



Reimagining the Professional Regulation of Australian Legal Education

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CALD

Council of Australian Law Deans

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The authors acknowledge the Traditional Owners of Country throughout Australia and recognise their continuing connection to land, waters and community. We pay our respects to the Traditional Owners of Country and their cultures; and to Elders past, present and emerging.

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Abbreviations

ABA	American Bar Association
ACT	Australian Capital Territory
AHRC	Australian Human Rights Commission
AI	Artificial Intelligence
ALAA	Australasian Law Academics Association
ALEC	Australian Legal Education Council
ALMPA	Australasian Legal Practice Management Association
ALRC	Australian Law Reform Commission
ALSA	Australian Law Students' Association
ALSPs	Alternative Legal Services Providers
ALSSC	Australian Law Schools Standards Committee
ALTC	Australian Learning and Teaching Council
ANZACLL	Australian and New Zealand Academic and College Law Librarians
APCC	Assuring Professional Competence Committee
APLEC	Australasian Professional Legal Education Council
AQF	Australian Qualifications Framework
ASCR	Australian Solicitors' Conduct Rules
BMRI	Brain & Mind Research Institute
BSB	Bar Standards Board
CALD	Council of Australian Law Deans
CBA	Canadian Bar Association
CBL	Competency-based Learning
CBT	Competence-Based Training
CCE	Common Entrance Examination
CCJ	Council of Chief Justices of Australia & New Zealand
CILEx	Chartered Institute of Legal Executives
CLE	Clinical Legal Education
COAG	Council of Australian Governments
COALA	Coalition Of Automated Legal Applications
CPD	Continuing Professional Development
CPLED	Canadian Centre for Professional Legal Education
ESOS	Education Services for Overseas Students
FC&P	Foundational Concepts & Principles
FLIP	Future of Law and Innovation in the Profession
FLK	Functioning Legal Knowledge
FLSC	Federation of Law Societies of Canada
FVWG	Family Violence Working Group
GDL	Graduate Diploma in Law
GDLP	Graduate Diploma of Legal Practice
GPA	Grade Point Average
HE	Higher Education

HESF	Higher Education Standards Framework
HESP	Higher Education Standards Panel
IAALS	Institute for the Advancement of the American Legal System
IBA	International Bar Association
ICC	Indigenous cultural competency
ICCLAP	Indigenous Cultural Competency for Legal Academics Program
IES	Institute for Employment Studies
ILP	Incorporated Legal Practice
JD	Juris Doctor
LACC	Law Admissions Consultative Committee
LCA	Law Council of Australia
LE&T	Legal Education & Training
LEAD	Legal Education Associate Deans
LETR	Legal Education and Training Review
LGBTIQ+	Lesbian, gay, bisexual, transgender, intersex, queer/questioning, asexual +
LLB	Bachelor of Laws
LLB	(Hons) Bachelor of Laws (Honours)
LPAB	Legal Profession Admission Board
LPCC	Legal Profession Complaints Committee (WA)
LPEAC	Legal Practitioners Education and Admission Council
LPLC	Legal Practitioners' Liability Committee
LSAT	Law School Admission Test
LSB	Legal Services Board
LSC	Legal Services Council
LSNB	Law Society of New Brunswick
LTAS	Learning and Teaching Academic Standards
MAG	Meeting of Attorneys-General
MBE	Multistate Bar Exam
MDP	Multidisciplinary Partnerships
MEE	Multistate Essay Exam
MOOCs	Massive Open Online Courses
MPRE	Multistate Professional Responsibility Exam
MPT	Multistate Performance Test
NCBE	National Conference of Bar Examiners
NCP	National Competency Profile
NSW	New South Wales
NT	Northern Territory
NYSBA	New York State Bar Association
OLT	Office for Learning and Teaching
OSCE	Objective Structured Clinical Examinations
PC	Productivity Commission
PCLL	Postgraduate Certificate in Laws
PEAT 1	Professional Education and Training stage 1
PEAT 2	Professional Education and Training stage 2

