. In particular, we agree that a “limited” review is not an appropriate way to deal with changes to the academic requirements for admission to the legal profession because these requirements now reside in a complex regulatory environment which needs to be considered as a whole. If there is to be a review, and we agree that there should be, it must be conducted in a comprehensive and carefully planned manner. We support the CALD proposals made for such a “rigorous” evidence-based review in the Supplementary Submission.

We provide our own submission, however, because the Limited Review has raised some significant concerns for the Griffith Law School (GLS) and we hope to contribute to the Committee’s consideration of how to move forward. We particularly wish to register our strong concern at the suggestion that Ethics and Professional Responsibility be omitted from the Academic Requirements.

We suggest that a more comprehensive and systematic review of the academic requirements should move beyond considering the nature of substantive legal content to be addressed in a law degree program. We submit that such a review should address the following issues:

- What are the purposes served by the coverage of substantive law?
- The importance of an incremental developmental approach that sees fundamental concepts reviewed and revisited across the law degree in different substantive legal contexts;
- How should students engage with substantive legal issues during their studies? What students learn is influenced by how they learn and the current Academic Requirements do not address the methods that should be used to foster learning;
- The use of outcome measures as well as input measures; and
- The appropriate links between the different stages of legal education. Practical Legal Training (PLT) should be complementing and building on coverage of fundamental concepts in the LLB/JD phase.

We believe that LACC’s consideration of the nature of academic requirements could usefully draw more heavily on the extensive recent legal education developments in the United States of America. In particular, we refer to Educating Lawyers: Preparation for the Profession of Law from the Carnegie Foundation for the Advancement of Teaching (The
We note the Carnegie Report’s very useful characterisation of the six tasks involved in the education of professionals:

1. Developing in students the fundamental knowledge and skill, especially an academic knowledge base and research
2. Providing students with the capacity to engage in complex practice
3. Enabling students to learn to make judgements under conditions of uncertainty
4. Teaching students how to learn from experience
5. Introducing students to the disciplines of creating and participating in a responsible and effective professional community
6. Forming students able and willing to join an enterprise of public service.¹

We also commend the Best Practices for Legal Education Report for its methodical outline of how to most constructively approach the various elements of legal education – from setting goals to program design, delivering instruction in various forms and assessing for student learning.

We now respond to some of the specific questions posed on page 13 of the LACC paper.

### 6.1 Areas of Knowledge

**Civil Procedure**
We consider this Academic Requirement has a valuable contribution to make in developing student understanding of the practical and institutional context of civil law, the dynamics of litigation processes and dispute resolution more broadly. In many subjects, there is a critical connection between substantive and procedural rules. This Academic Requirement could be developed so as to provide the basis for the more comprehensive account of Alternative Dispute Resolution proposed by the Productivity Commission.

**Company Law**
We consider this Academic Requirement has an important role to play in enabling students to appreciate a range of concepts related to legal personality. It would appear that this coverage might be more effectively characterised as Business Law given the range of structures addressed.

**Evidence**
This Academic Requirement makes a major contribution to enabling students to understand the critical importance of evidence-based decision making in law, and the role of fact determination in both criminal law and civil law contexts. It also plays an important role in relation to the development of skills in fact gathering and evaluation of facts. These skills are important tools for all lawyers and a range of other professions that law undergraduates may ultimately enter. Although the technical rules are complex and mainly applied by judges and barristers, a basic knowledge is required to understand what information will be admissible in a case – something every lawyer should know.

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Ethics and Professional Responsibility

We are concerned about any suggestion that Ethics and Professional Responsibility should not be a part of an undergraduate law degree. It is sadly well known that lawyers do not enjoy a high level of public approbation and one of the reasons for this is the poor ethical conduct which some lawyers have demonstrated. This issue concerns professional bodies around Australia. In a recent President’s Report the President of the Queensland Law Society said in Proctor that lawyers’ professional ethics are “under greater threat than ever before”. He continued:

The ethics that bind us to our profession are a cornerstone of the justice system, and in no way a vestige of fading tradition. ... As Queensland Law Society president, I aim to see professionalism return as the bedrock of our daily existence, and to see the Society actively working with members and the wider legal community [eg university law schools] to ensure that we continue the critical task of both setting those standards and ensuring adherence.\(^2\)

It would be inconsistent with this publicly expressed concern of a leader of one of the professional bodies and of public opinion generally to remove the academic requirement for ethics from undergraduate law degrees.

