



17 December 2013

104.3  
MB; ylh

Commissioners Warren Mundy and Angela MacRae  
Access to Justice  
Productivity Commission  
Attention: Ms Pragya Giri  
GPO Box 1428  
CANBERRA CITY ACT 2601

and via email: [access.justice@pc.gov.au](mailto:access.justice@pc.gov.au)

Dear Commissioners

### **Access to Justice Arrangements**

I refer to an announcement of 21 June 2013 from the then Assistant Treasurer, Mr David Bradbury, requesting the Productivity Commission undertake an inquiry into Australia's system of civil dispute resolution, with a focus on constraining costs and promoting access to justice and equality before the law.

Thank you for the opportunity to make submissions to the inquiry. In addition to our submissions of 25 October 2013, 4 November 2013 and 9 December 2013, please find attached a copy of submission to the Honourable Dr David Kemp and Mr Andrew Norton in relation to the Review of the Demand Driven Funding System. This submission is relevant to the Productivity Commission's Terms of Reference, including analysis of the supply of law graduates and how this adversely impacts on the market for legal services. This issue has also been the subject of commentary in the media.<sup>1</sup>

I trust these comments are of assistance.

Yours sincerely

Morry Bailes  
**PRESIDENT**

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<sup>1</sup> Jordanna Schriever, 'More law graduates than jobs', *The Advertiser*, 17 December 2013, page 7 and Joanna Mather, 'Uni group want fee rise amid oversupply fears', *The Australian Financial Review*, 17 December 2013, page 16



**THE LAW SOCIETY  
OF SOUTH AUSTRALIA**

THE VOICE OF THE SOUTH AUSTRALIAN LEGAL PROFESSION

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13 December 2013

108.8  
MB; ylh

The Honourable Dr David Kemp and Mr Andrew Norton  
Review of the Demand Driven Funding System  
Department of Education  
GPO Box 9880  
CANBERRA ACT 2601

COPY

and via email: [DDSreview@education.gov.au](mailto:DDSreview@education.gov.au)

Dear Dr Kemp and Mr Norton

**Review of the Demand Driven Funding System**

I refer to an announcement of 12 November 2013 by the Minister for Education, the Honourable Christopher Pyne MP, inviting submissions to a review of the demand driven funding system for public universities.

In 2012, the "demand driven funding system" was introduced for public universities resulting in a significant increase in the number of university entrants. While this system was only introduced in 2012, the Society in recent years has observed a significant increase in the numbers of law students and law graduates generally.

The Society was founded in 1879. Its continued existence is enshrined in Part 2 of *Legal Practitioners Act 1981* and it is the peak body representing the legal profession in South Australia. It currently has approximately 3,500 members. When considering this matter, the Society invited feedback from all members and also invited comment from the Deans of the Law Schools of the University of Adelaide, Flinders University and UniSA.

Thank you for the opportunity to make a submission to the review. You are welcome to contact me, should you wish to discuss any aspect of the enclosed submission.

Yours sincerely

Morry Bailes  
**PRESIDENT**



**THE LAW SOCIETY**  
**OF SOUTH AUSTRALIA**

**Submission**

in relation to the

**Review of the Demand Driven Funding System**

13 December 2013



## **THE LAW SOCIETY OF SOUTH AUSTRALIA**

### Preamble

1. Law is a challenging and satisfying discipline. Many students choose to study law because they have a fascination with the law, a curiosity about the workings of the justice system and a desire to help others. It also can attract students who excel in subjects such as English, Philosophy or History. Whatever the reason, a career in law requires a dedication to life-long learning, a passionate and inquisitive mind, and an appreciation for what is fair, just and ethical.
2. Students of law will be challenged. They are required to have an exceptional level of intellect and acumen to understand abstract concepts and the ability to apply those concepts to individual and to broad social problems. They also have the satisfaction of knowing that they can make a difference.
3. A strong and independent legal profession is a hallmark of an advanced modern society. The law has a long and rich history in our civilization and is a respected and prestigious profession. It is a privilege to join the ranks of those who are there.
4. However, law is not an easy career choice. The hours are long and the work will often challenge one's emotional and intellectual capacity. It requires years of education and preparation before students can achieve the specialist qualifications that will allow them to fully practise as a lawyer.
5. There can also be many rewards. Law offers a lifetime of opportunities with a variety of career options, both nationally and internationally.

### Background

6. In 2012, the demand driven funding system was introduced for public universities. This has resulted in the number of Commonwealth supported places expanding from around 469,000 places in 2009 to an estimated 577,000 places in 2013. It is critical that this expansion in Australian higher education enhances the knowledge and capabilities of Australians and delivers quality graduates who are able to contribute to society and thrive in the global economy.

7. The review, announced by the Minister for Education, the Honourable Christopher Pyne MP, will recommend possible areas for improvement to ensure that the system better meets its objectives, is efficient, is fiscally sustainable, and supports innovation and competition in education delivery.

