

RESPONSE TO COMMENTS BY THE NSW LEGAL PRACTICE BOARD

Draft 5 of the LPAB's comments on the revised descriptions of the prescribed areas of knowledge were received on 9 October 2019. As the final draft of the Steering Committee's report to LACC had been completed on the previous day, it was not possible to consider the LPAB's comments within the context of the Steering Committee's report.

The following observations on matters raised in the draft comments may nevertheless assist the Board.

First, the Board suggests that "in the absence of any evidence that the present framework is not working, it is difficult to see a practical need to introduce a competing framework."

The proposed revised descriptions do not purport to introduce any new framework. They are simply intended to replace the existing descriptions of prescribed areas of knowledge in terms that are widely seen as more compatible with the existing practices of Universities, in response to the AQF; of Law Schools, in response to both the AQF and TLO 1; and of TEQSA in accordance with the Higher Education Standards Framework (Threshold Standards) 2015 (**Threshold Standards**).

The decision to revise the **wording**, but not the **substance**, of the existing descriptions was triggered by the 2017 PhillipsKPG report *Professional Accreditation: Mapping the Territory*, commissioned by the Commonwealth Department of Education and Training, to see how the compliance burden imposed on tertiary institutions by Professional Accreditation bodies might be streamlined and made less costly. It surveyed and compared the respective current practices of accreditation bodies for most professions. Its main conclusions with respect to Law were set out in a paper prepared for the LACC meeting in July 2018. It was subsequently distributed to all Law Admitting Authorities for their consideration.

The report noted an almost universal trend among professional accreditation bodies to revise the drafting of their academic prerequisites in terms of outcomes, and identified Law as one of the few professions that had failed to do so. The report encouraged non-compliant professions to follow suit, on the basis that so doing would make their academic requirements more consistent with the outcome descriptions now adopted by most Universities and their Professional Faculties, and thereby reduce the complexity and cost to the tertiary sector of demonstrating compliance with their respective requirements. The report did not envisage the complexities and conflicts that the LPAB seems to foresee as arising from this relatively simple exercise.

In the event, LACC appointed a committee to examine the feasibility of revising the drafting of the prescribed areas of knowledge in the way suggested, and enthusiastically endorsed its report at the meeting in October 2018. Again, that report was made available for comment by all Admitting Authorities and other bodies represented on LACC. CALD, APLEC and most Admitting Authorities endorsed the Committee's report and its suggested draft of a revised description for Contract.

That proposal emphasised that any revised descriptions **should not** include material that was not already commonly taught by law schools in satisfying present descriptions of the prescribed areas of knowledge. It noted, however, that where teaching practices commonly adopted by law schools were not presently acknowledged by the existing descriptions, changes could be made to reflect these common practices. This followed the recent adoption by all Admitting Authorities of revised descriptions of Civil Procedure (now called Civil Dispute Resolution, which includes the "new" topic of Alternative Dispute Resolution) and Evidence, both reflecting changes in the common practice of law schools over many years.

In response to the concerns expressed by the LPAB, it should be noted that there are, in fact, widely-held views that the present framework is no longer adequate; that the proposed revised drafts complement, rather than compete with the 2015 Threshold

Standards; that they continue to provide the knowledge and skills "required to be eligible to seek registration to practise" referred to in Standard 1.4.3 c. of the Threshold Standards; and they continue to provide the "fundamental areas of legal knowledge" referred to in paragraph (a) of TLO 1 of the Threshold Learning Outcomes for the Bachelor of Laws.

The Board's attention might also be drawn to the fact that the proposed revised descriptions are supported by the submissions from CALD, the Legal Education Associate Deans Network, the University of WA law school, Monash University Faculty of Law and the Melbourne Law School; and that none of them foresees the theoretical or practical difficulties envisaged by the Board.

It should also be noted that Professor Sally Kift, who was the joint author of the TLOs for law in 2010 and Professor Alex Steel, who is the Acting Pro Vice-chancellor Education at the UNSW, are both closely familiar with the prevailing academic regulatory requirements for law schools and are members of the Steering Committee that has developed and sought comments upon the current proposals. Neither of them has expressed concerns similar to those expressed by the LPAB.

The LPAB also asks what new material a law school will be obliged to teach if the revised descriptions are adopted?

Para 2.9(c) of the Steering Committee's report explains why it would neither be feasible nor helpful to produce an Executive Summary of the import of all the subtle changes in expression. It is vital to reiterate, however, that any substantive changes that have been made in the revised descriptions only reflect the existing common teaching practices of all law schools. To give three examples

- (a) the common paragraph (a) of each description, which refers to the theoretical and conceptual bases of a prescribed area of knowledge and its historical and social context, was inserted at the insistence of the Chair of CALD and the Deputy-Vice Chancellor (Academic) of Swinburne University, who expressly identified these matters as being the existing primary features of all law school courses which distinguish subjects of a law degree accredited for admission purposes, from service courses in other Faculties that may bear similar names. The argument is that enunciating this requirement will make it impossible for law schools to grant *ad eundem statum* credit for subjects taken in service courses, thereby assuring that applicants for admission have satisfied the requirements of the prescribed areas of knowledge, rather than another subject bearing a similar name taught by some other Faculty.
- (b) the reference to principles of indigenous Australian law referred to in the description of Property recognises a change in the common practice of teaching Property that commenced in the mid-1970s following the decision of Blackburn J in *Milirrpum v Nabalco*. It does not, as the LPAB suggests, add to the existing burden of teaching the subject: see the Steering Committee report para 2.7.
- (c) similarly, the reference to the relationship between Aboriginal and Torres Strait Islander Peoples and the Australian constitutions merely recognises the existing substance taught in Constitutional Law. One of the authors of the revised description of that subject observed –

Including the relationship between Indigenous Peoples and the Constitution in constitutional law courses has been best practice for decades now, and I doubt any academic currently teaching the area in a leading Australian law school would dispute that it is a core aspect of the curriculum.

Anyone who thinks that by including this we are changing the substance of what is taught is seriously out of touch with current pedagogical practice.

It might also be helpful to the Board to know that LACC resolved at its meeting in June 2019 to place a proper review of the **substance** of the prescribed areas of knowledge on its work program for 2019 - 20. That has never been the purpose of the present review of the descriptions of the presently prescribed areas of knowledge.