LAW ADMISSIONS CONSULTATIVE COMMITTEE[1]

BACKGROUND PAPER ON ADMISSION REQUIREMENTS

This paper sets out background information about the present requirements for admission to the legal profession in Australia. It considers:

(a) the development of the Academic Requirements for admission;

(b) the development of the Practical Legal Training Requirements;

(c) the development and application of the Uniform Principles for Assessing the Qualifications of Overseas Applicants for Admission.

1. ACADEMIC REQUIREMENTS FOR ADMISSION

1.1 Some background

In 1976, a National Conference on Legal Education endorsed a suggestion by Justice Charles Bright, then Chancellor of Flinders University, that an Australian Legal Education Council (**ALEC**) be established. Under the chairmanship of Justice Gordon Samuels, ALEC sought to follow in the steps of the Ormrod Committee in the UK (1971), to identify a common "core" of compulsory subjects which all law schools would agree to teach to undergraduate law students, including those who sought admission to the legal profession.

At much the same time, in June 1978, the Victorian Council of Legal Education established an Academic Course Appraisal Committee under the chairmanship of Justice Richard McGarvie. It proposed amendments to the Victorian Admission Rules late in 1979, which provided for the Council of Legal Education to accredit subjects in a law course that provided a student with basic understanding and competence in most of the areas presently specified in the Academic Requirements, plus Statutory Interpretation, Case Analysis, Legal Research, Legal Writing and Concepts of Proper Law and Amenability to Jurisdiction.[2]

Also in 1979, Sir Laurence Street convened LACC's predecessor, which sought to promote consensus between Admitting Authorities on what should be required of law schools and their graduates who sought entry into the legal profession.

Law schools questioned the impact which the new requirements imposed by the Victorian Council of Legal Education would have on student demand and choice; on the academic interests and expertise of staff; and on a number of other institutional and resourcing matters. As a result of these reservations, the Academic Course Appraisal Committee launched an exhaustive enquiry, culminating in a *Report on Legal Knowledge Required for Admission to Practise*, presented to the Council in October 1982 (the **McGarvie Report**).

The McGarvie Report took into account a recommendation by LACC's predecessor, made in September 1980, that there should be a uniform requirement that all overseas applicants seeking admission in Australia should:

(a) have a tertiary law qualification substantially equivalent to the qualification required of local applicants;

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1 LACC's Charter is approved by the Council of Chief Justices which also appoints its Chairman. LACC is not, however, a committee of the Council, nor does it act on the Council's behalf.

2 Rules of the Council of Legal Education (Amendment No. 3) 1979 (Vic) (SR 29/1980) inserting rule 20(a)(ii).

(b) have knowledge of Federal and State Constitutional Law, Criminal Law, Torts, Contracts, Property (including Trusts and the Torrens System); and

(c) have knowledge of such additional subjects required of local applicants by the relevant Admitting Authority which had not been included in the applicant's academic preparation.

The McGarvie Report also examined work completed by a committee of ALEC, chaired by Professor Horst Lucke, in its *Report on Core Subjects* (February 1981) and ALEC's ultimate recommendation, in March 1982, that Australian applicants should be required to have studied the areas recommended by LACC's predecessor, plus Evidence, Procedure Professional Conduct and Trust Accounts, which were seen as falling under the rubric of item (c) of the LACC recommendation above.

In the event, the McGarvie Report departed from this proposal by adding Legal Process and by separating out Trusts from Property, and Administrative Law from Federal and State Constitutional Law.

In fact, the prior ALEC recommendation had proceeded on the assumption that each law degree would require an "inevitable introductory course".[3] The McGarvie Report thus concluded that its recommendations were substantially the same as those made by ALEC.[4]

It went one step further, however. In addition to affirming a list of subjects, it offered a synopsis of the topics which the Council of Legal Education would normally expect to be dealt with by subjects for which Universities might seek accreditation.[5] Those topics are very similar to, and in some cases identical with, the first paragraph of each of the subject descriptors in the present 11 Academic Requirements.

1.2 Form of the Academic Requirements

The ALEC and McGarvie Reports were the bases for the subsequent recommendations of LACC's predecessor, which ultimately became the present 11 Academic Requirements, set out in **Appendix 1**.

Those Requirements ultimately omitted any reference to Legal Process (or its assumed elements of Statutory Interpretation, Case Analysis, Legal Writing and Legal Research, as initially prescribed by the Victorian Rules)[6] again on the assumption that a Legal Process course would be inevitable. It added Company Law to the requirements at the urging of professional organisations. It also substituted Equity for Trusts, with the requirement that "about half the course would be devoted to trusts".

Some law schools were concerned that the proposed Academic Requirements, like the McGarvie Report, set out a list of topics for each subject area. To meet their concerns, and to promote consensus on the proposal, a second, more generally descriptive, paragraph was added to each subject.

