Submission to Law Admissions Consultative Committee
Review of Academic Requirements for Admission to the Legal Profession

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Summary of submission

The School of Law and Justice at the University of Southern Queensland endorses the position taken by the Council of Australian Law Deans in that while there is merit in an overall review of the academic requirements for admission to the legal profession, there is a need for further detailed consideration of the preliminary proposals currently under discussion – which in view of their significance would seem to require careful evidence-based justification.

Background

The Law Admissions Consultative Committee (LACC) is of the view that it is timely to undertake a Limited Review of the present 11 academic requirements. In particular, LACC has questioned the inclusion of four current areas of knowledge as fundamental threshold knowledge areas for all entry-level lawyers. These are: Civil Procedure; Company Law; Evidence; and Ethics & Professional Responsibility. The rationale for selecting these four areas appears to be an assumed capacity for Professional Legal Training (PLT) courses to provide the necessary knowledge for lawyers intending to practise. LACC has also canvassed the question of whether Statutory Interpretation or any other additional area of knowledge should be included as an academic requirement.

Structure of USQ’s LLB and JD degrees

After a period of detailed consultation, USQ has recently re-organised its LLB and JD degrees to improve their content and relevance. One significant change to the LLB has been a reduction in the number of units from 32 to 24 units, meaning the basic degree can now be completed in three years, together with the addition of a separate honours year which includes intensive legal research training and a chance for students to focus particularly on international and comparative topics (8 units). As part of this streamlining of the degree, ‘double’ units such as torts, contract, property and criminal law, which are all included in the 11 academic requirements, have been condensed.

We are conscious that law schools in Australia, as a result of streamlining and/or restructuring, now take different approaches to the incorporation of the 11 academic
requirements into their LLB or JD degrees. For example, the law of civil obligations, which covers two of the 11 academic requirements (torts and contract), can be taught in two, three or four compulsory units. The new USQ three year LLB degree (containing a total of 24 units as noted above), has 19 units that are compulsory. The law of civil obligations now comprises three of those 19 compulsory units (previously four units). If Civil Procedure, Company Law, Evidence, and Ethics & Professional Responsibility were no longer part of the 11 academic requirements, then USQ and all other Law Schools would have the option of either retaining all or some of these four areas as compulsory units, or treating them as law electives. An accompanying question would be whether any other areas of law are sufficiently important to warrant substitution for all or some of these four areas. We note in this regard that USQ has included Alternative Dispute Resolution (ADR) as a core course since the inception of our law degree in 2008. It is the first law school in Queensland to do this, in recognition of the importance of ADR for all law graduates.

It is the view of the School of Law and Justice at USQ that a detailed overall review of the academic requirements for admission to the legal profession should be undertaken in a holistic, evidenced based manner. At this point it is difficult to conceive that a credible law degree might not contain courses on evidence or ethics. These courses are considered significant to any law graduate, irrespective of whether they intend to engage in legal practise. Further, it is unclear on what basis another procedure course such as Criminal Procedure, for instance, is to be retained, while Civil Procedure is to be excluded? Procedure is fundamental to the operation of courts, as is ADR, and it would seem that without such knowledge both the credibility and the value of a law degree are eroded.

As to inclusion of Statutory Interpretation (or any other additional area of knowledge) as an academic requirement, we would suggest again that what is needed is a full review in open consultation with law schools and the legal profession - to provide cogent evidence on which to base additions or subtractions to the existing 11 academic requirements.

The globalisation of legal practice is mentioned as one of the contextual changes that might justify a review of the Priestley requirements. Part of the rationale given for removing the requirement for Australian students to study Evidence, Civil Procedure, Company Law and Ethics is that these areas of knowledge are not required for admission in other jurisdictions – and in that sense Australian Law Graduates might therefore be overqualified. It might be readily acknowledged that international context is important to a full understanding of changes in the way law is studied and practiced, however it would seem that changes to the Priestley requirements ought not to be made without primary regard to the Australian context. These four units are certainly no impediment to admission in other jurisdictions.

It is our view that essentially there are four issues for any Law School designing a law degree:

1) What academic areas have to be taught?
2) How should these compulsory areas be taught?
3) What combination of compulsory and elective courses should be offered, and
4) What are the graduate attributes and knowledge that a law graduate requires today and into the future?

Whether or not the four areas of knowledge identified by the Limited Review remain part of the 11 academic requirements, Law Schools should certainly retain the option of continuing to treat them as compulsory units.

Responses to the LACC questions

1. Should the four areas of knowledge identified by the Limited Review be omitted from the academic requirements?

None of the four areas of knowledge identified by the Limited Review ought to be omitted from the academic requirements without a comprehensive review of the requirements in the Australian context.

In particular:

Corporations Law

Company law is familiarising students with an entity that is a pure creature of statute. The details of it is not something that can be easily ‘picked up’ later if not part of the degree. At the same time, it is a fundamental part of any commercial practice. The use of company structures is so pervasive we find it difficult to see how any legal practitioner could avoid the area.

It is one of the key examples in the Australian law degree where statutory interpretation is developed and applied. This fits with the desire to improve the abilities of students in this area. It provides an excellent opportunity for students to put the knowledge they acquire at an introductory level in the first year of their degree into practice in a field with specific challenges.

