



Law Council
OF AUSTRALIA

Office of the President

10 September 2020

Senator the Hon James McGrath
Chair
Senate Education and Employment Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

By email: eec.sen@aph.gov.au

Dear Chair

Higher Education Support Amendment (Job-Ready Graduates and Supporting Regional and Remote Students) Bill 2020

1. The Law Council welcomes the opportunity to contribute to the Senate Education and Employment Legislation Committee's (**Committee**) Inquiry in relation to the Higher Education Support Amendment (Job-Ready Graduates and Supporting Regional and Remote Students) Bill 2020 (**Job-Ready Bill**). The Law Council is grateful for input received from the Queensland Law Society and Law Society of Tasmania, as well as assistance from its Access to Justice Committee in the preparation of this submission.
2. The Law Council acknowledges that the unprecedented crisis of COVID-19 has highlighted vulnerabilities across all sectors of Australia's economy with the higher education system particularly affected. It is therefore timely for the Australian Government to be revisiting the structures and supports within the Australian higher education system with the view to ensuring that it keeps pace with the changing needs of the economy and produces graduates with the skills society requires.
3. However, the Law Council is concerned by the very limited timeframe provided to the Committee (and therefore, stakeholders) to consider the Job-Ready Bill. While it is acknowledged that the Department of Education, Skills and Employment conducted an earlier consultation in relation to an exposure draft of the proposed measures, the limited timeframe afforded to the Committee to scrutinise the Job-Ready Bill in its current form is, in the view of the Law Council, inadequate.

Impacts on the legal sector

4. The Law Council understands that a key aspect of the proposed package is focussed on realigning public investment in higher education towards national priorities and emerging labour market priority areas including nursing, health, teaching and IT. Conversely students studying arts, law and economics among, other areas, will see increases in student contributions for these units. The proposed redesign of funding clusters would see a reduction in Commonwealth contributions to legal studies by 51 per cent, and a subsequent increase in maximum student contributions by 28 per cent.
5. Despite an appreciation for the intent behind the proposed reforms, the Law Council has significant concerns with the proposed changes to funding arrangements as set

out in the Job-Ready Bill, particularly as they relate to legal studies. The Law Council disagrees that the study of law is not in line with national priorities or that working in the law should be categorised as less of a labour market priority than the areas listed.

6. The Law Council is especially concerned that the proposed increase in financial contributions for those studying law will act as an impediment for prospective students from disadvantaged socio-economic backgrounds, and will add a further barrier to those who are underrepresented in the legal profession, including those from rural, regional and remote (RRR) Australia, culturally and linguistically diverse communities and Aboriginal and Torres Strait Islander communities.
7. Most students studying law in Australia already face an increasingly large financial burden with significant university fees to pay. To further limit the study of law to a narrow sector of society that is willing and able to absorb a substantial increase in fees necessarily limits diversity in perspective and therefore the way our society understands and sees itself, and narrows our vision for an Australia of the future.

Impacts in Rural, Regional and Remote Australia

8. While the Law Council generally supports measures contained in the Job-Ready Bill to encourage regional and remote students, it maintains serious concerns about the medium and longer term impacts that measures in this Bill will have on accessibility of the legal profession (i.e. the number of students from RRR areas studying law) and the accessibility of legal support and advice in RRR areas.
9. Many prospective students from economically disadvantaged RRR backgrounds are already cost-prevented from studying law as a result of significant expenses which cannot be covered by a HECS-HELP loan (in particular the cost of accommodation). Moreover, increasing HECS-HELP debt is likely to encourage graduates to attempt to optimise their income in order to ensure that their debt burden is under control. This is likely to drive many graduates toward higher income opportunities generally available in major cities, rather than regional areas. It may also have the effect of deterring graduates from pursuing careers in the legal assistance sector, particularly vital services such as Community Legal Centres and Aboriginal and Torres Strait Islander Legal Services.
10. The Law Council is aware of significant ongoing problems in recruiting and retaining legal practitioners in RRR Australia. These recruitment problems have a direct effect on the legal sector's ability to service the legal needs of regional communities. A significant proportion of the legal profession based in RRR areas were born or raised in RRR areas.¹ Limiting the access to the study of law for prospective students from these areas is therefore likely to have significant flow-on effects for the already stretched provision of legal services in these areas.