This explains both the present form and the content of each Academic Requirement. For example, in the description of Property, the first 10 items are identical with those proposed by the McGarvie Report. The second, alternative, paragraph was inserted to meet the concerns of certain law schools.

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3 ALEC Subcommittee *Report on Core Subjects* (1981) Appendix p1.

4 COLE Academic Course Appraisal Committee *Legal Knowledge Required for Admission to Practise* (1987) (**McGarvie Report**) para 39.

5 Idem Appendix 7.

6 Rules of the Council of Legal Education 1980 (Vic) (SR 496/1980) rule 19(a)(ii).

Although LACC's predecessor recommended that each jurisdiction should alter its admission rules to embed the 11 Academic requirements, this did not occur. Having discharged its initial commission, LACC's predecessor did not meet for several years. It reconvened in the early 1990s under the chairmanship of Justice LJ Priestley, and the Academic Requirements thereafter acquired the sobriquet of "the Priestley 11".

In 1998, LACC asked law schools, Admitting Authorities, the Law Council and each of its constituent bodies for their views on whether the Academic Requirements should be generally reviewed. Not one respondent thought a review of the Academic Requirements was then either necessary or desirable.[7] In 2008, however, a minor modification was made to the Requirement relating to Professional Conduct and Trust Accounting. The present description for Ethics and Professional Responsibility was inserted, and the requirement to study Trust Accounting as part of an *academic* course was removed

2. PRACTICAL LEGAL TRAINING REQUIREMENTS FOR ADMISSION

Before 1970, Australian graduates, or those completing the various legal qualifications then offered for articled clerks or by the Barristers and Solicitors Admission Board in New South Wales, customarily acquired pre-admission practical experience by undertaking articles.

As the number of law students increased, their ability to obtain one-year or five-year articles decreased. This led to the establishment of PLT courses, which rapidly replaced articles in New South Wales and South Australia, and became an alternative to articles in Queensland and Victoria.

By February 1993, the various systems for acquiring practical legal training that had developed in different jurisdictions led the Standing Committee of Attorneys-General (**SCAG**) to ask the Law Council of Australia to forge a national agreement between the various jurisdictions of the requisite elements of practical legal training. In the event that the Law Council was unable to produce agreement between its constituent bodies, SCAG suggested that LACC's predecessor should examine the issue.

The Law Council reached agreement on general heads of practical legal training, but could not agree on whether the necessary training should occur before or after admission. LACC's predecessor then took up the task. Twelve broad heads were endorsed, which actually mirrored the contemporary offerings of the various existing PLT courses. They were incorporated into a 1994 report which included a description of each general area of training, drafted in a similar way to the Academic Requirements noted in item 1.2 above.

The areas were:

Legal Profession:

Ethics and Professional Responsibility
Trust and Office Accounting

Profession Skills:

Work management
Legal writing and drafting
Interviewing
Negotiation and dispute resolution
Legal analysis and research
Advocacy

[7] LACC, *Re-thinking Academic Requirements for Admission* (2010) p 20.

Practice and Procedure:

Litigation
Property practice
Wills and Estate management
Commercial and corporate practice

These areas duly attracted the sobriquet of "the Priestley 12" to complement the Priestley 11: see item 1.2 above.

The same areas were subsequently also endorsed by the Law Council in its *Blueprint for the Structure of the Legal Profession: National Market for Legal Services* (1994).

Further development did not occur until after the Council of Chief Justices asked LACC:

> to pursue…the continued monitoring of common standards for academic legal qualifications for admission and consideration of further ways to achieve uniformity of practical legal training.[8]

Building on work done by Professor W P Birkett in designing the Competency Standards to guide the Professional Year of training for accountants in Australia and New Zealand, in 1997 the Australian Professional Legal Education Council (**APLEC**) produced a report on *Standards for the Vocational Preparation of Australian Legal Practitioners* that condensed the Priestley 12 into 9 more broadly-described fields of study. This report for the first time enunciated particular outcomes which each student should achieve in each of the fields of study. In turn, this report was taken into account in LACC's report on Practical Legal Training of September 1997.

Thereafter, LACC developed a project jointly with APLEC for a consultant to further develop proposed Competency Standards for Entry-level Lawyers. This work was completed in November 2000. LACC resolved to recommend the Competency Standards to all Admitting Authorities early in 2001. They were subsequently adopted in the form set out in **Appendix 2** and came into operation in July 2002.

3. UNIFORM ADMISSION RULES

In 1992, LACC developed so-called Uniform Admission Rules, which were:

> designed for the guidance of the Boards and other authorities administering the requirements for admission to practise in each jurisdiction.

They incorporated the 11 Academic Requirements as pre-conditions for admission, and were "recommended for adoption in each jurisdiction".

Subsequently, and contemporaneously with the adoption of the PLT *Competencies for Entry-level Lawyers*, the Uniform Admission Rules were revised to incorporate both the 11 Academic Requirements and the PLT Competencies.[9]

While each jurisdiction generally complies with the principles which underlie the Uniform Admission Rules as revised in 2002, they do so in a wide variety of ways. There seems no prospect that any jurisdiction would choose to make Rules which precisely correspond with the Uniform Rules in the terms prepared and revised by LACC.