#### Scope of the Review

8. The Review will examine the following aspects of the demand driven system:

- 1. the effectiveness of its implementation, including policies regarding the allocation of sub-bachelor and postgraduate places;*
- 2. early evidence on the extent to which it is:*

- a. increasing participation;*
- b. improving access for students from low socio-economic status backgrounds and rural and regional communities;*
- c. meeting the skill needs in the economy;*

- 3. extent to which the reforms have encouraged innovation, competition, diversity and greater responsiveness to student demand including development of new modes of delivery such as online learning;*
- 4. whether there is evidence of any potential adverse impacts on the quality of teaching and of future graduates;*
- 5. measures being taken by universities to ensure quality teaching is maintained and enhanced in the demand-driven system; and*
- 6. whether less academically prepared students are receiving the support they need to complete the course of study to which they have been admitted.*

9. The Review will recommend possible areas for improvement to ensure that the system better meets its objectives, is efficient, is fiscally sustainable, and supports innovation and competition in education delivery.<sup>1</sup>

10. In recent years, questions have been raised concerning the legal profession's capacity to support the increasing number of law graduates. Combined with a slowing economy and flat growth in law firms, employment prospects for law graduates are considerably lower than in the past.

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<sup>1</sup> The Honourable Christopher Pyne MP, 'Coalition announces review of the demand driven system' (Media Release, 12 November 2013, Education Portfolio)  
<<http://ministers.education.gov.au/pyne/coalition-announces-review-demand-driven-system>>

11. This Submission explores the Terms of Reference in that context. This Submission does not address all of the Terms of Reference.
12. The Society consulted all Members. The Society also invited comment from the Deans of the Law Schools of the University of Adelaide, UniSA and Flinders University. We received comments from Associate Professor Peter MacFarlane of UniSA and Professor Kim Economides of Flinders University.

### Executive Summary

13. We consider there is an oversupply of law graduates who wish to practise law and this has led to adverse impacts on graduates, law students and the legal profession. We acknowledge this view is not shared by all members and a small minority of members submitted that in a free market economy, distortions should be determined by the market.
14. There was also a view that increasing competition raises standards. A competitive system generates greater incentives for students to excel at university, and theoretically can produce a higher quality of graduates. There are however, significant problems caused by this situation and the Society considers that these problems ought to be addressed before it damages the legal profession's ability to attract the nation's best and brightest students.
15. There is a real question to be answered as to whether quality has been to some extent sacrificed in favour of quantity. Members of the Society expressed competing views on this issue and on balance the Society considers the issue should be further explored by way of Parliamentary Committee or inquiry. We are however pleased that remedial efforts are being taken to address some issues of quality that were raised, namely the requirement from January 2015 for all students studying law at UniSA to complete Evidence, Civil Procedure and Professional Conduct.<sup>2</sup>
16. The Society questions whether the increase in places has increased participation. Law schools in South Australia are producing around 600 graduates per annum but there are only an estimated 130-150 jobs in the legal profession in South Australia per annum, at best.<sup>3</sup> The employment figures do not improve when viewed from a national perspective either. In the past 12 months, Australia's large and mid-tier firms only recruited 991 law graduates.<sup>4</sup> The Society is very

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<sup>2</sup> Letter from Associate Professor Peter MacFarlane to President Morry Bailes, 9 December 2013, page 2

<sup>3</sup> The Society was unable to obtain empirical data on the number of legal jobs available in South Australia but when approached by the Society, a selection of Managing Partners from Adelaide's legal community estimated around 130-150 jobs, at best.

<sup>4</sup> Legal Affairs Survey, *The Australian Financial Review*, 13 December 2013, page 28

- concerned that the number of graduates far outweighs the available jobs. As time passes, new graduates are competing with past years' graduates, creating an ever increasing pool of law graduates unable to fully participate.
17. The reality is that even high achieving students with diverse experience will struggle to find a job in the legal sector.<sup>5</sup> Indeed, some will struggle to find full-time, meaningful employment in any given field. This has led to adverse impacts on students, namely stress and unhealthy levels of competition in law schools. It is no coincidence that law students have some of the highest rates of mental health disease and depression when compared to the rest of the Australian community and other tertiary student groups.<sup>6</sup>
  18. With law schools producing more graduates than can possibly find work in the legal profession, the Society has observed law students and graduates desperate to break into the profession offering their services for free to an established lawyer. While this phenomenon is not new, the Society is concerned at this rising trend in recent years and how a "race to the bottom" could have adverse impacts on innovation and competition.
  19. When labour becomes a cheap and replaceable commodity, we query where is the incentive to innovate and increase productivity? We also question how the trend in unpaid work improves access for students from low socio-economic backgrounds, given that wealthier students may have family support them through a period of unpaid legal work.
  20. It is recognised that a law degree has become a generalist degree, the "new arts degree", and that not every law student aspires to practise law. A law degree is desirable across a variety of industries, giving graduates analytical and reasoning skills that are useful. Whether or not the "generalisation" of the law degree helps meet the skill needs in the economy is a question that remains to be answered. 97% of students enter law school with a view to practising law but a failure to obtain employment in the legal sector forces graduates to consider alternative career paths.<sup>7</sup> The evidence we reviewed suggests the majority of students study law with a view to practising law but unrealistic expectations of the job market leave them disillusioned, even at early stages of their studies and careers.

