

Some Comments on LACC Redrafting the Academic Requirements for Admission

This document comments on the Law Admissions Consultative Committee (LACC) document titled “Redrafting The Academic requirements for Admission.” (the LACC Proposal).

Summary of comments

To summarise:

1. higher education providers are already required to comply with the Higher Education Standards Framework (Threshold Standards) 2015.¹ (the Framework). Introducing overlapping requirements into Schedule 1 potentially complicates the delivery of legal education in the absence of any demonstrated need;
2. in assessing whether to renew an accreditation, the Board is entitled, if it considers it necessary, to commission a report into whether the syllabus is being effectively taught and learnt without the need to redraft Schedule 1 of the Legal Profession Uniform Admission Rules 2015² (the Rules);
3. the LACC Proposal introduces new material into the Priestley 11 without clearly identifying what is new and without any explanation for the inclusion of new materials which would be required to meet the outcomes;
4. in effect the LACC Proposal introduces new Priestley 11 material without a comprehensive review of the Priestley 11 having been undertaken such that admission authorities have not been provided with substantive reasoning to justify this or that inclusion. In this way what is proposed is quite unsatisfactory. The outcomes could simply reflect the presently mandated Priestley 11 or the admission authorities could be invited to re-open discussions about really undertaking an updating process of the Priestley 11. If there is an intention to vary the mandated content the new materials should be specifically identified and the reasons for their inclusion – and the omission of other modernising content - given.

Adopting An Outcomes Basis

Current Approach in Schedule 1

Schedule 1 sets out the academic areas of knowledge that law schools are currently required to teach. It sets out the minimum course content in the designated areas which law schools must cover (the Priestley 11).

Whilst the Rules are a key focus for admission boards they form only one of the regulatory requirements that law schools - at least those operating within a university – must comply with. Important additional obligations that universities must comply with are contained in the Framework.

¹ Accessible here: <https://www.legislation.gov.au/Details/F2015L01639>

² Accessible here: : <https://www.legislation.nsw.gov.au/#/view/regulation/2015/240/sch1>

The Framework approach

The Framework adopts an outcomes focus. As a result all law schools in Australian universities are presently following both a content approach so as to comply with the Rules and an outcomes approach so as to comply with the Framework. Some of the key provisions of the Framework are set out below for ease of reference and to make good this observation.

Standard 1.3.3. Methods of assessment or monitoring that determine progress within or between units of study or in research training validly assess progress and, in the case of formative assessment, provide students with timely feedback that assists in their achievement of learning outcomes.

Standard 1.4.1. The expected learning outcomes for each course of study are specified, consistent with the level and field of education of the qualification awarded and informed by national and /or international comparators.

Standard 1.4.2. The specified learning outcomes for each course of study encompass discipline-related and generic outcomes, including:

- a. specific knowledge and skills and their application that characterise the field(s) of education or disciplines involved
- b. generic skills and their application in the context of the field(s) of education or disciplines involved
- c. knowledge and skills required for employment and further study related to the course of study, including those required to be eligible to seek registration to practise where applicable, and
- d. skills in independent and critical thinking suitable for life-long learning.

Standard 1.4.3. Methods of assessment are consistent with the learning outcomes being assessed, are capable of confirming that all specified learning outcomes are achieved and that grades awarded reflect the level of student attainment.

Standard 1.4.4. On completion of a course of study, students have demonstrated the learning outcomes specified for the course of study, whether assessed at unit level, course level, or in combination.

Standard 3.1.1. The design for each course of study is specified and the specification includes:

- e. expected learning outcomes, methods of assessment and indicative student workload

Standard 3.1.2. The content and learning activities of each course of study engage with advanced knowledge and inquiry consistent with the level of study and the expected learning outcomes, including:

- a. current knowledge and scholarship in relevant academic disciplines
- b. study of the underlying theoretical and conceptual frameworks of the academic disciplines or fields of education or research represented in the course, and
- c. emerging concepts that are informed by recent scholarship, current research findings and, where applicable, advances in practice.

