

1 April 2014

Professor Ken Wiltshire and Dr Kevin Donnelly
Commonwealth Department of Education
50 Marcus Clarke Street
CANBERRA ACT 2600



By email: AustralianCurriculumReview@education.gov.au

Dear Professor Wiltshire and Dr Donnelly

Review of the Australian Curriculum

The Law Council of Australia is pleased to provide this submission in response to the Review of the Australia Curriculum conducted by the Department of Education (the Review).

As set out at the end of this submission, the Law Council comprises the sixteen Australian state and territory law societies and bar associations and the Large Law Firm Group, representing 60,000 lawyers across Australia.

This submission has been prepared in consultation with the Law Council's constituent bodies and our Legal Education Committee, and includes input from the Law Institute of Victoria, the Law Society of South Australia and the Alternative Dispute Resolution (ADR) Committee of the Law Council's Federal Litigation and Dispute Resolution Section. The Law Council also understands that the Law Society of Western Australia provided a submission to the Department on 12 February 2014.

The Law Council believes legal studies are an important element of the Australian Curriculum and that it is good for all school graduates to have an understanding of Australia's constitutional framework, its legislative processes, and the system of administration of justice together with the basic rights and responsibilities that shape our society.

It is important that the national curriculum instil understanding and respect for the law, Australia's legal institutions and the civil and common law rights and privileges afforded to Australian citizens. The rule of law is a fundamental concept underpinning Australia's constitutional democracy, and yet it is a concept seldom touched upon or understood by high school graduands. Similarly, the respective roles of the legislature, the executive government and the judiciary are core elements of civics education, which the Law Council submits should be included.

The Law Council also supports including teaching units on civil rights and freedoms including those which Australia is obliged to protect under international law, and the legal history of Indigenous Australians.

The Law Council was involved at various stages of the Australian Curriculum Assessment and Reporting Authority (ACARA) review of the Australian Curriculum and provided

submissions to ACARA in August 2012 in response to the Draft Shape Paper on the National Curriculum Review: Civics and Citizenship ([available here](#)) and subsequently in July 2013 to the review of the Australian Curriculum on the Draft Years 3-10 Australian Curriculum Civics and Citizenship ([available here](#)).

Legal Education and Federalism

It has been found through inquiries such as the 2008 National Human Rights Consultation that many Australians have limited knowledge and understanding of their legal rights and responsibilities, and the sources of those rights.

The Law Council considers that learning about the sources of law, its institutions and the rights and privileges held by Australian citizens can promote respect for the law and the administration of justice. Basic legal education should commence at an early stage of the Curriculum, complemented by more detailed coverage in later years.

The notion of federalism should be taught at all year levels, given the importance of federalism in the development of our Constitution and national identity. The Law Council believes students should develop an understanding of the relationship between State, Territory and Federal Governments, the difference between States and Territories, why Australia has a federal system, and the reasons for and advantages and disadvantages of a federal system, compared with other systems. The Curriculum should promote an understanding of the Constitutional foundation of Australian society and the history of representative government, reference to local government and the different tiers of government.

Rule of law

The Law Council considers that in Australia, the rule of law is often referred to in political and legal discourse, but seldom fully understood by those without tertiary education in law or the humanities. However, this is a concept that is fundamental to Australia's constitutional democracy.

The Law Council considers that educators should regard it as essential that students from an early age, are taught that Australian society is governed by a system of laws, which are validly made by their elected representatives in an open and transparent way and which bind all people and their governments. This requires a broad understanding of the roles of the legislature, executive and judiciary, the sources (and limits) of their powers and the separation of those powers. It requires an understanding that the law is to be applied equally and fairly, and that certain rights and presumptions flow from the rule of law. These include the right to a fair and public trial, the right to competent and independent legal advice, an independent judiciary, the presumption of innocence and freedom from self-incrimination, the right not to be prosecuted for any offence not known to the law and the right not to have the law applied retrospectively.

In this regard, the Law Council refers the review panel to the Law Council's [Rule of Law Principles](#).¹

Human Rights

The Law Council believes that all Australians require an understanding of human rights which are protected under Australian law, or which Australia has undertaken to protect under international law.

¹ See <http://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/a-z-docs/PolicyStatementRuleofLaw.pdf>

The Law Council considers that particular attention should be given to ensuring that education about the full range of internationally recognised human rights is incorporated into the Curriculum.