Nevertheless, LACC formed the view that it is prudent to set out the principles now generally reflected in the regulatory arrangements in each Australian jurisdiction, in the

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[8] Letter from Chief Justice Mason to Justice LJ Priestley, 28 November 1996.

[9] LACC, *Towards a National Legal Profession* (February 2002)

expectation that this may contribute to achieving and retaining common principles and practices relating to admission to the Australian legal profession. Accordingly, in 2008 it produced a further document which retains the title of *Uniform Admission Rules* [10] which had become familiar. That document does not purport to set out Draft Rules for adoption in each jurisdiction. Rather, it records the principles which LACC considers that each jurisdiction should adopt, in one way or another.

4. ASSESSING OVERSEAS APPLICANTS FOR ADMISSION

As noted in item 1, as early as September 1980 LACC's predecessor recommended that all overseas applicants seeking admission in Australia should:

(a) have a tertiary law qualification substantially equivalent to the qualification required of local applicants;

(b) have knowledge of Federal and State Constitutional Law, Criminal Law, Torts, Contracts, Property (including Trusts and the Torrens System); and

(c) have knowledge of such additional subjects required of local applicants by the relevant Admitting Authority which had not been included in the applicant's academic preparation.

Prior to that, as most overseas applicants were already admitted practitioners in the United Kingdom, the common practice of Australian Admitting Authorities was to accept the United Kingdom assessment of the adequacy of an applicant's qualifications. A person who had qualified and been admitted as a solicitor in England was taken to have both sufficient and appropriate qualifications to be admitted in Australia.

With time, practitioners from a wide range of common-law, civil-law and other countries sought admission in Australia. It became clear that the nature, standard and quality of their preparation for legal practice was not uniform. It also became clear that few overseas applicants were familiar with the complexity caused by Australia's Federal system. Many had no understanding of the Torrens System of title by registration. Others, coming often from common-law countries deriving from a Roman law background, had no understanding of the operation of Equity.

After the 11 Academic Requirements were enunciated and adopted, overseas applications were examined more closely to decide whether an applicant's qualifications were, indeed, substantially equivalent to those required of an Australian applicant. This led to reservations about the apparent quality of some tertiary institutions and their ability to offer academic preparation that was substantially equivalent to that provided by a recognised Australian university law school.

Although the American Bar Association operates a rigorous accreditation process for law schools in the United States of America, and the Committee of Australian Law Deans (**CALD**) is endeavouring to establish an analogous regime in Australia, there is no comparable system for international accreditation of law schools. Each Australian jurisdiction thus became concerned about the lack of objective, reliable criteria for drawing conclusions about whether graduates and practitioners from some common-law jurisdictions have substantially equivalent qualifications to those required of Australian applicants.

A second consequence of adopting the 11 Academic Requirements was that Admitting Authorities were required to examine the precise content of particular subjects offered by overseas law schools, to determine whether an applicant might need to undertake additional academic studies or practical legal training in Australia, in order to obtain substantially equivalent qualifications to those required of Australian applicants.

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[10] LACC, *Uniform Admission Rules 2008*.

In the 1990s, it became apparent that differing practices had developed among Admitting Authorities, both in recognising the law qualifications offered by particular overseas institutions, and in giving credit for particular subjects studied. This led to a call for Admitting Authorities to adopt uniform and consistent principles and practices for assessing the academic qualifications of overseas applicants.

When the National Competency Standards for entry-level lawyers were finally adopted by all Admitting Authorities in 2002, they were similarly deployed as a template for assessing whether an overseas applicant had substantially equivalent practical legal training qualifications as are required of an Australian applicant. Again, it seemed desirable to ensure that Admitting Authorities adopted uniform and consistent principles and practices for making such assessments.

These pressures led to the development of the *Uniform Principles for Assessing the Qualifications of Overseas Applicants for Admission* (**Uniform Principles**). The principles for assessing substantial equivalence to the 11 Academic Requirements were initially based on practices developed by the Overseas Admissions Committee of the Victorian Council of Legal Education, but they subsequently evolved also to reflect the consistent practices of the New South Wales Legal Profession Admission Board's Academic Exemptions Sub-Committee as well. They are kept under constant review and modified as required, with the consent of each Admitting Authority.

The principles for assessing substantial equivalence to the National PLT Competency Standards codify the practices developed by the Practical Training Exemptions Sub-Committee of the New South Wales Legal Profession Admissions Board. Again, they are kept under review and modified as required, with the consent of each Admitting Authority.