PII	Professional Indemnity Insurance
PLSC	Professional Legal Studies Course
PLT	Practical Legal Training
QWE	Qualifying work experience
SA	South Australia
SCAG	Standing Committee of Attorneys-General
SDT	Self-Determination Theory
SQE	Solicitors Qualifying Exam
SRA	Solicitors Regulation Authority
SWT	Supervised Workplace Training
TEQSA	Tertiary Education Quality and Standards Agency
TFR	Training Framework Review
TLOs	Threshold Learning Outcomes
UA	Universities Australia
UBE	Uniform Bar Exam
UK	United Kingdom
UNSW	University of New South Wales
US	United States
VCAT	Victorian Civil and Administrative Tribunal
VET	Vocational Education and Training
VLSB+C	Victorian Legal Services Board and Commissioner
WA	Western Australia
WBL	Work-Based Learning
WEF	World Economic Forum
WIL	Work Integrated Learning

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Executive Summary

A climate of readiness for change

In 2021, many factors are converging to create a climate of readiness for change that sets the context for a reimagining of the professional regulation of Australian legal education and training (**LE&T**). Quite obviously, much has changed as regards modern legal practice and services delivery in recent years, particularly over the course of the pandemic. Change has also occurred in the professionalism of legal education and via the increasing sophistication of contemporary regulatory approaches internationally. The drivers of change are therefore multi-faceted and range across these transformed professional contexts, the changing demands in and of Australian LE&T and an increasing maturity of approaches globally in the regulation of professional competence. As has been well rehearsed in any number of reports and inquiries nationally and internationally, pervasive technological transformation in particular is changing the world of legal and lawyer work, disrupting how legal information and legal services are being accessed, structured and delivered, and requiring practitioners to constantly up- and re-skill to navigate the demands of technologically competent lawyering in tech-enabled legal workplaces. Technological competence and transformation have also impacted higher education (**HE**), which is experiencing similar levels of disruption, visited by many of the forces that also impact the academy's professional arm: competition; globalisation; unbundling; seismic regulatory and policy shifts; relationship management challenges; and calls for significant structural and business model changes.

In 2021, there are other deep-seated and fundamental issues that also demand concerted action. All legal actors continue to be challenged to work in partnership with First Nations peoples for 'deep and abiding structural change ... to redress the historical exclusion of, and continuing injustices to First Peoples and their laws, knowledges and sovereignties occasioned by colonisation in the country now known as Australia'.¹ The mental health and well-being of practitioners, educators and students continue to be of great and ongoing concern. Access to justice and unmet legal need remain perennially wicked problems, despite best professional endeavours.² Recent high-profile lapses in ethical behaviour and conduct that have, for example, 'shattered' confidence in any 'expectations of lawyers as an honourable profession',³ are combining with evidence of pervasive sexual harassment and bullying to highlight the need to reinforce ethical and professional responsibility. The continuing lack of diversity in a relatively homogeneous profession entrenches a propensity for a non-inclusive culture and is suggested to have been conducive to harassment, bullying

1 Council of Australian Law Deans, 'Working Party on First Peoples Partnerships' (Terms of Reference, 2020) 1 <<https://cald.asn.au/wp-content/uploads/2020/12/Terms-of-Reference-Working-Party-on-First-Peoples-Partnership-3-Dec-2020.pdf>>.

2 Law Council of Australia, *The Lawyer Project* (Report, September 2021) <<https://www.lawcouncil.asn.au/policy-agenda/access-to-justice/the-lawyer-project-report>>.

3 *Bolitho v Banksia Securities Ltd (No 18) (remitter)* [2021] VSC 666, 1 [3] per Dixon J; Supreme Court of Victoria, 'Banksia Securities Limited Trial October 2021' (Web Page) 1 <<https://www.supremecourt.vic.gov.au/news/banksia-securities-limited-trial>>.

and discrimination,⁴ while efforts to improve inclusion and diversity in response remain a work in progress. In short, there is much education and training work to be done across both the legal academy and profession. Many of these challenges are inter-dependent, suggesting coordinated and holistic responses will be of maximum benefit.

