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Professor S Clark
Chair
Admissions Committee
Legal Services Council
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Dear Professor Clark

Submission on the proposed Admission Rules

I wish to make a submission in respect to some of the rules contained in the proposed admission rules at http://www.legalservicescouncil.org.au/docs/Admission_Rules_Consultation_Draft.pdf as they apply to practical legal training.

I have been involved in providing practical legal training since 1983. I am currently the Director of the Legal Practice Unit at QUT, which delivers a Graduate Diploma in Legal Practice. I make this submission on my own behalf and not on behalf of QUT. I make this submission as the proposed admission rules may be adopted nationally at some time in the future and may affect the provision on PLT in Queensland.

My submission discusses rule 5(2) which will reintroduce a form of Articles of Clerkship in NSW. My submission then focusses on transparency and fairness relating to accrediting providers, placing conditions on accreditation and reviewing providers. The relevant rules do not explicitly provide for Boards to publish the criteria that they will apply in these situations nor do those rules provide for Boards to give notice of adverse decisions or for providers to be able to respond to or appeal those decisions.

Rule 5(2)

This rule will introduce Supervised Legal Training in NSW. This will bring NSW into line with QLD, VIC and WA, which offer Supervised Workplace Training. My view is that it is not a step that should be taken in NSW without wide consultation with the profession and other stakeholders given the likely significance of the decision for the profession, trainees and perhaps the overall quality of pre-admission training in NSW.

I believe that before seeking to extend SLT to NSW it would be useful to review its uptake and effectiveness in providing practical legal training in the jurisdictions in which it is offered already. My understanding is that SWT provides less than 10% of PLT in QLD which does not indicate significant demand for it from the profession.

SWT has the same fundamental problem as articles of clerkship had in that the assessment of a trainee's ability to demonstrate competence in any situation is left to individual legal practitioners who may or may not use systematic and transparent criteria for that assessment. Students in PLT courses have their competence assessed against transparent criteria. Students who are identified as not having attained competence are re-tested or failed.

Because PLT courses have to be accredited and because they assess student competence in a systematic way against transparent criteria, the admitting authorities can have confidence that students who successfully complete PLT courses have attained a specified level of competence. Because success in SWT seems to be more subjective, the admitting authorities may not always be able to have that same level of confidence with SWT graduates.

I work with firms that offer SWT in Queensland and those firms have well-resourced and well-thought-out programs and many of the trainees in those programs demonstrate a high level of competence in the tasks they perform for me. This is not however any guarantee that if the availability of this form of training spreads, that all firms wishing to provide it will have the will or expertise to provide it at the same standard. One of the problems with Articles of Clerkship was that because training was dispersed among several hundred providers, most with only one or two clerks, it was impossible to ensure some uniform minimum standards of experience for all clerks.

I also believe that a strong argument can be made that a student's basic competence to practice should be tested in a simulated environment before they start to do work for real-life clients.

Rule 6(2)

This rule provides that in determining whether to accredit a provider, a Board must take into account the appraisal criteria from time-to-time endorsed for use in other Australian jurisdictions and any other matter it considers material. This is too uncertain.

Each Board should be required to publish its appraisal criteria upfront so that providers can know precisely what criteria will be applied to their applications for accreditation, so they can address those criteria in their applications.

Rule 6(3)

This rule provides Boards with the power to impose conditions on accreditations. The rule should provide some procedural fairness around this – such as the issue of a 'condition notice' prior to imposing a condition to enable a provider to make submissions relating to the proposed condition before it is imposed.

The rule should also provide a right of review or appeal of Board's decision to impose a condition.

Rule 6(7)

This rule will allow a Board to withdraw a provider's accreditation or add conditions to an existing accreditation. For the purposes of procedural transparency and fairness, before withdrawing a provider's accreditation or adding a condition the Board should first issue a 'show cause' notice setting out the reasons the accreditation is to be withdrawn and providing a provider with a right to make submissions as to why its accreditation should not be withdrawn.

The rules should also make clear what mechanisms exist for a review of the Board's decision (administrative and judicial review) and that right to information (freedom of information) applies to

Board deliberations in these matters, so that providers can find out why Boards are asking them to show cause.

Rule 6(8)

This rule effectively requires providers to give Boards a blank cheque for the cost of accrediting, monitoring and reviewing providers. I do not believe that some institutions will be prepared to do this.

Boards should set fees upfront for accreditation, monitoring and reviewing. Any fees the Board sets will of course be indirectly paid by persons (students) who undertake training with those providers.

If Boards set fees for accreditation of PLT providers and other services, those Boards might need to determine if they should reduce the fees they charge currently charge applicants for admission to the legal profession, as presumably those fees currently cover the costs of some Boards carrying out the functions described in rule 6(8).

Rule 7(3)

This rule relates to reviewing providers. The same observations apply as I made for 6(2) in that Boards should publish their review criteria upfront.

As a matter of procedural fairness providers being reviewed should have right to provide a response to the reviewer's report (perhaps prior to the reviewer finalising that report). Perhaps providers should also be involved in the process of determining the 'summary' to appear on the website and whether providers can put a response up to that summary if they disagree with it.

Thank you for this opportunity to make submissions in respect to the proposed rules. If you wish me to clarify any of the matters I have raised, please do not hesitate to contact me.

Yours faithfully

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