Standard 3.1.3. Teaching and learning activities are arranged to foster progressive and coherent achievement of expected learning outcomes throughout each course of study.

Standard 3.1.4. Each course of study is designed to enable achievement of expected learning outcomes regardless of a student's place of study or the mode of delivery.

Standard 5.3.4. (b) Review and improvement activities include regular external referencing of the success of student cohorts against comparable courses of study, including:

- b. the assessment methods and grading of students' achievement of learning outcomes for selected units of study within courses of study.

Supervising of the achievement of outcomes

In complying with the Framework all law schools should already follow an outcomes approach and teach to and assess the outcomes identified by them. Unit Outlines³ or other documents should set out the Unit Learning Outcomes of each unit. They should also set out a mapping of each of those Unit Learning Outcomes to the particular assessment tasks which

³ Some universities call courses of study courses and others units. This paper will use the terms units.

are set over the semester in that unit in which those Unit Learning Outcomes are intended to be achieved. In a standard unit there may be say 3 or 4 Unit Learning Outcomes and those Unit Learning Outcomes may be quite broadly phrased.

Where the Priestley 11 content in a particular area is taught entirely in one unit in the current content approach to the Priestley 11 it is possible to review the Unit Outline to ensure that the mandated Priestley 11 content is covered. If a deeper analysis were considered necessary a review of the teacher's teaching notes or aids and of the mandatory readings might be undertaken. This task can be undertaken in relation to courses taught in Australia or elsewhere. The content is either there or it is not.

If as the LACC Proposal recommends a content or an outcomes approach were followed and if those outcomes were to become Unit Learning outcomes across the sector it should be possible to supervise course providers. Each student's achievement of the outcomes would then be able to be reviewed by reviewing the Unit Learning Outcomes of that unit against the LACC Proposal outcomes and the student's mark. If a deeper analysis was considered necessary reviewing the assessments to confirm that those assessments did in fact measure the relevant objectives could be undertaken. Where the Priestley 11 content in any particular area was taught across more than one unit it should still be possible to supervise course providers' achievement of the outcomes by checking that the Unit Learning Outcomes (or if they are prescribed the prescribed learning outcomes) are all assessed in more than one unit and, if considered necessary, by reviewing the assessments set to test the achievement of those outcomes. Where students undertake the study of mandated Priestley 11 subjects outside Australia and where the institutions involved do not follow an outcomes approach it may not be possible for admitting authorities to review the outcomes achieved.

As universities are already adopting, as required by the Framework, an outcomes approach to their task the LACC proposal could be seen as bringing the admission requirements into line with the Framework and with what universities actually do. However, as noted above the Unit Learning Outcomes used at most law schools are not likely to currently replicate those proposed in the LACC Proposal and may not be as detailed or specific as the LACC Proposal recommends. Even though the LACC Proposal states that its wordings are "indicative not prescriptive" (1.3) it seems inevitable that if adopted the LACC Proposal's outcomes would be the benchmark against which every Priestley 11 unit in every Australian law school would be measured. Effectively specifying the outcomes is a much more prescriptive approach than the current approach. Contemporary university Unit Learning Outcomes tend to be small in number in each unit and fairly broad in content. The more learning outcomes prescribed and the more detailed their content the more difficult it will be to assess their achievement by every student undertaking a unit. The proposed "indicative not prescribed" learning outcomes are of a different nature to what might be found in many contemporary university unit outlines. They are larger in number and they are more specific in content. Significantly the outcomes proposed are also not a simple rewording of the current Priestley 11 content into outcomes (see below) but necessitate the teaching of some additional content to achieve the proposed mandated outcomes.

The current Schedule 1 approach mandates subject content and not the specific learning outcomes so that law schools have some flexibility in the manner by which they align their obligation to teach the Priestley 11 with their obligation to measure learning outcomes under the Framework. Subsidiarity and difference are important principles such that, within

necessary parameters, law schools should be given the scope to develop their own approaches: This includes formulating specific unit outcomes as part of the flexibility that law schools should continue to enjoy. Although styled as “indicative not prescriptive” it would be difficult for universities not to adopt the terminology used in the LACC Proposal if it were adopted.