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<sup>5</sup> Simon Palombi, 'Barriers to entry run high, higher, highest', *Sydney Morning Herald*, 26 August 2013 <<http://www.smh.com.au/comment/barriers-to-entry-run-high-higher-highest-20130826-2sl2b.html>>

<sup>6</sup> Dr Norm Kelk, Dr Georgina Luscombe, Dr Sharon Medlow and Professor Ian Hickie, 'Courting the Blues: Attitudes towards depression in Australian law students and legal practitioners', *University of Sydney*, 2009, page viii <<http://sydney.edu.au/bmri/research/mental-health-clinical-translational-programs/lawreport.pdf>>

<sup>7</sup> Australian Law Students' Association, 'National Law Student Cap Discussion Paper, ALSA Council, April 2013, page 10 <[http://www.alsa.asn.au/council/documents/April2013/Student%20Cap%20DP\\_Final.pdf](http://www.alsa.asn.au/council/documents/April2013/Student%20Cap%20DP_Final.pdf)>

21. In order to encourage competition and greater responsiveness to student demand, the Society recommends that students are provided with accurate, up-to-date and candid information about career prospects for law. Given that in Australia a law degree costs up to \$100,000 the decision to study law is a commitment not to be taken lightly. Statistics from UniSA indicate that in 2012, 100% of graduates from the Bachelor of Law degree “had secured work in a professional occupation”.<sup>8</sup> It is unclear whether the graduates’ law studies are relevant to their employment.
22. It is critical that students can make informed choices about their future and therein the problem lies. We suggest that providing more accurate information about job prospects would better inform students before they commit to a law degree they are unlikely to ever fully repay.
23. Ultimately, if questions about quality and adverse student impacts are not adequately addressed, our nation’s best and brightest students may not regard the legal profession with the high level of respect and prestige that it currently commands. Accordingly there is a risk that the legal profession’s ability to attract talented students may diminish over time.

#### Recommendations

24. The Society makes the following suggestions:
  - a. the study of law should be encouraged, however school leavers and law students must be provided with full, frank and candid information about career prospects in law and the cost of the law degree before commencing study in order to allow them to make a fully informed choice as to their course of study;
  - b. questions concerning quality should continue to be monitored closely, with a view to maintaining excellent standards;
  - c. entry into law school should not be based upon a student’s capacity to pay and the Society would be deeply concerned if such a proposal were to arise as a consequence of any capping of law student numbers for non-fee paying places; and
  - d. an inquiry or Parliamentary Committee could be established for the purpose of considering issues of quantity of law students, quality of teaching and the mental health and wellbeing of law students in particular.

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<sup>8</sup> Letter from Associate Professor Peter MacFarlane to President Morry Bailes, 9 December 2013, page 2



25. Further information about these suggestions is discussed below.

#### A question of quantity over quality

26. Some consider this is a critical review which can help determine if we as a nation are putting enough emphasis on quality over quantity for this vital sector, charged with producing the skilled workforce and research innovation that is so integral to Australia's future.<sup>9</sup>

27. According to Associate Professor Peter MacFarlane of UniSA, 100% of graduates from the Bachelor of Laws degree at UniSA had secured work in a professional occupation in 2012 and in 2013 the figure was 83%. The professional occupations may or may not utilise knowledge and skills from the law degree.

28. It is overwhelmingly accepted amongst the legal profession that in the current economic climate, there is a greater supply of law students and law graduates, than the legal profession can absorb.

- A survey from Graduate Careers Australia shows that almost two-thirds of Australia's law graduates are not working as lawyers four months after they have completed their law degree. Over 64% of law graduates were not practising law between 2010 and 2011.<sup>10</sup>
- Almost three quarters of respondents to a poll by *Lawyers Weekly* believe universities should reduce their intake of law students until the graduate recruitment market improves.<sup>11</sup> Over 3000 people responded to the poll.
- Some Managing Partners take the view that "this is the toughest market for a summer clerk or graduate in more than 30 years."<sup>12</sup>
- That view is also supported by those in the legal recruitment industry receiving dozens of phone calls each week from high-performing law graduates struggling to find a job. The recruiters say that "It is the worst time in living history to be a law graduate".<sup>13</sup>
- The Society's Young Lawyers Committee of the Society submitted that, "In the current economy, the number of law graduates far outstrips the number

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<sup>9</sup> Dr Michael Spence, 'University of Sydney welcomes Coalition Government review of the demand driven system' (Media Release, 13 November 2013, University of Sydney) <<http://sydney.edu.au/news/84.html?newsstoryid=12666>>

<sup>10</sup> Jane Lee, 'Graduates shun legal profession', *The Age*, 20 May 2012 <<http://www.theage.com.au/victoria/graduates-shun-legal-profession-20120519-1yxt0.html>>

<sup>11</sup> Brigid O'Gorman, 'Law schools should cut spots to tackle grad oversupply', *Lawyers Weekly*, 29 October 2013 <<http://www.lawyersweekly.com.au/news/law-schools-should-cut-spots-to-tackle-grad-oversu>>

<sup>12</sup> Tom Adolph, 'Jobs shock looms after graduate glut', *The Australian*, 18 October 2013 <<http://www.theaustralian.com.au/business/legal-affairs/jobs-shock-looms-after-graduate-glut/story-e6frg97x-1226741945144>>

<sup>13</sup> Leanne Mezrani, 'It is the worst time in living history to be a law graduate', *Lawyers Weekly*, 27 August 2013 <<http://www.lawyersweekly.com.au/news/it-is-the-worst-time-in-living-history-to-be-a-law>>

of graduate positions available. As time passes, new graduates are competing with past years' graduates creating an ever increasing pool of law graduates unable to pursue their career goals...the situation forces graduates to consider alternative career paths, and different ways in which law degrees can be utilised in other fields."<sup>14</sup>

- In the latest Legal Affairs Survey by the *Australian Financial Review*, it was reported that "fierce competition between large firms and fewer opportunities for revenue growth are reducing employment opportunities for young lawyers. Only 13 of 37 firms grew non-partner lawyer numbers in the past six months".<sup>15</sup>
- In the past twelve months, Australia's top tier and mid tier firms only recruited a total of 991 graduates.<sup>16</sup> There are simply not enough jobs in the legal profession to support the number of law graduates who want to practise law.
- In response to whether there is an oversupply, Professor Kim Economides of Flinders University said that, "the oversupply is a result of new law schools opening up (eg UniSA) and existing ones increasing their intake (eg Adelaide). We believe Flinders' intake has remained fairly constant and therefore are reluctant to accept responsibility for any 'over-supply'".<sup>17</sup>

29. There are some who consider that in recent years the quality of graduates and students has noticeably lowered. However, this is not a universally held view.