As the Productivity Commission observed in 2014,⁵ advances in Australian legal education and its regulation have been inhibited by their segregation into three distinct stages: the academic; practical legal training (**PLT**); and continuing professional development (**CPD**). It has been argued that this structural disadvantage has led to incremental, siloed improvements and missed the opportunity to pursue development and enhancement for integrated *system-level* responses. It is certainly the case that the regulation of LE&T is complex and fragmented, differentiated across and between: professional and HE regulation; the segmentation of academic from practice requirements; the merits of ‘vocationalism’ versus ‘professionalism’;⁶ differing state and territory regimes; and disjuncted approaches to pre- and post-admission regulation, with dedicated national oversight for the former but none for the latter. Attempts at harmonising regulatory intent and modernising regulatory practice, whether at the behest of the Law Admissions Consultative Committee (**LACC**), the national HE regulator, the Council of Australian Law Deans (**CALD**) and/or the Productivity Commission, have not led to any substantive enhancements. Epitomising the stasis, in 2021, the ‘Priestley 11’ articulation of the prescribed *Academic Requirements* for admission remains essentially unchanged from its initial conceptualisation in 1982, despite a number of attempts at reform. Moreover, there is constant agitation to sandwich ever more into over-crowded law school and PLT curricula. For example, in 2017, the New South Wales Law Society’s *Future of Law and Innovation in the Profession (FLIP)* Commission of Inquiry identified a range of ‘skills and areas of knowledge’⁷ deemed necessary for law graduates’ entry-level proficiency, *in addition to* retaining all of the existing Priestley 11 (and statutory interpretation) and PLT competencies. As the previous Chair of LACC, Emeritus Professor Sandy Clark, noted quite pragmatically in his response to the FLIP Commission, it is:

... unrealistic to assume that law schools or PLT providers can readily include all of these proposed new requirements [as recommended by the FLIP Commission] in their existing programs. Rather, we need to re-conceive legal education as a continuum, and allocate responsibilities for sequential components to other elements of the profession, after law schools and PLT providers have made their initial threshold contributions. Further, we may need to regulate each part of that continuum consistently. Where can additional knowledge, skills and values best be acquired by entry-level lawyers? When can this realistically occur? How can we make it happen?⁸

4 Government of South Australia, *Review of Harassment in the South Australian Legal Profession: Report by the Equal Opportunity Commission to the Attorney-General* (Report, April 2021) (*‘Review of Harassment in South Australia’*) 5.

5 Productivity Commission, *Access to Justice Arrangements* (Inquiry Report No 72, 5 September 2014) (*‘Access to Justice Report’*) 252 <www.pc.gov.au/inquiries/completed/access-justice/report>.

6 Nick James, ‘More than Merely Work-Ready: Vocationalism Versus Professionalism in Legal Education’ (2017) 40(1) *University of New South Wales Law Journal* 186, 186.

7 Law Society of New South Wales, *The Future of Law and Innovation in the Profession* (Report, 2017) (*‘FLIP Report’*) 78-79, Figure 6.1 <<https://www.lawsociety.com.au/sites/default/files/2018-03/1272952.pdf>>.

8 Sandford Clark, ‘Regulating Admissions: Are We There Yet?’ (2017) 91 *Australian Law Journal* 907, 911-912.

Council of Australian Law Deans review: ‘Reimagining the Professional Regulation of Australian Legal Education’

Leveraging such advocacy for a legal education continuum, this CALD review and program of work have been developed to tackle the ‘socially complex’ problem⁹ of developing an evidence-based consensus to bring about a step change in Australian professional legal regulation. The work is to be conducted in three discrete phases:

- **Stage 1:** Conduct a desktop review and formulate options for reimagining professional regulation for CALD’s consideration, leading to choice of preferred option(s).
- **Stage 2:** Development of the preferred option(s) with the assistance and oversight of a broad-based Reference Group and/or evaluator; extensive consultation and consequent iterative enhancement for consensus generation; and a report to CALD and other stakeholders on the agreed approach’s socialisation, evaluation and refinement.
- **Stage 3:** Implementation of the consensus-generated approach as appropriate following endorsement of the Stage 2 Report.

This report concludes Stage 1 of that program of work. The review was conducted over the second half of 2021, for a limited number of days as a desktop review only, with the research assistance of Ms Kana Nakano. Over the course of 2021, CALD was presented with two progress reports (in July and October 2021). Specific consideration of barristers’ legal education and training was agreed to be out of scope, while time did not allow for the examination of other professions’ regulatory regimes. In anticipation of the review, an early meeting was held in February 2021 with the Chair of LACC, The Hon Arthur Emmett AO QC, and representatives of the Legal Services Council (LSC) (Ms Megan Pitt, CEO of the LSC, Commissioner for Uniform Legal Services Regulation, and Ms Cora Groenewegen, Principal Policy Officer). The authors are grateful to His Honour, Ms Pitt and Ms Groenewegen for their generous engagement with this work and particularly for their assistance in the provision of information and resources that have informed this report’s preparation.