4.1 Assessing academic qualifications

Schedule 2 of the Uniform Principles sets out the additional academic studies which applicants from 18 nominated common-law jurisdictions will usually be required to complete in Australia, before applying for admission. Each of these jurisdictions has a common law background. Further, experience in assessing legal qualifications from these jurisdictions indicates that those qualifications are substantially equivalent to the academic qualifications required of Australian applicants. Because of this, an applicant from one of these jurisdictions will usually be granted credit for some of the 11 Academic Requirements, which are the **Prescribed Subjects** for the purposes of Schedule 2.

Applicants from jurisdictions other than the 17 specified in Schedule 2 will generally be required to study all of the 11 Prescribed Subjects in Australia. These include applicants from such countries as Bangladesh, India, Pakistan and common-law countries in Africa (excluding South Africa).

Although these countries share Australia's common law background and have institutions which grant degrees in law, the precise quality of their qualifications cannot be accurately assessed from Australia. While an Admitting Authority must try to form judgments about whether subjects undertaken in such degrees are substantially equivalent to the Academic Requirements undertaken during an Australian degree in law, there is no objective, reliable assessment or rating scheme for law schools outside the United States.

Admitting Authorities previously asked applicants from these countries to produce information about the assessment practices, syllabus or content of particular subjects at a tertiary institution, sufficient to allow the academic content and quality of each subject to be properly assessed. There were, however, numerous difficulties in devising reputable, defensible techniques for assessing subjects and institutions that were not highly subjective.

For example:

(a) Applicants might produce one or more of copies of University handbooks, syllabus descriptions and reading guides for particular subjects. In approaching such materials, some allowance might be made for the lack of resources available to law schools in some jurisdictions. This may affect the way in which such materials are presented. On the other hand, although inadequacies in content, grammar or spelling may be partly due to lack of resources, they may equally indicate lower academic standards than one would expect from an Australian law school.

(b) Formal handbook or syllabus descriptions probably reveal less about the actual content of a particular subject than a reading a guide for that subject. Nevertheless, the way in which a subject is generally described might sometimes say something about the philosophical framework of the subject and the sophistication of the curriculum. Presentation and spelling might also be revealing.

(c) Reading guides are likely to be much more revealing, as it is possible to assess whether the sources used and the subject matter are up-to-date and pertinent. They may also indicate whether the subject aspires to the comparable depth of treatment that one would expect in a sound Australian law course. If notable authors are misspelt and old, superseded editions are relied upon, it might be proper to draw adverse conclusions about the quality of a subject.

(d) The way in which an applicant draws a supporting affidavit, particularly if it has been drafted and sworn outside Australia, might sometimes also offer insights into the legal knowledge and skills which the applicant has acquired in the course of the applicant's academic and practical legal training.

Although these considerations were all carefully explored by Admitting Authorities, it was recognised that none of them is objective or can be deployed evenly or with great confidence.

In retrospect, the common experience was that very few applicants were able to demonstrate conclusively both the international reputation of the applicant's qualification and the substantial equivalence of subjects taken by the applicant to subjects which local Australian graduate must have undertaken as part of their academic qualifications.

Because of the difficulty of making such judgements consistently and with confidence, Admitting Authorities ultimately resolved to require all applicants from these countries to undertake further studies in all of the Prescribed Subjects. Schedule 2 of the Uniform Principles thus reflects this.

Two avenues are nevertheless still open to practitioners from such countries to qualify for admission, without having to study all of the 11 Prescribed Subjects in Australia. Those few applicants who might previously have been granted credit for some or all of their previous academic studies, are still be able to apply to an Australian university or the NSW Legal Profession Admission Board Course for admission *ad eundem statum.* Each law school is then be required to make detailed investigations about the equivalence of particular subjects before granting credit for them towards a degree from the relevant law school. Such applicants would eventually complete an Australian law degree and qualify for admission as local, rather than as Overseas, applicants.

A second avenue has been created by the LACC's scheme for accrediting subjects taught by law schools in such countries. [11] The Dean of a law faculty in one of these countries may apply to have subjects taught in the faculty's law course recognised for admission purposes in Australia. An application must provide information similar to that required by

[11] LACC, *Accreditation of subjects in Overseas Law Courses for Australian Admission* (2008) http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uuid=1DF84F44-1E4F-17FA-D20D-9A0AEFD28629&siteName=lca

the CALD *Standards for Australian Law Schools*. [12] It will be considered by a committee convened by LACC and recommendations made to each Admitting Authority.

4.2 Assessing particular subjects

Schedule 2 of the Uniform Principles reveals different practices of recognition for different jurisdictions. This section explains some of the reasons for those differences.

(a) *Federal and State Constitutional Law*

Applicants from all countries except New Zealand are required to study this subject in Australia. This is because the precise division of legislative powers between the Commonwealth and State Governments is unique. Even applicants from other federal systems, such as Canada or the USA, will be required to study the subject.

Although New Zealand is a unitary, rather than federal, system of government, Trans-Tasman Mutual Recognition arrangements require practitioners admitted in New Zealand to be admitted in Australia without having to acquire further qualifications.