A key finding of the National Human Rights Consultation carried out in 2009-10 was that a significant proportion of Australians lacked basic understanding about whether Australia has a Bill of Rights and which rights are recognised under Australian law. Accordingly, it would also seem appropriate to include specific understanding of legislative, as opposed to constitutional rights, and which commonly recognised rights and freedoms are protected under Australian law (such as, freedoms of speech and from discrimination).

In addition, several States and Territories have existing human rights legislation, and it is submitted that the right of workers to a safe and fair workplace should also be included in the Curriculum.

Aboriginal and Torres Strait Islander Legal History and Participation

The Law Council believes the Curriculum should recognise Aboriginal and Torres Strait Islander histories and cultures and encourage students to learn about indigenous societies and laws. A key objective should be to enhance understanding about past laws and policies, as well as important developments in the law, which have affected Aboriginal and Torres Strait Islander peoples.

In 2011, the Expert Panel on Constitutional Recognition of Aboriginal and Torres Strait Islander Australians conducted a national consultation to gauge the views of Australian citizens on a proposal to amend Australia's Constitution, to recognise Indigenous Australians and consider whether certain rights should be guaranteed. In its Final Report, the Expert Panel noted that:

"...consultations revealed limited understanding among Australians generally of our constitutional history, especially in relation to the exclusion of Aboriginal and Torres Strait Islander people from full citizenship."²

Improving community understanding of Aboriginal and Torres Strait Islander legal history in Australia is an important step toward promoting reconciliation and achieving the commitments of governments at Federal, State and Territory level to 'close the gap' in indigenous and non-indigenous life expectancy and living standards.

The Law Council submits that a central and fundamental truth is that a strong education for Aboriginal and Torres Strait Islander students is essential if significant in-roads into Indigenous disadvantage is to be made in the next generation.

The Law Council also considers that an education system which is culturally appropriate and relevant is an important aspect of keeping Aboriginal youths in schools and with the best chance of securing employment and access to higher education. Education about the law, legal institutions, rights, responsibilities and their interactions with Aboriginal and Torres Strait Islander legal systems and laws can assist in building respect for the law and the important place of Aboriginal and Torres Strait Islander peoples in Australia's national and cultural identity.

² Youmeunity – Expert Panel on Constitutional Recognition, Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution, January 2012, Final Report, Commonwealth of Australia, page xii.

Alternative Dispute Resolution

Alternative dispute resolution (ADR) refers to processes, other than judicial determination, which provide less formal means of resolving disputes between parties.

The Law Council notes the submission by the former National Advisory Committee on Alternative Dispute Resolution “NADRAC” to the Productivity Commission’s *Access to Justice Inquiry*, and agrees that reference to the techniques of ADR should be part of the Australian Curriculum on Civics and Citizenship.³

In its submission to the Productivity Commission, NADRAC referred to its earlier submissions that had recommended the Civics and Citizenship Curriculum include learning about dispute resolution and conflict management during Years 3–8, and as an optional study in Year 9, with the subject matter taught becoming more sophisticated as students mature. NADRAC wrote:

Teaching such concepts and utilising dispute resolution skills throughout Years 3–9 entrenches an awareness of the proper and healthy nature of dispute. This includes an awareness that dispute, civilly handled, can usually be resolved, and that all citizens can behave in a way that will aid resolution. Young citizens can learn to recognise that if a dispute is unlikely to be resolved quickly or easily there are techniques available to assist them to find resolution that does not necessarily involve judicial intervention or formalised processes.

...

Being able to identify situations where the use of ADR is appropriate at critical junctions throughout the dispute process not only benefits individuals accessing justice, but also has widespread benefits to other citizens and the community in which they live.⁴

While not necessarily embracing the entirety of the NADRAC submission, the Law Council does endorse the sentiments expressed in this passage.

Conclusion

The Law Council would be pleased to provide further contributions to the National Curriculum Review if the opportunity arises in the future, or to respond to any questions arising from this submission. The responsible officer at the Law Council is Emma Hlubucek, on (02) 6246 3726 or emma.hlubucek@lawcouncil.asn.au.

Yours sincerely



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³ National Alternative Dispute Resolution Advisory Council submission to the Productivity Commission, ‘Inquiry into Access to Justice Arrangements’, 7-8.

<<http://www.ag.gov.au/LegalSystem/AlternateDisputeResolution/Documents/NADRAC%20Publications/submission-to-the-productivity-commissions-inquiry-into-access-to-justice-arrangements.pdf>>.

⁴ Ibid.