



UNSW
THE UNIVERSITY OF NEW SOUTH WALES
SYDNEY · CANBERRA · AUSTRALIA

Law

20 May 2014

Mr Warren Mundy and Ms Angela McCrae
Access to Justice Arrangements Review
Productivity Commission
Locked Bag 2, Collins St East
Melbourne VIC 8003, Australia

Dear Commissioners

Access to Justice Arrangements: Becoming a lawyer – education and training

Thank you for the opportunity to comment on your draft report on Access to Justice Arrangements. This response from the UNSW Law School focuses only on section 7.2 of your draft report.

UNSW Law's curriculum review

The issues raised in this section of your draft report have been of great interest and importance to us recently. We conducted a major review of our curriculum and teaching in 2011-2012, leading to major changes to our LLB and JD degrees in 2013. A copy of our curriculum review report is attached.

Preparation for our review had two major, connected stages. First, we examined closely the changes (proposed and actual) in US law schools following the Carnegie Report. This included visits to new and innovative law schools, such as UC Irvine. Second, we talked to employers and other stakeholders about their evaluation of our graduates and their suggestions for change. An important finding was the congruence between what is regarded as ideal practice in the US, the views of stakeholders, and the foundational commitment of UNSW Law to teach interactively and contextually rather than in large lectures. In brief, the conclusion of our work was that we should focus more on the type of lawyer we graduate than the volume of information transmitted. Lawyers need first-class black-letter skills, but that is not enough. Equally, we should not be a trade school providing practical legal training.

Legal education at UNSW aims to produce graduates: who have a deep sense of professional ethics and commitment to justice and the rule of law; who think critically and broadly; who can solve problems; who can communicate orally and in writing; who can work collaboratively; and who understand law in action and law in the world. By 'law in action', we mean that students learn the law better if they see it operating: this runs from the introductory visits to courts and other institutions through to clinical programs. UNSW's Kingsford Legal Centre is a key part of our clinical program which currently includes some ten clinics. 'Law in the world' means that it's not enough for students to study international law: they need to understand how all kinds of law now have legal dimensions. We teach this through a new compulsory course, Law in Global Context, which uses a series of case studies. Students also study law in the world through exchanges, international internships, international mooting, and summer/winter schools. It's important to stress that these are not niche programs for a few high-performing students: they are available to all. When demand exceeds supply, we seek to open new programs: recent examples include our police powers clinic at Redfern Legal Centre and our forthcoming summer school in California.

The steps of legal training

Your report describes the steps as being university education, PLT, and obtaining a practising certificate. The last of these is not training, but recognition that the first 2 steps have been completed. In its place, it would be more appropriate to include the on-the-job training that young lawyers get when they join law firms or other employers.

It is important to include this part of the learning process because it affects your suggestion that the Priestley 11 should be reviewed. We will make comments on the contents of the Priestley 11 below: here, the issue is how the Priestley 11 fit into the structure of legal training. In the USA, law schools have more freedom in arranging their curricula because their graduates have to pass rigorous content-based Bar examinations after completing law school. We consider that it is appropriate for Australian law schools to teach this kind of legal content rather than leave it to the Bar examination. Not least, this is because law schools can teach content contextually and thematically, rather than the memory test required by Bar examinations. In brief, we consider that, in principle, the Priestley 11 serves an appropriate purpose in setting a basic level of legal knowledge that graduate lawyers must possess. We therefore express caution about your suggestion that undergraduate legal education should be 'generalised' with postgraduate courses providing training for those intending to practise. There is nothing to stop universities offering such legal studies or law and justice degrees now – indeed some do so. But they do not replace the law degree.

The Priestley 11

The conclusion in the previous paragraph may not be expected: usually, legal academics complain about the Priestley 11. Our view is that the P11 are acceptable for the reasons noted above – but only if they are supervised by legal admitting authorities that respect the professionalism and expertise of legal academics. The various subjects have to be taught, but how they are taught (as separate or integrated courses, etc) is left largely to the law schools. The LPAB in NSW has done this, with a light touch approach to regulation. Of more concern have been the recent calls to extend the P11 to 12 or 13, by requiring separate courses in statutory interpretation and alternative dispute resolution. Such calls often seem to express concern about the knowledge of practitioners (eg senior counsel in superior courts) whose legal education was completed many years ago. In our curricula, requiring a separate compulsory in statutory interpretation would be bizarre: our courses are constructed around the centrality of statute and other regulation in contemporary law. Similarly, for us, dispute resolution is not 'alternative', but something to be taught as part of lawyers' core business: that's why we replaced Civil Litigation with a new course called Resolving Civil Disputes.

The recent debate about statutory interpretation has too often been by a lack of respect for the expertise and professionalism of legal academics to which academics have responded with defensive deference. Neither is helpful in improving the way law students are taught. While the profession is of course entitled to set entry standards to its membership, law schools should be trusted in designing their programs, within broad requirements of subject coverage. The quality of Australian law schools is very high. This is not hubris: QS, the only reputable international ranking of university disciplines, has five Australian law schools in the top twenty in the world.

Too many law students?