(b) Administrative Law

The established practice prior to 2010 was to require all overseas applicants to study Administrative Law in Australia. This view was based on the uniquely Australian elements of the prescription of this Academic Requirement for this subject. The practice was reviewed after consulting Administrative Law teachers in Australia and elsewhere.

As a result applicants who have taken a separate and sufficiently detailed course in Administrative Law in one of the following common-law jurisdictions which shares similar underlying principles of Administrative Law with Australia, will be exempt from further study of the subject:

England and Wales
Northern Ireland
Canada (except Quebec)
New Zealand
Republic of Ireland
South Africa
Scotland
Singapore
Malaysia
Hong Kong

(c) Property

For may years, all applicants from England, Wales and Northern Ireland were required to undertake further study of Property in order to acquire an understanding of the Torrens System. A review of the Property component of the Foundations of Legal Knowledge[13], which are now taught to all law students in England, Wales and Northern Ireland, resulted in a decision no longer to require such applicants to undertake additional studies in Property. This applies whether

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[12] http://www.cald.asn.au/docs/CALD%20-%20standards%20project%20-%20final%20-%20adopted%2017%20November%202009.pdf

[13] See item 5.2(a) below.

an applicant has a degree in law or has taken the Common Professional Examination or a postgraduate diploma in law.

Applicants from other jurisdictions where a Torrens registration system is already an integral part of the land tenure system and the underlying law of Property is based on common-law principles (such as New Zealand, Singapore, Malaysia, most Canadian provinces and some states of the United States) also receive credit for Property. Before such credit is granted, however, it is necessary to verify that:

(i) the underlying principles of real property law are based on common-law principles (thus excluding Israel, the Philippines and Scotland, despite their registration systems); and

(ii) the relevant Property course undertaken by an applicant has included instruction in the Torrens title-by-registration system and not simply a Deeds registration-of-title system.

(d) Ethics and Professional Responsibility (formerly Professional Conduct)

Many applicants who have been admitted in another common-law country will have undertaken training in a PLT or professional training course generally equivalent to the PLT Competency of Ethics and Professional Responsibility. However, they may not have studied Ethics and Professional Responsibility during their academic course.

Such applicants will be required to undertake further studies in the *Academic Requirement* of Ethics and Professional Responsibility. Under the principles for assessing PLT qualifications, all applicants will also be required to undertake the PLT Competency of Ethics and Professional Responsibility offered by an Australian PLT provider.

(e) Subjects taken in a PLT Course

Elements of an applicant's PLT course might often bear similar names to one or more of the Academic Requirements. In some instances, the broad description of a PLT area of study may appear very similar to the broad description of an Academic Requirement.

However, the manner and depth of treatment of a PLT area of study will never be equivalent to that of an Academic Requirement. Accordingly, undertaking a PLT element will not be assessed as complying with an Academic Requirement.

(f) Bar exams and Transfer Tests

In many United States jurisdictions, courses which prepare students for bar exams, and the bar exams themselves, will often cover areas with similar names to one or more of the Academic Requirements. Again, studying such courses and competing such bar exams will not be assessed as complying with any Academic Requirement.

Similarly, completing the English Qualified Lawyers Transfer Test will not be regarded as complying with any Academic Requirement.

(g) Postgraduate subjects

Applicants will sometimes seek to rely on subjects which have been undertaken after the applicant has completed the academic qualification appropriate for admission purposes in the home jurisdiction. Often, the additional subject will have been taken as part of a specialist postgraduate qualification.

Credit will not be given for such subjects, unless the syllabus for the subject fully complies with the relevant Academic Requirement. Whether or not it does so may be determined in many instances by comparing the syllabus for the postgraduate subject with the syllabus for the comparable undergraduate subject, for which credit is customarily given.

(h) Special-purpose subjects

It is possible that special subjects, including on-line subjects, may be expressly designed to allow potential overseas applicants to undertake studies in, say, Australian Federal and State Constitutional Law or Administrative Law, before making an application to an Australian Admitting Authority.

Successful completion of such a subject will not satisfy the relevant Academic Requirement unless:

(i) the subject is conducted by a tertiary institution which is approved by an Australian Admitting Authority for the purpose of providing a full course of study complying with the Academic Requirements; and

(ii) the Head of the relevant Faculty or Department at that tertiary institution has certified that the subject is substantially equivalent to a subject offered as part of the course of study already accredited for admission purposes at that institution.

4.3 Assessing compliance with PLT Competencies

Schedule 4 of the Uniform Principles establishes four categories of applicant. The additional practical legal training required of an applicant depends upon the category into which an applicant falls.

Category 1 comprises applicants from nine jurisdictions where the applicant will have undertaken a PLT course which has been assessed as substantially similar in content and quality to an Australian PLT course. Applicants from these jurisdictions will more readily obtain exemptions from additional study requirements than applicants from other jurisdictions.

Category 2 comprises applicants who have been admitted in the United States of America and who have at least two years' continuous experience in one or more of four nominated practice areas. Although they will be required to undertake further study in three areas, they may receive exemptions from three other areas of study that might otherwise be required.