As a practical matter a change to an “indicative not prescriptive” but effectively a mandated outcomes approach would require all law schools to amend their unit outlines and their assessments. This would first involve an internal approval process which all takes time which could be put to other use. If the intention is that every law school should monitor the achievement by every student of every one of the newly effective prescribed individual learning outcomes, assessments specifically designed to achieve that objective would need to be prepared and presumably rules put in place in each university to prevent a student who fails to successfully complete any of the mandated learning outcomes (rather than a mark sufficient to earn a passing grade) to advance in their degree. If not students will graduate without achieving each of the mandated outcomes.

The introduction of a set of outcomes which are different from those which are stipulated by the Framework introduces an unnecessary complication for providers of legal education. It is not clear why doing so is desirable in circumstances where the LPAB is already able, if it considers it appropriate to do so, to investigate whether a course is being effectively taught (see Admission Rule 8).

Ultimately, and as a practical matter, the compliance of law schools with the Framework is already administered by TEQSA, which is empowered by the *Tertiary Education Quality and Standards Agency Act 2011* (Cth) to monitor compliance (see ss 59-62) and to undertake investigations (see Part 6). 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.

What content is in the outcomes but not in the Priestley 11?

If there is considered to be a need to update the Priestley 11 first updating the Academic Areas of Knowledge before creating an outcomes approach would have made it easier for admissions authorities and others to see what new material must be taught in order to achieve the newly identified outcomes. It is evident that new content has been added to the Priestley 11 in the new outcomes approach.

The way in which the outcomes have been presented in the LACC Proposal gives no explanation or justification for the inclusion of any of these new specific areas of learning. There are no doubt very laudable objectives and justifications which may be given for these additions – and not others - but it is important to keep in mind that most law schools teach the Priestley content in each area in a single one semester unit. The more additional material which is effectively mandated the less time that can be spent on each component of the course and the less a student will really learn. If this is an attempt to modernise the Priestley 11 there seem to be glaring omissions such as for example personal property securities law not being added as mandatory in Property Law. In the outcomes proposed most refer to new content being the broad theoretical basis of an area but some also refer to social context and others historical contexts. Why these differences are proposed in the new formulations is not explained nor is the inclusion of an indigenous component in some areas - like Constitutional Law and Property Law - explained. These are surely not the only areas of the law in which an

indigenous people perspective is of relevance. Just to cite a few examples of effectively mandated new content which would need to be taught to satisfy the outcomes:

Administrative Law

“(h) the impact of human rights legislation on administrative law, where such legislation exists.”

A good thing to learn no doubt and students taking electives in human rights law no doubt would do so but ought it be compulsory for all students of law?

Civil Dispute Resolution

“(a) the broad theoretical basis of civil dispute resolution and social context”

“(c) how the legal system seeks to promote access to justice...”

Contract

“(a) the broad theoretical basis of the law of contract and its social context.”

Company Law

“(a) the broad theoretical basis of company law and its social, historical and global context”

(h) the role of the corporate regulator...”

Constitutional Law

“(a) the broad theoretical basis, and the social and historical context, of Australian constitutional law including the relationship between Aboriginal and Torres Strait Islander Peoples and the Australian Constitution.”

Criminal Law

“(a) the broad theoretical basis of the criminal law and procedure and its wider context.”

Equity and Trusts

“(a) the broad theoretical basis and historical origins of equity and of its social context.”

Ethics and Professional Responsibility

“(a) the broad theoretical and conceptual basis of lawyers’ ethics and professional regulation and its social context.”

Property

“(a) the principles of indigenous Australian law that form the basis of Aboriginal and Torres Strait Islander claims to land.”

Torts

“(a) the function and development of tort law in its social context...”.

Legal Profession Admission Board of NSW

1 October 2019