Review of Academic Requirements

While LACC is primarily concerned with competency to practise law rather than the contemporary dilemmas confronting law schools, it might note the following:

a) The dramatic increase in the number of law schools from 12 in the 1980s to 38 today (or 44, if one takes into account that some universities, such as James Cook, Deakin, Notre Dame and the Australian Catholic University have more than one campus);

b) The correlative increase in the number of graduates — from 1,932 in 1984 to 12,742 in 2012. Less than 50 per cent of these graduates go into traditional private practice.

c) The legal profession has also expanded considerably, which has led to increased specialisation, as LACC notes. This heterogeneous picture means that it is not possible for all law schools to cater adequately for the growing diversity in graduate destinations.

It might also be noted that while the US picture of legal education is undoubtedly more diverse than that of Australia, US law schools may include only three or four compulsory subjects in their curricula. A separate state Bar exam follows completion of the law degree for those wishing to practise. In light of the growing disjuncture between the need to equip students for traditional private practice and a diverse range of destinations, LACC might direct its mind to this dilemma and whether a separate admission exam would also be desirable in Australia.

Rather than including more and more substantive areas of knowledge, the key question to be asked in each case is whether a designated area of knowledge is foundational to legal practice, not whether it is a useful addition. Given the degree of specialisation that has developed within the profession, law firms cannot expect neonate graduates to be job-ready on the first day. It is the responsibility of law schools to provide a good generalist legal education that focuses on basic principles so that students can choose their area of specialisation rather than fill the curriculum with predetermined compulsory courses.

6.1 Civil Procedure, Company Law and Evidence could be omitted, but not Ethics and Professional Responsibility.
6.2 Civil Procedure and Evidence: These areas of knowledge are particular to court procedure and advocacy. They are already included in the PLT Competency Standards and supplemented by the Bar Readers’ Courses. They could both be offered as law school electives.

Company Law: This was not always compulsory in the past. Indeed, the McGarvie Committee was torn between making company law or family law compulsory. It opted for company law which was accepted by the Priestley Committee. While Company Law is undoubtedly of critical importance in corporate practice, it is not foundational and could be offered as an optional course along with cognate business and commercial law courses. The inclusion of Commercial and Corporate Practice in the PLT Competency Standards would suffice for general admission.

Ethics and Professional Responsibility: Although compulsory in the PLT Competency Standards, this area of knowledge satisfies the foundational test for retention. It goes to the heart of contemporary practice as a shift from law as a profession to law as business has insidiously occurred. Competition policy, the offering of legal services by non-legal providers and the amalgamation of a number of leading Australian firms with global firms have underscored how crucial this area of knowledge. It is nevertheless desirable that Ethics and Professional Responsibility be integrated into the teaching of all subjects rather than be treated as discrete.

6.3 Statutory Interpretation: It is highly desirable that students be au fait with the principles of statutory interpretation, since we live in an age of statutes and the principles are not always well understood (sometimes, including by judges themselves). Certainly, greater attention could be paid to this issue by law schools. However, I do not believe that this justifies it being designated as another area of knowledge any more than skills, such as case analysis or legal research and writing. Of course, this does not preclude it being recommended for inclusion in a compulsory foundational or introductory skills course.

6.4 I think that the LACC must take cognisance of the point made at the outset, namely, that it should focus on minimising rather than augmenting the number of compulsory courses in a climate where ever more areas of knowledge are vying for attention. While Alternative Dispute Resolution and Globalisation have strong claims to inclusion, the LACC must resist the temptation to fill up the entire curriculum with disparate areas of knowledge that are treated as compulsory.

6.10 The issue of standardisation between law schools is always problematic. In light of the increasing number of law schools and diversity among them adverted to at the outset, LACC should nevertheless avoid being unduly prescriptive. Proposals of the past such as having the admitting authorities scrutinise all course materials of a law school or sending in deans from different schools to certify the acceptability of the standards of other schools have always come to nought because they were logistically unrealistic. Certification by individual deans should suffice. It is also desirable that a relationship of trust be fostered between the judiciary, practitioners and law schools, which is something the Australian Academy of Law is seeking to do.

Yours sincerely

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