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

General Response

I endorse the CALD and APLEC submissions that a limited review is not ‘the appropriate mechanism’ for amending the current Academic Requirements. A rigorous and contemporary legal education framework is essential for the future of the legal profession, employment opportunities for law graduates and the reputation of law schools. To ensure such a framework, a comprehensive review is necessary.

My core concern with the review is the reliance on the LETR as a comparison with the suggestion that the Practical Legal Training programs in Australia are able to absorb areas of knowledge currently covered in the academic course. As noted in other submissions, the UK Legal Practice Course is not analogous to Practical Legal Training (PLT) in Australia, the main reason being the significant difference in the length of the courses. PLT in Australia has been designed and developed to cover the vocational requirements for admission to legal practice, building on the foundation knowledge covered in the core academic curriculum.

Finally, an overarching consideration for a review is the relevance of the Academic Requirements in the law degree and the current environment in which a significant number of graduates do not work as legal practitioners.

Items 6.1 to 6.8 of the Limited Review are considered below:

6.1

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

- Civil Procedure
- Company Law
- Evidence
- Ethics and Professional Responsibility

Answer: No, not as part of a limited review. If a review is to take place, it should include all the prescribed areas of knowledge within the context of contemporary legal education. A full review should consider the role of PLT in partnering with the academic curriculum in order to prepare graduates for admission to legal practice. As recommended by the Productivity Commission in its Access to Justice Report (2014), a full review of legal education in its three stages (academic, practical and continuing professional development) is timely.

6.2

Question: If so, why?
**Answer:** A partial review limits the opportunity to examine and debate what is relevant and of value in legal education from the perspective of the profession, the community and the law student body.

There is an arguable case for each of the Priestly 11 areas of knowledge to remain. Arguments against omitting the above areas of knowledge include:

**General Relevance to legal practice of these Areas of Knowledge**

Company Law was the third most dominant area of practice (after Commercial Law and Conveyancing/Real Property) and Civil Litigation and General Litigation, the fourth and fifth most common areas of practice for NSW solicitors, published in the *2014 Profile of the Solicitors of NSW* by the NSW Law Society.

*Civil Procedure* includes knowledge as to ‘the cost of litigation and the use of costs to control litigation’. This is an increasingly important component of civil litigation and of the broader issue of access to justice. Civil Procedure should be expanded to include dispute resolution as recognition that the majority of civil disputes are determined through other forums than a trial. The ALRC in its *Managing Justice* Report in 2000 identified the need for law schools to teach dispute resolution.

*Company Law*, including “Corporate personality’, ‘Administration of companies and management of the business of companies’ and ‘Duties and liabilities of directors and officers’, is essential in a society where corporations are one of the major stakeholders. In practice, corporate clients are a significant client-base for many lawyers.

*Evidence* as a body of knowledge is fundamental to the efficient management of an adversarial system in which the civil and criminal jurisdictions operate. Advocates build their knowledge and skill in evidence through the continuum of the academic, practical, practise and continuing professional development stages.

*Ethics and Professional Responsibility* is core to the administration of justice, the reputation of the legal profession and the opportunity for law students to develop as ethical practitioners with an awareness and understanding of their role in maintaining the Rule of Law. There are numerous reasons why the area of knowledge should remain as a core component in the law degree. These include:

- CALD has clearly identified the essentiality of ethics as a core subject as seen in *The Standards for Australian Law Schools* (2009):
  ‘General requirements: The curriculum seeks to develop knowledge, understanding, skills and values: knowledge of the law; understanding of legal principle and of the context within which legal issues arise; skills of research, analysis, reasoning, problem-solving; and communication; and the values of ethical legal practice, professional responsibility, and community service.’ (2.3.2)

- The ALRC in its report on *Managing Justice: A Review of the Federal Civil Justice System* (ALRC Report 89) published in 2000 identified the need for law schools to increase the focus on teaching legal ethics and professional responsibility.

- To remove this area of knowledge from core teaching fails to recognise the significant contribution that law schools make to the fabric of the profession. Australian academics teaching, researching and publishing in the area of legal ethics are renowned internationally
for their expertise in ethics-related areas, including regulation, the health of the profession and access to justice.

- The component of ‘professional and personal conduct in respect of practitioner’s duty’ in the knowledge area of Ethics and Responsibility has enabled law schools to expand, both broadly and deeply, the content of this subject with the result that students are provided with opportunities to be reflective, ethically competent life-long learners.
- Ethics as a core subject undertaken by all law students provides opportunities for continuing the valuable connections between the profession and academia with lawyers teaching in these subjects and academics contributing to the development of the law, the profession and legal practice in the area of legal ethics and professional conduct.
- The increased focus of law societies and bar associations on providing members with education, resources and guidelines on ethical issues demonstrates the value placed on ethical practice. Professional responsibility and ethical practice are best covered within the continuum of the academic, practical, practise and continuing legal education stages.
- The ever present denigration (regardless of the truth of the criticism) of lawyers as ‘unethical’ will be fuelled by an absence of ethics in the core curriculum.

6.3

**Question:** Should Statutory Interpretation be included as an Academic Requirement?

**Answer:** Statutory Interpretation as an area of knowledge and practical application should be part of a full review.

6.4

**Question:** Is any other area of knowledge, not presently included in the Academic Requirements, now of such basis potential importance to the great majority of practitioners today, that no law graduate should be permitted to practise without it?

**Answer:** To ensure current and future relevant areas of knowledge are included in the Academic Requirements, the views of all appropriate stakeholders should be sought.

Due to the diversity of legal practice, it is impossible to cover all areas of knowledge applicable to all practitioners. A blend of knowledge, skills and attributes would be of greater value to law graduates from which they can build on in PLT and continuing professional development.

6.5

**Question:** If so, should any area be added to the Academic Requirements?

**Answer:** Current discussions have included international law, indigenous law and law and technology as possible core subjects.

6.6

**Question:** Should the drafting technique used in the Academic Requirements be amended in any way?
6.7

Question: If so, how?

Answer: An outcomes focus, such as used in the TLOs (‘will be able to’, ‘will demonstrate’) and the PLT Competencies (‘has competently’, ‘identified’, ‘completed’, etc.), should be considered as this approach:

1. Provides clear guidelines for law schools to design subjects and assessments;
2. Supports the framework of TLOs and Graduate Attributes currently embedded in law courses; and
3. Enables law students to learn both content and skills and to be able to demonstrate their understanding of the area of knowledge and their ability to apply that knowledge in a professional context.

As with the TLOs, the outcomes could be supported by practice notes or good practice guides.

6.8

Question: In the 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 the areas of knowledge prescribed by the Academic Requirements in legal practice?

Answer: Yes. The importance of integrating professional skills and values with an academic curriculum was recognised in the 2007 Carnegie Report, Educating Lawyers: Preparation for the Profession of Law (William M Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond and Lee S Shulman). Law graduates should have knowledge of the law, an ability to apply the law and the capacity to use their knowledge and skill to serve clients and the community.

This submission is based on my experience as a practitioner and as an academic who teaches ethics in the core degree and in the PLT program. These are my personal views and are not intended to represent the Faculty of Law at UTS.

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