Category 3 comprises applicants who have been admitted in countries other than those mentioned in Categories 1 and 2, but who have subsequently had continuous legal experience in one or more of four nominated practice areas for at least two years in a Category 1 jurisdiction. As such applicants will have acquired practical experience in a jurisdiction similar to Australia, they will usually be granted the same exemptions as a practitioner from the United States of America (Category 2).

Other applicants all fall into Category 4. While they may receive exemptions from further studying some of the PLT Competencies set out in Appendix 2, the nature and extent of those exemptions will depend on a close examination of the precise nature of their experience in legal practice

Completing part of an *academic* course which involves an element of skills training – as often happens during a law course in the United States of America – does not justify an exemption from acquiring the equivalent PLT Competency in Australia. This principle applies, even where the skills training offered as part of an overseas academic qualification

appears to have been of similar or comparable scope and depth to the training offered in a PLT course in Australia.

5. ASSESSING APPLICANTS FROM ENGLAND, WALES AND NORTHERN IRELAND

5.1 Introduction

For many years, practitioners from these jurisdictions received preferential treatment when seeking admission in Australia. The adoption of Uniform Admission Rules made it necessary to examine whether the Academic and PLT training of such applicants was substantially equivalent to that of Australian applicants.

Many applicants had formerly undertaken the course of study and examinations offered by the Law Society of England and Wales and had qualified for admission without undertaking a law degree. Subjects studied as part of the qualification offered by the Law Society were deemed to be substantially equivalent to Australian subjects. Credit was thus given for them.

The Law Society examinations have now been superseded by other more expeditious avenues for becoming a lawyer. Instead of undertaking a three-year, full-time law degree, applicants who have previously graduated in another discipline may now take a one-year full-time (or two-year part-time) Common Professional Examination or postgraduate diploma in law. In these academic courses students merely study what are called the Foundations of Legal Knowledge. [14]

The academic phase - whether a three-year degree or one-year qualification – is followed by a one-year, full-time practical legal training course: either the Legal Practice Course for intending solicitors or the Bar Professional Training Course for intending barristers (formerly the Bar Vocational Course).

Thereafter intending solicitors must complete a two-year training contract with a law firm before being admitted to the profession. An intending barrister may be admitted upon completing the Bar Professional Training Course, but must then complete one year of pupillage in barristers' chambers.

These changes have made the task of assessing applicants from England, Wales and Northern Ireland more complicated. After exhaustive enquiries, Admitting Authorities have agreed to adopt the principles set out below.

In summary, applicants who have completed a law degree, the Common Professional Examination or a postgraduate diploma in law will be required to do any of the Academic Requirements not completed in the course of that qualification. Completing the Legal Practice Course or the Bar Professional Training Course will not qualify an applicant for exemption from any of the Academic Requirements.

5.2 Academic preparation for both barristers and solicitors

(a) All intending practitioners are required to complete the Foundations of Legal Knowledge as part of their academic training. These are subjects relating to:

Public Law
Criminal Law
Contract
Torts
Property
Equity and Trusts
EU Law.

[14] See item 5.2(a) below.

(b) An applicant may have studied the Foundations of Legal Knowledge as part of a university law degree, the Common Professional Examination or a postgraduate diploma in law. In each case an applicant will be given credit for:

Criminal Law
Contracts
Torts
Equity and Trusts
Property.

(c) An applicant who has completed the Institute of Legal Executives' Higher Diploma in Law (Level 4) examinations in the Foundations of Legal Knowledge will also be given credit for the subjects mentioned in item (b) if the applicant has subsequently been admitted to practise in England or Wales.

(d) Applicants who have a "qualifying" degree in law will have studied additional law subjects as part of their degree. They will be given credit for any of the other Academic Requirements studied as part of that degree.

(e) During the 1980s, before the proliferation of Australian law schools, some students who could not obtain entry to a law course in Australia sought to complete an English external law degree by examination and thereafter undertake PLT in Australia. This led the to a provision in the Uniform Admission Rules which required such applicants also to complete either the Legal Practice Course or the Bar Vocational Course before they were eligible to have their academic qualifications assessed by an Admitting Authority.

In practice, this provision causes substantial inconvenience to English law graduates who migrate to Australia before undertaking any practical legal training, as they are effectively precluded for subsequently completing practical legal training in Australia and seeking to practise law in this country. It has thus been proposed that his principle be abandoned.

5.3 Further preparation for solicitors

(a) An intending solicitor who has completed the Foundations of Legal Knowledge subjects must then undertake a Legal Practice Course of one year full-time or two years part-time study.

During the Legal Practice Course, each student will study:

Civil and Criminal Litigation
Business Law and Practice
Professional Conduct
Accounts

(b) These subjects are, however, not substantially equivalent to the *Academic* Requirements of:

Criminal Procedure
Civil Procedure
Company Law
Ethics and Professional Responsibility
Evidence.