In 2014 the Jubilee Centre for Character and Virtue at the University of Birmingham (UK) published a report about ethics and the practice of law. The study analysed findings from a survey of nearly 1000 ‘lawyers and aspiring lawyers at varying stages of their careers’ which explored a range of issues relevant to contemporary practice. The first of the four main recommendations was:

More time is needed for ethics education in undergraduate courses and in vocational training.\(^3\)

We note the manner in which the Carnegie Report articulated the importance of forming the identity of lawyers guided by professionalism, social responsibility and ethics. The Report noted that ‘Much of law school’s pedagogical activity presumes that issues of professionalism are somehow, somewhere being handled. However, in a time when many raise questions about the legitimacy of the legal profession in both general and specific terms, professionalism needs to become more explicit and better diffused throughout legal preparation.’\(^4\)

We consider that engagement with ethical issues is far too important to be left until the PLT stage of legal education. The Best Practices for Legal Education Report also provides support for an incremental approach to the development of ethical awareness. The Report states the program of instruction should be organised to ‘provide students coordinated educational experiences that lead them to develop the knowledge, skills, and values required for their first professional jobs’.\(^5\)

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\(^3\) J Arthur, K Kristjánsson, H Thomas, M Holdsworth, L Badini Confalonieri, T Qiu, Virtuous Character for the Practice of Law: Research Report, The Jubilee Centre for Character and Virtues, (University of Birmingham, 2014). The Report was launched by Lord Neuberger, President of the UK Supreme Court, on 25th November 2014 at the Supreme Court in London.


\(^5\) Roy Stuckey et al, Best Practice for Legal Education: A Vision and a Roadmap, 2007, 94
It seems that the thinking in professional and academic circles is around ways to enhance and energise ethical learning and teaching rather than reducing its presence.

It also needs to be understood that our Ethics course (and similar courses at other universities) promotes broad learning outcomes which encourage students to develop an ethical framework for practice and equips them with skills to resolve ethical dilemmas in the future. This mode of ethical practical is applicable well beyond the practice of law.

6.3 Statutory Interpretation
We agree that statutory interpretation is a critical skill for legal practitioners and scholars. We consider that statutory interpretation is better taught in the context of other subjects as and when appropriate through the curriculum as opposed to a stand-alone subject. The statement set out in Appendix 2 is helpful in revealing the range of techniques and issues that need to be included in a comprehensive account of statutory interpretation. We are less clear on why the approach taken for the teaching of statutory interpretation should be different from that used for other important skills, such as client interviewing, negotiation and advocacy.

6.8 Intellectual Skills and Personal Attributes
We believe that the Threshold Learning Outcomes (TLOs) are an important benchmark for law degrees and were developed through a comprehensive and consultative process. However, as stated at the beginning we are concerned about the complex web of standards and frameworks which already exist (many of which are described in the Introduction to the CALD submission). The GLS believes that careful consideration must be given to the practicalities of having to report on a range of different, but slightly overlapping, standards, outcomes and content elements to a range of different regulatory bodies.

We also note the Carnegie Report’s characterisation of practical skills as best developed through ‘modelling, habituation, experiment, and reflection.’ We commend this type of incremental development approach where students are introduced to these skills, given opportunities to develop familiarity and to then extend their ability to use those skills in increasingly complex situations.

The capacities to locate, access, analyse and apply the applicable law are also very important. The dynamic nature of law and the pace of legislative and policy change mean that it is increasingly important for law students to develop their capacity to access the current law in any given substantive area at any given time.

6.10 Appropriate Assessment Arrangements
We submit that consideration of assessment should be focused on appropriateness rather than consistency. Assessment arrangements should be framed by the need for validity, reliability and fairness. We note the excellent assessment guidelines provided in Chapter Seven of the Best Practices for Legal Education Report.

Conclusion
At page 7, the LACC Paper refers to the ‘likely difficulty of achieving consensus’ as a reason for previous reluctance to embark on a review of the Academic Requirements. We consider it worth noting that the Legal Education and Training Review in England and

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Wales appears not to have been characterised by difficulties of the kind referred to. While there may be differing views expressed by relevant stakeholders in any review of legal education in Australia, these should serve to enrich the process of review.

Contact for Further Information
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