#### A brief analysis of entry and completion requirements

30. In South Australia, there are three law schools. An overview of the current entry and completion requirements for the Adelaide, Flinders and UniSA is outlined in the table below.<sup>18</sup>

Item	UniSA	Flinders	Adelaide
<b>ATAR</b>	90.10	90.2	95.55
<b>Prerequisite for entry (domestic students)</b>	None	None	None

<sup>14</sup> Submission from the Young Lawyers' Committee of the Law Society of South Australia, 6 December 2013, page 1

<sup>15</sup> Alex Boxsell, 'Shrinking jobs worry young lawyers', *The Australian Financial Review*, 13 December 2013, page 32

<sup>16</sup> Legal Affairs Survey, *The Australian Financial Review*, 13 December 2013, page 28

<sup>17</sup> Email from Professor Kim Economides to President Morry Bailes, 12 December 2013

<sup>18</sup> The information in the table is available from the Adelaide Law School's "Law Enrolment Student Guide 2013", UniSA's "Guide to Law 2014" and the website of the Flinders Law School.

Item	UniSA	Flinders	Adelaide
<b>Prerequisites for entry (international students)</b>	International English Language Testing System (IELTS) with minimum overall score of 6.5	International English Language Testing System (IELTS) with minimum overall score of 7.0 with a minimum score of 7.0 in Writing and Speaking sub scores and 6.5 in Reading and Listening sub scores.	International English Language Testing System (IELTS) with minimum overall score of 7.0 with a minimum score of 7.0 in Writing and Speaking sub scores and 6.5 in Reading and Listening sub scores.
<b>Core subjects</b>	Contracts Torts Legal Institutions and Methods Law, Society and Justice Legal Research and Writing Property Law Fundamentals of Criminal Law Constitutional Law Real Property Jurisprudence Criminal Procedure and Sentencing Corporate Law Administrative Law Law of Trusts Equity	Administrative Law Advanced Contract Civil Litigation Constitutional Law Contract Corporate Law Criminal Law and Legal Method Evidence History of Legal Ideas Issues in Criminal Law Legal Research and Writing PLT Practice Professional Skills and Ethics Property, Equity and Trusts Public Law Real Property Law Torts	Administrative Law Constitutional Law Contracts Corporate Law Criminal Law and Procedure Dispute Resolution and Ethics Equity Evidence and Proof and Theory in Practice Foundations of Law International Law Tort Law Law of Torts 2 Principles of Public Law Property Law
<b>Rules on academic progress</b>	Rules on Academic Progress ( <b>Appendix A</b> )	There may or may not be rules on academic progress but the information could not be found.	The "10 Year Rule" provides that in determining a candidate's eligibility for the award of the degree, the School

Item	UniSA	Flinders	Adelaide
			may disallow any course completed more than 10 years ago. The effect of this rule is that a student must complete their law degree within 10 years.

Potential adverse impacts on the quality of teaching

31. Some say that raising the competition arguably raises standards. We make a few observations below. In 2003, undergraduate entrants to Adelaide were required to have a Tertiary Entrance Rank (TER) of 98.5. The entrance score for law appears to have dropped over the past decade. It is important to note here that the ATAR is not the sole measure of a student's intellectual capacity, nor is it an accurate representation of their future ability. But it is a representation of their application in high school, and of their preparedness for the rigours of university study.<sup>19</sup>
  
32. Universities are required to accept a certain number of students from low socio-economic backgrounds, regional students and students from an Aboriginal or Torres Strait Islander background. The Society received feedback suggesting that the delivery of law courses had to change to accommodate these students because students from such backgrounds have to be "brought up to speed" with the rest of the students. We suggest that consideration should be given to studying the impact of including lower ATAR score students and whether it has an adverse impact on course delivery and academic achievement overall.
  
33. An exceptionally high level of English language skills is needed to successfully practise law in Australia and internationally. While there are mandatory English requirements for international students, no prerequisites apply to domestic students whatsoever. It seems anomalous that domestic students are not subjected to the same rigour of English assessment as their international peers.
  