The methodology of desktop research (only) was deemed appropriate for this first stage, given the many recent reviews, reports, surveys and academic treatments available that have interrogated LE&T nationally and internationally, particularly over the last decade. Much of that material is synthesised in this report. The review was considered to be timely because, in addition to the multi-faceted drivers of change briefly canvassed above, the complex relationship between LE&T and its regulation in Australia has not been subjected to a comprehensive review for many years. The extensive literature canvassed in this report makes the evidence-based case that review and reform are overdue and that international and local good practice should be leveraged to consider how best to meet current professional demands and safeguard the interests of clients and consumers of legal services. The field is a dynamic one, but a constant theme globally has been to direct attention to the regulation

⁹ Legal Education and Training Review, *Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales* (Report, June 2013) (‘LETR Report’) 4 <<https://paulmaharg.com/letr/wp-content/uploads/LETR-Report.pdf>>.

of professional competence, including continuing competence, via the development of 'competence frameworks' across the LE&T continuum, from pre- to post-admission and beyond. That this is so further confirms the timeliness of a review of this nature.

This report: 'Shared space' collaboration and regulation for an integrated legal system-wide approach

Much of the focus of [LE&T] has been on establishing initial competence: a baseline of knowledge and skills that form the foundation for a legal career. Until relatively recently [LE&T] has paid less attention to continuing competence being demonstrated throughout that career. Whilst initial competence is essential, it is not sufficient training for a working life that may span 40 or more years beyond qualification. This report recommends some transfer of the burden of competence from the initial to the continuing stages of training.

(Source: Legal Education and Training Review, Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales (Report, June 2013) 277)

In response to increasing calls for regulatory reform, a contemporary and coherent re-imagining of a LE&T continuum was considered worthy of investigation. A continuum conceptualisation would consider the relationship between the sequential components of LE&T, across the academic and PLT phases (for pre-admission/entry-level competence) *and then* onto the post-admission phases of 'newly admitted lawyer in supervised practice' and continuing competence. Almost every recent international review, together with the *CPD Review* conducted in 2020 for the Victorian Legal Services Board + Commissioner,¹⁰ has signalled the imperative to address professional regulation in this way; over the practitioner's lifelong career, for more integrated, *system-wide* legal regulation, from pre- to post-admission for sustained assurance of competence. As a number of international examinations make clear, this integrated system approach can be compared with a siloed and unbalanced scheme that focuses predominantly on the pre-admission stage for entry-level assurance, disconnected from the imperative to support and assure continuing competence. As many analyses also identify, such an integrated and pervasive approach replicates the modern regimes for many other regulated professions. It also speaks to the contemporary necessity to assure professional competence and lifelong learning in response to the impact of Industry 4.0's technology-driven disruption to the nature of future legal work and skills. Legal services and legal practitioners, as for all industries and workers, must now constantly adapt, and up- and re-skill as the half-life of skills continues to shrink due to technological change.

¹⁰ Chris Humphreys, *Getting the Point?: Review of the Continuing Professional Development for Victorian Lawyers* (Report, Victorian Legal Services Board and Commissioner, November 2020) ('*Getting the Point?*') <https://lsbc.vic.gov.au/sites/default/files/2020-11/CPD_Report_Final_0.pdf>.

It has been suggested by the 2013 *Legal Education and Training Review (LETR)* in England and Wales that the activation of lifelong learning over the professional life continuum requires a ‘shared space’ regulatory approach, in which all arms of the profession come together in the spirit of continuing dialogue for iterative and ongoing assurance and evidence-based enhancement. The ultimate objective of shared space regulation is considered to be the assurance of the LE&T system from the whole *system* perspective across the continuum, and then to persistently (re)consider the quality assurance mechanisms for the robustness of those systemic responses. As defined by LETR, the ‘shared space’ is ‘a community of educators, regulators, policy-makers and professionals working in provision of legal services, drawing information from other jurisdictions, other professions and other regulators to identify best practices in [LE&T] and its regulation’.¹¹