Accordingly, an applicant is required to undertake further study in each of these Academic Requirements and any other Academic Requirement which has not been included in the applicant's previous law degree, postgraduate diploma or Common Professional Examination.

(c) Sometimes an applicant will have undertaken the course offered by the Institute of Legal Executives, rather than the Legal Practice Course. Such an applicant is generally given credit for the studies with the Institute for the equivalent subjects in the Legal Practice Course, for the purpose of being admitted as a solicitor in the United Kingdom. An applicant who has been admitted to practise in England or Wales as a result of PLT credit granted in this way who subsequently applies for admission in Australia will receive the same credit for PLT in Australia as the applicant received in England or Wales.

(d) Those who complete, or receive credit for, the Legal Practice Course offered by an approved provider, have been admitted to legal practice, and are otherwise eligible under clause 2 of Schedule 4 of the Uniform Principles, will also be Category 1 applicants for the purposes of the Principles for Assessing PLT Qualifications, and will usually be exempt from completing further PLT requirements except for:

Trust and Office Accounting
Ethics and Professional Responsibility.

5.4 Further preparation for barristers

(a) An intending barrister who has completed the Foundations of Legal Knowledge during a law degree, the Common Professional Examination or a postgraduate diploma must then undertake a one year full-time or two year part-time Bar Professional Training Course offered by a provider "validated" by the Bar Standards Board. During that course, each student will study:

Civil Litigation and remedies
Criminal Litigation and sentencing
Evidence
Professional Ethics
Two optional subjects, which may include Company Law.

(b) These subjects are not substantially equivalent to the *Academic* Requirements of:

Criminal Procedure
Civil Procedure
Ethics and Professional Responsibility
Evidence.

Where Company Law has been studied as an option, this is also not substantially equivalent to the *Academic* Requirement of Company Law.

Accordingly, an applicant will be required to undertake further study in each of these Academic Requirements and any other Academic Requirement which has not been included in the applicant's previous law degree, postgraduate diploma or Common Professional Examination.

(c) Those who have completed the Bar Professional Training Course and have been admitted to legal practice will be Category 1 applicants for the purpose of Schedule 4 of the Uniform Principles, and will usually be exempt from completing further PLT requirements other than:

Trust and Office Accounting
Property Law Practice
Ethics and Professional Responsibility
Work Management and Business Skills.

5.5 Qualified Lawyers Transfer Test

Admitted practitioners from other countries, including those from civil law countries, can be admitted in England by undertaking the Qualified Lawyers Transfer Test, which is administered by bodies accredited by the Solicitors Regulation Authority.

The test includes examinations under heads of Property, Litigation, Professional Conduct and Accounts, and an Oral head, comprising an oral examination in basic common law principles relating to land law, contracts, the legal system and basic statutes relevant to torts and contracts.

The background studies to support these tests are in no way equivalent to the Academic requirements for Australian graduates. In many ways they are very similar to bar exams conducted in USA jurisdictions.

For this reason, admitted English practitioners who have qualified for admission in England by taking the Qualified Lawyers Transfer Test will have their qualifications assessed on the basis of their first, underlying academic qualification in law. Thus, an applicant who has qualified in South Africa, but who has subsequently been admitted in the UK on the basis of a South African law degree and the Qualified Lawyers Transfer Test, will have to study all the Academic Requirements usually required of a South African law graduate.

6. ENGLISH LANGUAGE PROFICIENCY

For many years most Admitting Authorities have had the power to require overseas applicants to demonstrate that they have proficiency in the English language, but have lacked a reliable test to apply. In 2007 LACC reviewed the then available tests and their use by tertiary institutions and the medical profession in Australia. As a result, Admitting Authorities agreed that, from 1 January 2008, most overseas applicants for admission should complete the International English Language Testing System Module (**IELTS**), developed in Cambridge, within the two years prior to applying for admission and obtain minimum scores of 8.0 for writing, 7.5 for speaking and 7.0 for reading and writing.

Several grounds of exemption are set out in item 6 of the Uniform Principles. One relates to an applicant's prior residence in "a country where English is the native or first language". Consistently with the approach taken by the medical profession, only the following countries are acknowledged for that purpose:

Canada
England and Wales
New Zealand
Northern Ireland
Republic of Ireland
Scotland
USA
South Africa.

An applicant, who has undertaken *both* the final two years of secondary school *and* the applicant's legal qualification while residing in one of these countries will ordinarily be exempt from taking the test, provided the language of instruction in *both* cases was English.

Any other applicant will usually be required to undertake the test, unless there is other particularly strong evidence of the applicant's proficiency in English.

7. PRACTITIONERS WITH SUBSTANTIAL EXPERIENCE IN PRACTICE

In the vast majority of cases, applications from people with overseas qualifications are determined by reference to the principles referred to in items 4 - 6 above. For many years, the Admitting Authorities in New South Wales and Western Australia have occasionally invoked a dispensing power in order to admit certain practitioners with substantial prior experience in practice, without requiring those applicants to comply with all, or any, of the additional academic study requirements or practical legal training which would usually be imposed.

