

Response to Productivity Commission's Draft Report on Access to Justice Arrangements

Thank you for the opportunity to comment on the draft report.

This response is made on behalf of the members of the Australasian Professional Legal Education Council (APLEC). APLEC's membership comprises all the providers of structured Practical Legal Training (PLT) programs in Australia and New Zealand. We do not represent the providers of traineeships, or supervised workplace training programs, where they exist.

APLEC supports the Commission in its acknowledgement of the significant role of PLT in the education and training of lawyers. The practical legal training stage is pivotal to legal education as it is the connection between the study of law and the practice of law.

The PLT programs provided by APLEC members are designed to deliver education and training that meets the competency level required of 'an entry-level lawyer at the point of admission to practise law'¹. In 2010, in order to meet the changes in the profession and the delivery of legal services, APLEC and LACC commenced a review of the Competencies developed in 2002. The review included extensive consultation with relevant stakeholders. As a result of the review, revised Competency Standards for Entry-Level Lawyers were drafted and will commence on 1 January 2015. They can be found at –

<http://www1.lawcouncil.asn.au/LACC/images/pdfs/LACCCompetencyStandardsforEntryLevelLawyers-Jan2015.pdf>

The Competency Standards state:

PLT must be provided at a level equivalent to post-graduate training and build on the academic knowledge, skills and values about the law, the legal system and legal practice which a graduate of a first tertiary qualification in law should have acquired in the course of that qualification.²

This response addresses the following matters:

1. Clarification of information in the draft report
2. Whether the review contemplated in Draft Recommendation 7.1 is necessary
3. Issues for consideration in any review of legal education in Australia
4. APLEC's status as a core stakeholder in any review

¹ The Competency Standards, p.5.

² The Competency Standards, p.5.

1. Clarification of information

Report	Recommended Change	Reason
7.2 Becoming a lawyer – education and training (p. 271)	<i>Include values in second dot point - Practical Legal Training focused on procedures, skills <u>and values</u> required to work as a solicitor</i>	The PLT Competencies include values, such as professional responsibility and resilience and well-being.
Practical Legal Training and admission (p. 223)	The training combines a traditional course work component with work experience (within a firm: replace with) <i>in a supervised law-related work environment.</i>	Work experience may also be undertaken with barristers in chambers, in community legal centres, in corporations and with government agencies.
Practical Legal Training and admission (p. 223)	The courses are offered online – <i>replace with Courses are offered on site or as a blend of online and on-site and throughout ...</i>	Some PLT courses are offered online with a face-to-face component.

2. Whether the review contemplated in Draft Recommendation 7.1 is necessary

APLEC is not convinced that the Review envisaged in Draft recommendation 7.1 is justified. Given the regular consultation between LACC, CALD, APLEC and the Admitting Authorities, the review processes that have been undertaken in relation to both the Competency Standards and the law schools and the debate and developments leading to the introduction of the national legal profession, the issues envisaged in the review specified in Draft Recommendation 7.1 have been well canvassed and there is no consensus by key stakeholders that further changes are required.

The resources required for such a review would be significant and would be better directed in reviewing other aspects of Access to Justice and, in particular, access to legal aid and the general costs of litigation.

3. Issues for consideration in any review

In the event that a review is considered necessary, we make the following submissions in regard to some of the matters specified for review in Draft Recommendation 7.1:

a. Embedding alternative dispute resolution into the legal psyche

APLEC agrees that ADR is of vital importance in modern legal practice. However, we ask the Commission to note that training in ADR is already embedded in the PLT Competencies in the following ways:

- Within the Practice Areas of Civil Litigation, Consumer Law, Family Law Practice, Planning and Environmental Law, Employment and Industrial Law, and

- As a requirement within the context of Lawyers' Skills. Students in PLT programs are assessed on their competence in practical tasks such as a negotiation.

We submit that existing structured PLT programs already provide students with the skills and processes to enable them to advise and act for clients in a range of dispute resolution options.

b. The merits of increased clinical legal education

APLEC agrees that there can be value in a clinical legal education experience for law graduates who wish to be admitted as an Australian lawyer. However, we ask you to note that clinical legal education involves different learning outcomes to those of a PLT program and does not attempt to address all the competencies prescribed in the Competency Standards. For this reason clinical legal education should not in any sense be regarded as a substitute for completion of a structured PLT program.

In addition the following factors detract from the usefulness of clinical legal education as a compulsory element in Australian legal education:

- The limited number of places available for students in clinical legal education³
- The cost of setting up and maintaining clinics (as acknowledged in the draft Report)
- The need for law graduates to be able to enter the workforce within a reasonable timeframe, following (usually) 5 years of undergraduate study and the completion of a PLT program. The structured PLT programs offered by APLEC members generally meet the level 8 requirement under the Australian Qualifications Framework and adequately equip students for the first years of practice without the need for any additional clinical education component.

We also submit that the following additional matters should be addressed in any review that might be undertaken in response to Draft Recommendation 7.1:

- c. The need for uniform admission requirements and processes across Australia
- d. The critical importance of specific, appropriately resourced, practical legal training within the legal education system, especially given the increasingly generalist nature of many undergraduate degrees
- e. How best to align the different stages of legal education with the expectations and requirements of law graduates, of the practising profession and of the public
- f. The impact of JD programs on the cost and effectiveness of legal education, and on the profile of newly admitted lawyers
- g. The role of work experience in a PLT program
- h. Whether Legal Practice Management courses should be uniform and compulsory nationally.

³ See for example QPILCH website which states in relation to student volunteers, "There is an application process as we do not have enough seats to match demand" at <http://www.qpilch.org.au/cms/details.asp?ID=619>.

4. APLEC's status as a core stakeholder in any review

APLEC would welcome the opportunity to contribute to any review that may take place in response to Draft Recommendation 7.1 and asks the Commission to note the organisation's status as a core stakeholder and the representative of all the providers of structured PLT programs in Australia.

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