This report lays the groundwork and presents the evidence-based case for regulatory reform from the *legal system* perspective. **Sections 1–3** provide an environmental scan of the ‘why’ and ‘what’ of the professional and academic regulatory regimes, considering: the current state of professional and HE regulation across the three distinct stages, and commentary on it; the drivers of change; and the more recent national and international reviews and literature for lessons and precedents. **Section 4** then discusses the ‘how’ and ‘where’ of reimagined professional regulation. It first takes a deep dive into the international work on legal regulation and competence – the ‘how’ – and then moves to consider the most advantageous loci and foci for change – the ‘where’.

As the 2018 review of LE&T conducted in Hong Kong notes, there is much about the ‘core’ of knowledge, skills and values, at least up to day-one entry-level, that is ‘not contested, and remains fundamentally unchanged’.¹² The challenge is to reconsider the efficacy of that core for the needs of contemporary practice and then to sequence and allocate the lifelong education and training imperative across the professional learning continuum.¹³ Some emphases have clearly shifted and a consumer focus in particular has become more evident and influential in recent times. The complaints and professional indemnity insurance data discussed in this report demonstrate plainly that communication, ethics, values and professionalism – including client-focus as a compendium of it all – are in particular need of greater focus and assurance. In an extensive and ongoing exercise being conducted by the Legal Services Board (**LSB**) for England and Wales, the LSB (the regulators’ regulator) has stated that current regulatory arrangements are ‘out of step with consumers’ expectations that [lawyers] face ongoing competence checks ... consumers were concerned that the current arrangements leave space for poor competence to go undetected’.¹⁴ In response, the LSB has announced its intention to issue a ‘statutory statement of policy on ongoing competence’ under section 49 of the *Legal Services Act 2007* (UK). Setting the scene for this work, the LSB

11 *LETR Report* (n 9) 268.

12 Standing Committee on Legal Education and Training, *Comprehensive Review of Legal Education and Training in Hong Kong* (Report, April 2018) 155 (*Hong Kong Review*) <<https://www.sclet.gov.hk/eng/pub.htm>>.

13 Clark (n 8).

14 Legal Services Board, ‘Draft Statement of Policy on Ongoing Competence – Consultation Paper’ (Consultation Paper, December 2021) 13 <<https://legalservicesboard.org.uk/wp-content/uploads/2021/12/Ongoing-competence-consultation-paper-December-2021.pdf>>.

reports in its December 2021 Consultation Paper (which seeks feedback to inform the development of the statutory statement):

Following extensive evidence gathering between 2019–2021, we have found that while regulators have comprehensive competence checks in place at the point of authorisation of [admitted] persons, there are few routine, formal measures to ensure those persons' ongoing competence thereafter, with the exception of the widespread adoption of continuing professional development (CPD).

Our research shows that consumers expect that there are robust checks in place and, when immersed in the detail of this area, the majority of the public thinks regulators should adopt more specific measures to ensure ongoing competence. Further, the practice in the legal services sector is out of step with other regulated sectors, where regulators tend to adopt more robust measures to augment CPD and be assured that those they regulate remain competent, for example, using periodic reaccreditation, peer reviews, spot checks or feedback to identify learning and development needs.¹⁵

As the LSB observes, there can be no suggestion that any one-off injection of (even remarkable) LE&T prior to admission, or even immediately post-admission, will suffice for 'forever' competence in enduringly dynamic professional contexts. If there is true consensus internationally, as the evidence presented in this report makes clear, it is that competence standards, and evidence-based regulation against them across the professional learning continuum, are what is required to secure the future of the legal services industry and those who work within it. The locus of much of the contemporary regulatory attention is in the post-admission phase, where the regulatory gaps are considered to be most evident, particularly so for new lawyers within their first one to three years of practice. This does not mean that the focus on pre-admission assurance of competence abates; for example, much warmer handovers *from* law school to PLT to entry-level practice should be pursued, and pre-admission LE&T contributions better articulated and mapped as foundational for post-admission continuing competence oversight. But as regards regulatory frameworks at the pre-admission stage, between the now well-entrenched Threshold Learning Outcomes (TLOs) for the academic stage and the *PLT Competency Standards* for the practical stage, Australia is comparatively well positioned, and objectively so given international commentary to that effect.¹⁶

An opportune reimagining

This report presents a compelling call to action for a reimagining of Australian professional regulation. In the context of a rapidly evolving landscape that is generating considerable momentum for significant and fundamental change, the evidence-base for alignment with international good practice to regulate competence across the LE&T and legal career

¹⁵ Ibid 5 (emphasis added).