34. Flinders University acknowledged that some Australian law students lack English language skills but on the other hand, also queried why students without a high

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<sup>19</sup> Professor Ed Byrne, 'Entry standards for teachers are too low', *The Age*, 24 July 2013, <<http://www.theage.com.au/comment/entry-standards-for-teachers-are-too-low-20130723-2ghf5.html>>

level of English should be denied the opportunity to study the law so they may engage more fully with the law and legal issues in our democracy.<sup>20</sup>

35. Flinders University raised a question on to what extent do law schools prepare their students for potential work on an international level.<sup>21</sup> How should Australian law schools acknowledge increasing globalization and the increasing value of proficiency in languages and cultures other than English, particularly Asian languages and cultures?
36. Other professions require entrants to have successfully completed relevant subjects before commencing the program. For example, students of medicine have completed at least one of Chemistry, Biology or Maths. Other science and engineering courses share similar requirements before entering the program. The reason for requiring students to complete prerequisites is that these subjects form the foundational concepts of the program, and without a sound basis of these concepts, students lacking may be more likely to fail.
37. In addition to the pre-requisites for entering a program, we have also considered issues in relation to the quality of course content and whether there were any adverse impacts.
38. At UniSA, students are presently **not** required to complete Civil Procedure, Evidence or Professional Conduct. A student will not be permitted to practise without having completed these subjects however it will not prevent a student from completing the program and graduating from UniSA. The Society is pleased to have been advised that from January 2015, the subjects of Evidence, Civil Procedure and Professional Conduct will be compulsory for all students enrolled in law at UniSA.<sup>22</sup> We note these subjects are mandatory at other South Australian universities.
39. Legal ethics is the foundation of the legal profession's rules of conduct and practice. While some lawyers choose not to practise, many lawyers are employed in roles of a legal nature, for example in government, academia or a not-for-profit organisation. Lawyers of this type do not always hold a practising certificate but may be faced with legal ethical issues.
40. Similar comments could be made with respect to Civil Procedure and Evidence not being mandatory. These subjects provide a basic understanding of our civil

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<sup>20</sup> Email from Professor Kim Economides to President Morry Bailes, 12 December 2013

<sup>21</sup> Email from Professor Kim Economides to President Morry Bailes, 12 December 2013

<sup>22</sup> Letter from Associate Professor Peter MacFarlane to President Morry Bailes dated 9 December 2013

justice system and lay the foundation for a student's understanding of dispute resolution in the civil litigation system.

41. Accordingly the appropriateness of whether a student should be able to graduate law without completing ethics, civil procedure and evidence ought to be considered.

The "generalisation" of law degrees – potential adverse impacts on students

42. Some students study law without any intention or aspiration to practise law. In recent years, it has been regarded by some as a generalist degree that is nonetheless useful for pursuing other careers and accordingly any proposal to cap student numbers is unfair. Some members are of the view that, in principle, no student should be prevented from studying law if they wish to and that the free market will sort matters out. Whilst this is a view held by some members of the profession it is a minority view.
43. On the other hand, the market is not free in the sense that students and taxpayers will have to pay for the degrees at some point and by the time the market "sorts matters out", the social and financial consequences have already had an impact on students (and taxpayers). In financial terms, there is a significant difference between an arts or commerce degree and a law degree. Arts and Commerce degrees are much cheaper than a law degree and therefore easier for graduates to repay loans or pay fees.
44. Many consider that a law degree is now considered to be a valuable degree across a variety of industries, equipping graduates with analytical and reasoning skills that may be desirable and useful across a range of applications. On this basis, the Society does not object to large numbers of students studying law degrees, and supports broader accessibility of such degrees to students. Having more Australians knowledgeable about our nation's legal system is beneficial.
45. However, the Society's support is made on the basis that students are provided with full and frank information about career prospects and the cost of the degree. Students should enter the law degree with their eyes open, fully aware that job prospects in the legal profession are quite low, that the law degree effectively subsidises other Band 3 programs, for example medicine, and accordingly the law degree is disproportionately more expensive than need be.
46. A more "legally literate" labour force could be of benefit to employers and the community generally. This may be achieved for students without the need to study law.

“Generalist” law degrees – meeting the skill needs in the economy?

47. The view that a law degree is generalist is not shared by all, particularly amongst law students. The Australian Law Students Association noted a recent study showing that over 97% of first year students expected to practise in the legal profession after graduation.<sup>23</sup> We suggest this figure shows a disconnection between students’ perceptions of job prospects and reality.
48. We also repeat the view of the Society’s Young Lawyers’ Committee that some graduates do not voluntarily pursue an alternative career path and only do so after failing to obtain a job in the legal profession.
49. The Society was unable to find empirical evidence of precisely how many jobs in the legal profession are available to law graduates, although when approached by the Society, a selection of Managing Partners from Adelaide’s legal community estimated there would be no more than estimated 130–150 jobs per year in the legal profession, at best. This figure does not take into account the increasing number of recruitment freezes across the public and private sectors. Given that South Australia is producing around 600 law graduates per year, the majority of them will not practise law.
50. Law degrees are generally structured in a practical way and taught as if practise of the law is the ultimate outcome. Law degrees are not currently structured in similar vein to generalist degrees such as Arts. Students are required to complete a number of mandatory subjects that are designed to prepare students for their first foray into the justice system. Students are rarely able to indulge in generalist subjects exploring legal philosophy, democracy and society, general ethics etc.
51. With that in mind, it could be questioned how prepared these “generalist” students are for whatever alternative career they end up in, and whether such an approach effectively meets the skill needs in the economy.
52. UniSA says on its website that “With legal practice a likely destination, you may choose to work specifically as a barrister, solicitor or in-house lawyer”. The reality is that for many students, legal practice will not be the likely destination. It will be elsewhere. If that is the case, should these students be encouraged to enrol in law or perhaps counselled to go elsewhere? Statistics on job prospects

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<sup>23</sup> Australian Law Students’ Association, ‘National Law Student Cap Discussion Paper, ALSA Council, April 2013 <[http://www.alsa.asn.au/council/documents/April2013/Student%20Cap%20DP\\_Final.pdf](http://www.alsa.asn.au/council/documents/April2013/Student%20Cap%20DP_Final.pdf)>

and employability should, may we suggest, clearly distinguish between jobs in the legal profession and jobs in other fields.