Impacts of changes to social studies, political science, etc on the study of law

11. The Law Council submits that ensuring appropriate access to tertiary studies in law has significant public benefit, with law graduates playing active roles across all sectors of the Australian economy and society. As noted by Professor Pip Nicholson:

¹ Law Council of Australia, *Report into the Rural, Regional and Remote Areas Lawyers Survey* (July 2009) 8 <www.lawcouncil.asn.au/policy-agenda/advancing-the-profession/rural--regional-and-remote-areas-lawyers>.

A law degree ought to teach graduates to: think analytically, including how to evaluate empirical and logical claims; to marshal arguments; and to succinctly communicate. These are generic skills, imparted through the study of law, which are of as much value in a government policy unit, a business strategy team or a board room, as they are inside a law firm, an in-house counsel office or a barrister or judge's chambers.²

12. The Law Council is concerned by the proposal to move degrees in areas such as social studies, political science and behavioural science to the highest band of student contribution (a proposed cost increase of 113 percent). These fields are often studied in conjunction with law, producing graduates with highly tuned critical and analytical skills that can be applied across a diverse range of professions.
13. To limit the study of these subjects to that narrow sector of society that can afford to pay high fees, will serve to diminish the breadth of critical thinking within Australia's student cohort. This will flow through to our society, with less graduates equipped with the valuable analytical skills acquired in combined law degrees being available to benefit a myriad industries and professions.

Impacts on entrants to the legal profession

14. The continued supply of legal students through accessible education and legally qualified workers throughout the workforce is critical to ensure:
 - *access to justice and the operation of the rule of law* – in particular during this unprecedented period of time when disadvantaged individuals (whether that be related to financial stability, health, age, employment, location, etc) have significantly elevated levels of legal need and communities are vulnerable to injustice without effective legal advice and representation;
 - *business survival and rights of workers which are at risk across most sectors of the economy* – legal need in the commercial sector is high to navigate altered operating arrangements (such as insolvency liability changes or commercial leasing arrangements);
 - *resilience to growing cyber threats* – there is a role for both preventative and restorative legal assistance to individuals and businesses targeted by malicious online actors;
 - *recovery from natural disasters events, such as significant bushfires* – recovery from these devastating events often involve the resolution of often complex legal issues for affected individuals and businesses following the initial emergency first response to get them back to the place they would have been but for the disaster;
 - *recognition and defence of human rights for the public in accessing services and program delivery for the disadvantaged in our community;*

² Professor Pip Nicholson, 'Why Law Degrees Matter', *Pursuit* (Online, 9 February 2018), <<https://pursuit.unimelb.edu.au/articles/why-law-degrees-matter#>>.

- *promotion of good corporate accountability and administration to fulfil the corporate social responsibility mandates of private companies in disrupted and difficult times; and*
 - *the maximisation of public investment in legal assistance services, which relies heavily upon the contribution of law students and recent graduates.*
15. Accordingly, the proposed measures may entrench barriers to entry to the law for many in our community and will also reduce the number of qualified, representative legal graduates contributing to society in many critical ways at a time when they are needed most. The legal need from the current pandemic and oncoming disaster events will be felt for some years and the community needs continuity in its legal profession to respond and deal with those challenges successfully. Now is not the time to leave the community vulnerable to growing legal need.
16. There is a real risk that increased barriers to entry will reduce the pool of talented students entering legal studies. This is likely to have an adverse impact on law firms with graduate programs and student intakes as competition for the best candidates will be heightened. This would put further upward pressure on starting salaries and remuneration for those entry positions which structurally should be devoted to training and gaining experience. Further, this may have an undesirable impact on the commerciality of those positions and potentially lead to a reduction in the number of those opportunities. Such an outcome will further fuel competition and wage pressure in the remaining graduate position cohort, leading to an undesirable outcome that is neither beneficial for emerging students, nor for their law firm employers.
17. A hyper-competitive landscape for new talent has the potential to damage the efficacy of renewal and retention in the legal profession and accordingly the standards and health of those currently in practice.

Conclusion

18. The Law Council understands the need to promote tertiary courses that will drive growth in certain sectors, particularly in a post-pandemic context. However, this should not come at the expense of those who wish to pursue a career in the law, particularly those who may already find the fees difficult to manage. The Law Council therefore recommends that the proposed reforms which will introduce financial disincentives for the study of law be removed.
19. Please contact Dr Natasha Molt, Director of Policy on (02) 6246 3754 or at natasha.molt@lawcouncil.asn.au in the first instance, if you require further information or clarification.

Yours sincerely



Pauline Wright
President