This is an important topic and it's good that your draft report draws attention to concerns about over-supply. However, there are aspects of the situation which are sometimes misunderstood, particularly by drawing too simple comparisons with the very difficult situation for US law schools and their graduates since the financial crisis.

- While US JD students usually expect to become lawyers, Australian law students are much less focused on jobs in the profession. Most students still study law as an undergraduate (LLB)

rather than graduate (JD) program. Undergraduates are less committed than JDs to being lawyers. As you note, undergraduate dual degrees provide graduates with other options.

- You quote the SA Law Society's suggestion that law has become a generalist degree, 'the new arts degree'. Such comments ignore a vital feature of law degrees: they are not just a random collection of courses (the very unfair caricature of an arts degree) but, as noted above, a focused education which produces graduates with particular skills, attributes and values. This is not mere rhetoric: alumni in all kinds of 'non-legal' work tell us that their legal training is vital to what they do. It has become a cliché to say that only half of law graduates go into the profession. Even this overstates the number of lawyers, because many graduates who go into big firms or other employing institutions will get their training and will move on to 'non-legal' jobs. One very valuable recommendation that the Commission could make is to call for rigorous research and ongoing reporting on the career destinations of law students. Some such work has been done, but it has lacked the resources and authority needed. (UNSW is one of only 2 Australian law schools to participate in the US-based Law School Survey of Student Engagement which provides useful data on students' career aspirations, but none on actual destinations).
- In general, we concur with your conclusion that concerns about oversupply are overstated, that capping numbers is not necessary (although rigorous scrutiny of new law schools by admitting authorities is to be expected), and that emphasis should be on educating prospective and current law students about employment opportunities. (This is why, at UNSW, we have appointed a Director of Senior Studies – an academic with extensive experience in practice – to advise later year students and are expanding our in-house careers counselling service.)
- None the less, the growing number of law graduates is a matter of concern. Law students are hard for universities to resist: they are high quality students who are cheap to teach, particularly if taught badly in large lectures. Law schools used to be expensive to establish because the university would have to put together a collection of reports, legislation, journals, monographs etc. No longer: through the extraordinary development of free access to law by the Australian Legal Information Institute (AustLII, a UNSW-UTS initiative), a law student now needs no more than access to the internet.

The attractiveness of law students to universities will increase even further if the Commonwealth Government succeeds in its attempt to deregulate fees. Seen as cheap to teach and heading for well-paid jobs, law students may be seen as potential cash-cows for universities. We have deep concerns about this approach. First, law can't be taught well to massive classes. Secondly, despite the US situation being different in important respects, it would be most unfortunate if law schools produce large numbers of graduates with large interest-incurring debts and poor job prospects. Thirdly, UNSW Law takes great pride in being a premier quality law school for students from all backgrounds, notably those from migrant families. The Government proposes that 20% of the new student fees should be allocated to scholarships and other student support, but the details of this scheme are as yet unavailable. If Australian universities are to model themselves on their US peers (as seems to be the Government's intention), then that proportion should be higher.

Dispute Resolution

We agree with your commentary on this matter. As noted above, we already teach dispute resolution as core lawyers' business.

Clinical legal education

As noted above, we are very strong advocates of clinical legal education. However, we note that it is resource-expensive. In addition, it can be hard to attract staff with the appropriate blend of academic and professional skills. This leads, in some US law schools, to problematic differences between academic and clinical faculty. In addition, while preferring clinical education, we recognise that others

have other priorities. Every law school does not have to be the same: on the contrary, we feel it would be better for there to be a variety of types of law school from which students could choose rather than, as at present, an unfortunate tendency for everyone to be the same (leading to some law schools having little to show behind the marketing about clinics and social justice).

Regulation

We strongly agree with your suggestion that effective regulation must minimise regulatory burdens. However, your brief comments need to be expanded to take account of the very difficult regulatory regime surrounding law schools.

- Far too much time has been wasted in recent years dealing with the Australian Qualifications Framework and the Tertiary Education Quality Standards Agency. They challenged basic, long-established characteristics of Australian legal education – graduate degrees (either LLB or JD) which don't fit neatly into UG or PG; embedded honours awards; and one-year master degrees. In a remarkably regrettable case of regulatory parochialism, the regulators tried to make us give up internationally recognised features of legal education. It is good to see that the Commonwealth Government winding back TEQSA.
- Admitting authorities. There is considerable divergence in practice across Australia. The constructive and collaborative approach of the LPAB in NSW could be a model for others.
- The Commission should acknowledge the law schools' impressive attempt to regulate themselves via the Council of Australian Law Deans' Standards for Australian Law Schools. There is a useful introduction to the Standards at <http://www.cald.asn.au/assets/lists/ALSSC%20Resources/CALD%20Standards%20Introductory%20Context%20Statement%20March%202014.pdf>. For the Standards themselves, see <http://www.cald.asn.au/assets/lists/Education/CALD%20Standards%20As%20adopted%2017%20November%202009%20and%20Amended%20to%20March%202013%5B1%5D.pdf>.

Please contact me if further comment or information would be helpful.

Yours sincerely

David Dixon
Dean, UNSW Law