53. It is unclear whether students who enrol in dual degrees (one degree being law) do so because:
- a. it is a requirement of a university (we understand it used to be a requirement for undergraduate law students at the University of Adelaide);
  - b. students consider it will make it easier for them to obtain employment in the legal profession;
  - c. students wish to strengthen their chance of employment in a non-legal field; or
  - d. a combination of the factors above.
54. It is also unclear what effect dual degrees have on employment prospects. Anecdotally speaking, some members noted that their non-law degree was not used or not relevant to their job while other members commented that it had been useful. Some members also considered that undertaking a dual degree was enjoyable and interesting, notwithstanding its lack of practical application to their job in the legal profession. These issues are worth further exploration in the context of whether such an approach is helping to meet the skill needs in the economy.
55. It is important to highlight that this discussion is **not** targeted at preventing or reducing access to students who want to study law. We should be trying to avoid a “New York Law School” case from similarly developing in Australia. This discussion is about finding ways to allow students to make **better informed choices** before they commit themselves to thousands of dollars in debt they are unlikely to ever fully repay.

#### An ethical question

56. Over 3000 people participated in a Lawyers Weekly poll and agreed that “the current intake of students is irresponsible”.<sup>24</sup>
57. Others in the legal profession take it further and suggest that the tertiary sector’s oversupply of law graduates is unethical. The legal industry is currently grappling with an economy that is providing little or no growth for most law firms. Changes to compulsory third party insurance and minor civil litigation together with increasingly cost-conscious clients who are simply unwilling to pay

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<sup>24</sup> Brigin O’Gorman, ‘Law Schools should cut spots to tackle grad oversupply’, *Lawyers Weekly*, 29 October 2013 <<http://www.lawyersweekly.com.au/news/law-schools-should-cut-spots-to-tackle-grad-oversu>>



for services that they would have paid for in the past, have all contributed to the current economic climate. The recent trend in outsourcing has not helped either.<sup>25</sup> In all the circumstances, it has been questioned whether it is appropriate for universities to continue taking law students in current numbers.

58. It has been suggested that we have set up a system that arguably gives the majority a false sense of their futures, which some suggest is unethical. It is acknowledged this is not a universally held view.

59. A very real issue is whether accurate information on career prospects is being provided to school leavers and other applicants before starting law.

60. In 2011, a group of nine New York Law School graduates claimed they overpaid for their degrees, because they were led to believe, as a reasonable consumer would be, that between 90% and 92% of the school's graduates secured full-time jobs as lawyers. However that percentage also included students in part-time jobs, as well as jobs that do not require a law degree.<sup>26</sup> Instead of working in the law, some of the graduates were toiling at hourly jobs in department stores and restaurants and struggling to pay back more than \$100,000 in loans used to finance their education. Others were in temporary or part-time legal positions.<sup>27</sup>

61. The students from the New York Law School sought \$225 million in damages and alleged that New York Law School engaged in deceptive practices by omitting those details from its website and marketing materials. Similar lawsuits were filed against law schools in California, Delaware and Florida.

62. New York Supreme Court Justice Melvin Schweitzer dismissed the case saying that prospective law school students should know better. However, he added that these lawsuits served to highlight problems hitting the legal profession, and he made a plea for the "most transparent data and of the state of our profession that we can possibly assemble", so that prospective students can make more informed choices about their future.<sup>28</sup>

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<sup>25</sup> Alex Boxsell, 'Shrinking jobs worry young lawyers', *The Australian Financial Review*, 13 December 2013, page 32

<sup>26</sup> Joe Palazzolo, 'Judge Tosses Lawsuit against Law School over Employment Stats', *Wall Street Journal*, 21 March 2012 <<http://blogs.wsj.com/law/2012/03/21/judge-tosses-lawsuit-against-law-school-over-employment-stats/>>

<sup>27</sup> Maura Dolan, 'Class action: Law school grads claim misleading reports of success', *Los Angeles Times*, 2 April 2013 <<http://articles.latimes.com/2013/apr/02/local/la-me-ln-class-action-law-school-grads-claim-misleading-reports-of-success-20130402>>

<sup>28</sup> Joe Palazzolo, 'Judge Tosses Lawsuit against Law School over Employment Stats', *Wall Street Journal*, 21 March 2012 <<http://blogs.wsj.com/law/2012/03/21/judge-tosses-lawsuit-against-law-school-over-employment-stats/>>

63. We concur with the view of Justice Schweitzer and return to South Australia and to explore this issue in further detail.

Career prospects in the legal sector in South Australia

64. The University of Adelaide, Flinders University and UniSA publish information about career options for law graduates.