Evidence

The law of evidence is both complex and vital. The rules of evidence are not easily mastered, and judicial decisions on the admissibility of evidence are a frequent source of appeals. To contemplate that the law of evidence can be successfully understood in a 15 week PLT course would seem to be unrealistic. It should also be noted that students who do not necessarily wish to practise are still concerned to understand the rules of evidence. This is especially true of mature students who are already in the workplace and whose employer has an interest in potential litigation or arbitration matters. No case, whether civil or criminal, can be won without evidence. Evidence is the lifeblood of court work. All the spadework in criminal or civil procedure count for nought without evidence. The gathering of evidence is a time consuming and costly process. It is therefore essential that students have a clear grasp of the type of relevant evidence (real, oral and documentary) that can be admitted in Australian courts. Given that all cases rely on evidence, it might be argued that there are few more important courses than evidence in a law degree.
Civil Procedure

Civil Procedure was rated by England’s legal practitioners as second only to ethics in importance (as acknowledged by the LACC), demonstrating the necessity of this course being included as an Academic Requirement.

In Australia, PLT courses are conducted over about 15 weeks. This is significantly less than the English version. Unless we also intend to extend our PLT (ie to 12 months) so that these practice areas can be properly covered, then the removal of this course from the academic requirements could place Australian law graduates at a significant disadvantage. This could affect job opportunities for Australian graduates in a competitive global environment.

Ethics and Professional Responsibility

The importance of ensuring that students develop skills in ethical decision-making has been recognised in Australia by the inclusion of a relevant outcome in the Threshold Learning Outcomes (TLOs) for Australian law graduates. The TLOs recognise that ethical practice goes beyond a knowledge of the rules of professional conduct (the law of lawyering), and requires the development of professional judgment and an understanding of the social and professional responsibilities of lawyers more broadly.

The potential removal of the Ethics and Professional Responsibility requirement is premised on:

1) its inclusion in the PLT Competency Standards; and
2) the fact that it is not a mandatory academic requirement in England, Wales, Scotland or India.

The first point perhaps ignores the reality that students are able to engage with ethics and professional responsibility in the limited context of PLT partly because they have already developed a solid grounding in their prior studies. Professional decision-making, in particular, is a skill that is best developed over time, not taught in a short course. Whilst there may be some overlap between the Academic and PLT requirements that could be reduced (eg Trust Accounting), this should not happen without a comprehensive review.

As to the point that Ethics and Professional Responsibility is not a mandatory requirement in certain other countries, again we would suggest that whilst the international context is important a review of the academic requirements in Australia ought to be based primarily on the context of and evidence from Australia. Moreover, once again, Australian graduates achieving more than what is required for admission in other jurisdictions is no impediment to their practising in those jurisdictions.

2. Should Statutory Interpretation be included as an academic requirement?

We would suggest that this step should not be taken without evidence that a specialised unit or treatment is necessary above and beyond the material already commonly taught across existing units. Australian law schools recognise the importance of statutory interpretation, and are taking steps to enhance students’ development of this skill. CALD has recently commissioned a Good Practice Guide for Statutory Interpretation, which includes six (6)
comprehensive and detailed learning outcomes. These require students to develop a ‘solid foundation’ in the skill of statutory interpretation, as well as re-visit, practise and develop their skills throughout their degree in multiple contexts. Absent a comprehensive review of the existing academic and skills-based requirements for Australian law graduates, it would seem unnecessary and potentially disruptive to reconstruct Statutory Interpretation as a separate requirement.

3. Should any other area of knowledge be included as an academic requirement?

We note that ADR is often considered in this regard. Our law school, as noted above, has already placed ADR in the core units in recognition of its importance. This importance has been affirmed by the addition of the TLO on ADR. Particularly in this respect, we are supportive of a more holistic review of the existing academic requirements.

4. Should the academic requirements be altered or supplemented?

Given that the Threshold Learning Outcomes have been carefully drafted to comply with the requirements of the Australian Qualification Framework, and supported with research findings, we think it is unnecessary for the academic requirements to go beyond areas of knowledge and to take account of intellectual skills and personal attributes. Law Schools are already required to ensure that their graduates are able to demonstrate their attainment of the TLOs, and considerable work has gone in to identifying these outcomes, and to developing Good Practice Guides for each outcome. Broadening the academic requirements to include intellectual skills and personal attributes is a significant change that ought only to be considered in the context of a comprehensive review. In addition, many Universities have their own broader graduate attributes for their programs.

It is appropriate that law schools achieve the academic requirements in different ways, given their unique student cohorts and contexts. It is the role of the academic requirements to set the minimum standards of academic knowledge, rather than closely manage how these standards are achieved. There appears to be little evidence to indicate that Australian law graduates are not meeting the existing academic requirements.

Conclusion

We are grateful for the opportunity to have some input on these issues. It would seem at this point that further consideration and justification of the proposed changes is required. The use of England and Wales as exemplars of the way forward in Australia, and reliance on the PLT to cover a degree potentially shorn of evidence, ethics and civil procedure, would seem to be less than ideal in various respects. USQ does support an overall review, however it would appear that cogent arguments would be needed to justify the proposed change, alteration or supplementation.