Early in 2009, LACC produced a discussion paper to explore ways in which such a dispensing power might be adopted and consistently applied by all Admitting Authorities. With the assistance of the New South Wales Legal Profession Admission Board, this paper was developed into a proposal that was adopted by all Admitting Authorities in 2010.

Item 7 of the Uniform Principles thus notes the discretion of an Admitting Authority to dispense with some or all of the Academic or PLT Requirements which might otherwise be imposed on an applicant, if a particular applicant has relevant, substantial and current experience of legal practice. Common considerations which an Admitting Authority may, but is not obliged, to take into account are set out in Schedule 5 of the Uniform Principles.

LACC has recommended to Admitting Authorities that arrangements be made to circulate details of each exercise of this discretion between Admitting Authorities, to encourage the evolution of common practices.

The following reflections, which are not intended to constrain an Admitting Authority's discretion, may assist decision-makers to adopt similar and consistent practices.

7.1 Common jurisdictions

The Uniform Principles presently acknowledge that the academic and PLT programs provided by all relevant institutions in a number of jurisdictions are substantially equivalent to the programs offered by Australian Universities and PLT providers. It is likely that Admitting Authorities will, in practice, find the same jurisdictions to be the source of an applicant's most relevant legal experience for the purposes of taking substantial prior legal experience into account. Those jurisdictions are:

Canada (except Quebec)
England and Wales
Hong Kong
Malaysia
Northern Ireland
Republic of Ireland
Scotland
Singapore
South Africa.

In addition, an experienced applicant who has obtained a law degree from:

(a) an ABA - accredited Law School in the United States; or

(b) any law school whose subjects have been accredited for admission purposes in Australia, pursuant to the scheme for accrediting subjects in Overseas Law Courses,

might appropriately be considered, if the applicant has subsequently acquired relevant legal experience in the United States, or the applicant's home jurisdiction, as the case requires.

An applicant with substantial relevant legal experience in a European Union jurisdiction other than England and Wales, who has also passed the Qualified Lawyers Transfer Test for admission in England and Wales, might also appropriately be considered.

7.2 Length of academic course

Apart from applicants who have undertaken either the English Common Professional Examination or an English postgraduate diploma in law, an applicant should generally have undertaken the equivalent of a three-year, full-time academic course in law.

7.3 Usual additional study requirements

(a) Although the particular prior knowledge and experience of a very occasional applicant might justify an exemption from studying Federal and State Constitutional Law, additional study in this area has usually been prescribed.

(b) Subject to paragraph (d), where an applicant's academic course has not included studies in Administrative Law or Ethics and Professional Responsibility, these academic subjects have also usually been prescribed.

(c) Subject to paragraph (d), every applicant has also usually been required to do additional PLT studies in Office and Trust Accounting and Ethics and Professional Responsibility.

(d) While there appear to have been very few instances which justify an exemption from Federal and State Constitutional Law, there appear to be more cases in which it has been appropriate to waive one or more of the subjects mentioned in item (b) or (c) in the light of the common considerations set out in Schedule 5 of the Uniform Principles.

7.4 Usual period of prior legal experience

One of the common considerations applied by Admitting Authorities and set out in Schedule 5 of the Uniform Principles refers both to the *duration* and the *currency* of an applicant's experience in practice "and especially whether the applicant has practised for at least seven years."

Admitting Authorities appear to favour the following:

Relevant experience in practice and **currency** in this context could be determined by asking whether an applicant:

(i) has practised in the manner of one or more of a barrister and solicitor;

(ii) has acted in a judicial capacity;

(iii) has been employed in providing legal services at a level and with responsibilities comparable to those of an Australian legal practitioner; or

(iv) has acted in a combination of two or more of the capacities referred to in subparagraphs (i), (ii) and (iii),

for seven or more of the 11 years preceding the person's application and, during the last two years, has not been absent from practice for any reason for a total of more than six months.

The "**duration**" of that experience could be appropriately determined by reference to experience acquired after the applicant has completed both the academic and the PLT qualification required for admission in the applicant's home jurisdiction, which may include a period of up to two years' **experience in practice** acquired before admission.

7.5 Completing additional requirements

At present, any additional Academic or PLT Requirements imposed on an applicant must be completed before admission. Admitting Authorities are generally reluctant to depart from this practice.

It might, however, occasionally be appropriate to dispense with this requirement in the case of an experienced practitioner where a compelling case is made to do so - say where an applicant's particular expertise is required by the law firm recruiting the applicant to take over the conduct of an existing matter.

An obligation to undertake specified additional studies within a specified time after admission might appropriately be imposed by either:

(a) a Court-ordered condition attached to the applicant's practising certificate (where such a power exists); or

(b) an enforceable undertaking given to the Court by the applicant, upon admission.

21 October 2010