UniSA	Flinders	University of Adelaide
<p>“Law is a field that affects almost every other aspect of society and as a Law graduate you will be presented with a wide range of employment opportunities, in settings from small law firms to large government departments; from local welfare agencies to private enterprise.</p> <p>With legal practice a likely destination, you may choose to work specifically as a barrister, solicitor or in-house lawyer (after completing the training required for admission to practice). Involving consultation with clients or representing them in court, this is the typical pathway of a law graduate.</p> <p>Alternatively you might look at careers outside the traditional law field, such as a policy officer, management consultant or intelligence analyst. If you</p>	<p>Lawyer Analyst Articled Clerk Australian Youth Ambassador for Development Barrister Commercial Lawyer Commercial Litigation Lawyer Consultant Criminologist Duty Solicitor Freedom of Information Officer (FOI) Graduate Administrative Assistant Graduate Industrial &amp; Employee Relations Officer Graduate Insurance Lawyer Graduate Law Clerk Graduate Lawyer Graduate Taxation Officer Industrial Research Officer In-House Prosecutor Intellectual Property Law Graduate International Humanitarian Law Officer Journalist Judge's Associate Junior Family Law Solicitor</p>	<p>Barrister Business Lawyer Community Legal Services Officer Corporate Lawyer Diplomatic corps Humanitarian / Aid Worker Industrial relations Export / Import trade Foreign Affairs Intelligence Officer Ministerial Adviser Patent Attorney Parliamentary Adviser Parliamentary Member Judicial Associate, Lawyer / Solicitor / Barrister Legal Officer / Legal aid Political Adviser Politician</p>

UniSA	Flinders	University of Adelaide
<p>take a double degree with another discipline, such as commerce, journalism, international studies, or psychology, you may find yourself working in a completely different field, with the added competitive edge of a specialised knowledge of law in that area. For example, a construction project manager, social worker or journalist.”<sup>29</sup></p>	<p>Legal and FOI Officer  Legal and Policy Officer  Legal Associate  Legal Case Manager  Legal Officer  Legal Researcher  Litigation Officer  Ministerial Liaison Officer  Personal Injury Lawyer  Policy and Research Officer  Prosecutions Liaison Officer  Prosecutor  Publisher/Editor (Law Publications)  Solicitor  Summer Clerk  Trade Mark Examiner  Trainee Lawyer  Workplace Relations  Graduate/Lawyer  Youth Justice Coordinator</p>	

65. In addition to the statement above, UniSA’s “Guide to Law 2014” includes a “4-star Employability” rating but without clearly available corresponding information that highlights what this rating means.<sup>30</sup>

66. Could an untrained or inexperienced person potentially form a view that a legal career has more opportunities than it has in reality? For example, is there any real difference between a “business lawyer” and a “corporate lawyer”? They are different shades of the same role however the information is displayed in a way where a person could potentially form a view that they are different occupations. Similar comments can extend to “Commercial Lawyer” and “Commercial Litigation Lawyer”. We also query the appropriateness of including positions that are unpaid. We understand that while Australian Youth Ambassadors receive a small stipend and travel allowance, the role is otherwise unpaid and voluntary. There are other examples in the table.

<sup>29</sup> UniSA, Careers in Law <<http://www.unisa.edu.au/Business/Law/About-us/Careers-in-Law/>>

<sup>30</sup> This ranking is the result of an independent assessment by QS Global. A reference to its assessment of University rankings can be found at [http://www.topuniversities.com/qs-stars/employability?location\\_depth\\_tid=&field\\_qs\\_stars\\_rating\\_value=&field\\_courses\\_tid=&page=4](http://www.topuniversities.com/qs-stars/employability?location_depth_tid=&field_qs_stars_rating_value=&field_courses_tid=&page=4)

## Potential adverse impacts on law students – unpaid work

67. In recent years, the Society has received anecdotal feedback from Members that they are frequently approached by students for employment and some are so desperate for an opportunity that students resort to offering their services on an unpaid basis.
68. This trend was recently explored by the University of Adelaide's Professor Rosemary Owens and Professor Andrew Stewart.

*"With law schools producing many more graduates than could possibly find work in the legal profession, we were aware that students desperate to break into the profession might well want to offer their services for free to an established lawyer, in order to gain experience and make (or cement) a valuable contact."<sup>31</sup>*

69. Around half of those law students surveyed said they had performed unpaid work since leaving high school and for the most part they had not done so for credit towards a degree of qualification. A significant minority had performed extracurricular unpaid work more than once, often for months at a time. A substantial number reported working for law firms or (to a lesser extent) barristers.<sup>32</sup>
70. While unpaid work in the legal profession is not a recent phenomenon, the increasing prevalence of this trend could be considered in light of the high increase in numbers of law students as having an adverse impact on students.
71. There are questions about whether the trend for unpaid work increases participation and whether it improves access for students from low socio-economic status backgrounds and rural and regional communities. Students from higher socio-economic backgrounds are more likely to have the family support needed to sustain themselves in an unpaid internship whereas a student with a lower income may need to supplement an unpaid internship with some form of paid casual work or alternatively forgo the unpaid opportunity altogether. All of these outcomes raise further questions about quality (and inequality).

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<sup>31</sup> Rosemary Owens and Andrew Stewart, *'Experience or Exploitation? The Nature, Prevalence and Regulation of Unpaid Work Experience, Internships and Trial Periods in Australia'* Report for the Fair Work Ombudsman, January 2013, page 56

<sup>32</sup> Ibid, page 57

## Potential adverse impacts on law students – Deregulation of university fees

72. While the Review's Terms of Reference do not include the deregulation of university fees, there have been calls for the Review to consider whether universities should be allowed to charge what the market will bear for desirable courses.<sup>33</sup> There is a view that universities should have the ability to raise prices for courses that lead to professions where students may earn high incomes, such as commerce, law and engineering.<sup>34</sup>

73. Fred Hilmer, Vice-Chancellor of the University of NSW, said that,

*"The policy change should not be sudden. I would like to see it done in an intelligent and gradual way. If there are no serious effects then it's a good experiment and you extend it. There should be no change in courses such as nursing and teaching, because there is a high public benefit that justifies a higher government subsidy and wages are lower making it more difficult for graduates to repay loans"*<sup>35</sup>

74. The proposed policy is based on a presumption that law graduates earn high incomes, however given that over 64% of law graduates are not practising law, then this presumption may need further exploration before being used as a basis to effectively subsidise other professions including nursing, teaching and medicine, which are also much more expensive to deliver than law.

75. For the few law graduates who are fortunate enough to obtain full-time employment in the legal industry, a first year graduate can only expect to earn around \$55,000 per annum.<sup>36</sup> The question of whether lawyers truly are high income earners should be considered if the proposed policy to deregulate university fees is to be further explored. Flinders University questioned whether the costs of the law degree should be reduced to take into account what is likely to be lower wages for most graduates.<sup>37</sup>

76. The Society has significant concerns regarding any proposal to cap law student numbers if as a consequence students will be forced to seek full fee paying places. Entry into law school should not be based upon a student's capacity to pay. Safeguards would be needed to ensure that students from low socio-

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<sup>33</sup> 'University review should extend to fees', *Australian Financial Review*, 14 November 2013, page 62

<sup>34</sup> Tim Dodd, 'Unis ripe for change', *Australian Financial Review*, 14 November 2013, page 60

<sup>35</sup> Tim Dodd, 'Unis ripe for change', *Australian Financial Review*, 14 November 2013, page 60

<sup>36</sup> Katherine Sampson and Lisa Gazis, Mahlab Recruitment Survey 2013: Private Practice Australia and International, page 11 <<http://www.mahlab.com.au/legal-career.asp?id=148&t=survey-2013-private-practice-and-international&cid=43>>

<sup>37</sup> Email from Professor Kim Economides to President Morry Bailes, 12 December 2013

economic backgrounds who may not have the resources and support necessary to enter law school will be able to obtain entry on a HECS-HELP supported basis.

77. Some in academia have also expressed concern that rising university fees are forcing law students to take on too much paid work whilst they are studying. Most university guidelines advise students not to work more than 20 hours per week but many students work for 30 hours or more.

78. Joellen Riley, Dean of the University of Sydney law school, is of the view that fees approaching \$10,000 a year are excessive when you consider the high cost of living in Australia's major cities, and student expenses such as phone and internet bills.<sup>38</sup>

79. The era of free tertiary education, or heavily subsidised education, are gone. LLB programs cost in excess of \$40,000 in tuition fees plus there are textbooks and other study expenses. The Juris Doctor (JD) program can cost in excess of \$100,000.<sup>39</sup> Accordingly the decision to study law is not one to be taken lightly. In the absence of suitably paid full-time employment, it is difficult to pay off debt and this may have profoundly adverse social and financial impacts on graduates, including the inability to buy a first home or start a family.

#### International Case Studies – Singapore and the UK

80. South Australia is not alone in considering the issues around the quantity and quality of its law graduates. The Society also had the benefit of reviewing a submission from the Young Lawyers' Committee of the Law Society of NSW.

81. That submission was made in response to the Review of Australian Higher Education and recommended that an inquiry be established specifically to examine the situation currently prevailing within the legal profession leading to the possible reduction of numbers of graduates produced by tertiary institutions in total.<sup>40</sup>

82. We consider that such an outcome requires further research and empirical studies before a decision is made but we also consider that an inquiry or

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<sup>38</sup> Leanne Mezrani, 'Academic says law students overworked', *Lawyers Weekly*, 29 January 2013 <<http://www.lawyersweekly.com.au/lawyer2b/academic-says-law-students-overworked>>

<sup>39</sup> Australian Law Students' Association, 'National Law Student Cap Discussion Paper, ALSA Council, April 2013 <[http://www.alsa.asn.au/council/documents/April2013/Student%20Cap%20DP\\_Final.pdf](http://www.alsa.asn.au/council/documents/April2013/Student%20Cap%20DP_Final.pdf)>

<sup>40</sup> Joanne Chaina, Chair Civil Litigation Committee, NSW Young Lawyers, Law Society of NSW, Submission to Review of Australian Higher Education, 31 July 2008 <<http://www.lawsociety.com.au/cs/groups/public/documents/internetyounglawyers/023639.pdf>>

Parliamentary Committee established to consider issues of quantity and quality in the legal sector is worth exploring.

83. The Society understands that in Singapore a Committee on the Supply of Lawyers in convened on an annual basis. The Committee is comprised of members of the judiciary, legal profession, universities, Law Society of Singapore and representatives of the Attorney-General. The Committee reviews the numbers of lawyers and makes recommendations to the Government. In 2013, some of the key recommendations included increasing the intake of students from 120 to 180, establishing a third law school subject to certain conditions and introducing programmes to help law students better prepare for legal practice.<sup>41</sup>

84. We understand the English Bar limits its intake to 800 per annum in order to encourage the sector's viability.

I trust these comments are of assistance.

Yours sincerely

Morry Bailes  
**PRESIDENT**

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<sup>41</sup> Ministry of Law of Singapore, 'Government welcomes key recommendations of the 4<sup>th</sup> Committee on the Supply of Lawyers' (Media Release, 28 May 2013) <<http://www.mlaw.gov.sg/news/press-releases/government-welcomes-key-recommendations-of-the-4th-committee-on-the-supply-of-lawyers.html>>