¹⁶ See for example, *LETR Report* (n 9) 125–126; *Hong Kong Review* (n 12) 48, 74–75.

continuum is laid out. If progressed with ‘shared space’ goodwill and intent, collaboratively by all legal actors, including regulators, the opportunity for a regulatory re-set that addresses many of the contemporary challenges and imperatives that beset and challenge the discipline and its professional and academic proponents is there to be seized.

The confluence of drivers of change demands bold and cross-cutting action; siloed incrementalism will not suffice nor sustain a healthy professional future. The urgency and magnitude of the change to be prosecuted are not underestimated, but the beauty of the timing is that much work and thinking have already been done, locally and globally, as this report records. Moreover, a broad-based commitment to betterment is palpable across many important contemporary agendas, including: calling out the scourge of sexual harassment and bullying; reconciliation with First Nations peoples and redressing the many injustices of past legal interactions; embracing technological competence for more efficient and personalised client-focused delivery of legal services; and peak agency (re)commitment to the public professional role of societal service for positive social, economic and political outcomes.¹⁷ In all of this, as well-being practitioners appreciate, the resumption of agency and autonomy in progressing a complex (professional) piece of work, via collaboration and positive relationships that facilitate valued goals, makes for (professional) mental well-being and, in this context, a healthy legal culture. As exhorted by the Australian Law Reform Commission in 2000:

The maintenance of high standards of performance also require a healthy professional culture — one that values lifelong learning, takes ethical concerns seriously, and embraces a “service ideal”.¹⁸

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1 December 2021

¹⁷ Law Council of Australia, *The Lawyer Project* (n 2).

¹⁸ Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System* (Report No 89, 2000) 10. See also Law Council of Australia, *The Lawyer Project* (n 2); Australian Pro Bono Centre, *14th Annual Performance Report of the National Pro Bono Target* (Report, September 2021) <<https://www.probonocentre.org.au/provide-pro-bono/target/>>.

1 Current System of Australian Legal Education and Training and its Regulation

Key points

- Professional regulation of Australian legal education and training (**LE&T**) is structured over three distinct stages: academic (the *Academic Requirements*, also known as the ‘Priestley 11’); vocational/professional (practical legal training (**PLT**)); and continuing legal education/continuing professional development (**CPD**).
- Regulation of Australian legal education and training in the pre-admission stages is multi-layered and fragmented, consisting of at least: state- and territory-based professional regulation, overseen nationally by the Law Admissions Consultative Committee (**LACC**); higher education (**HE**) regulation, overseen by the national regulator, the Tertiary Education Quality and Standards Agency (**TEQSA**); attempts to harmonise regulatory regimes (by the Council of Australian Law Deans (**CALD**), LACC and in a law discipline standards project that developed the Threshold Learning Outcomes (**TLOs**) for law); and HE provider frameworks for internal quality assurance.
- While professional regulation of the two pre-admission stages – the *Academic Requirements* and PLT – is overseen nationally by LACC, there is no corresponding *post*-admission regulatory body with an equivalent national remit.
- In 2021, the Priestley 11 articulation of the prescribed academic areas of legal knowledge for admission to practise (the *Academic Requirements*) remains essentially unchanged from its initial conceptualisation in 1982, despite a number of attempts at reform. Since 2010, law schools are also expected to comply with the requirements of LACC’s *Statement on Statutory Interpretation*.
- The Priestley 11 *Academic Requirements* have been subjected to sustained and substantial criticism regarding their contemporary relevance to modern legal practice. While there is disagreement over the contemporary fitness-for-professional-purpose of LE&T at the academic stage, in a spirit of virtuous compliance, and in accordance with the requirements of the national HE regulator, quality has been maintained and enhanced in spite of the regulatory regime and the ‘light’ or ‘dead’ hand of Priestley, depending on the perspective taken.
- At the PLT stage, regulatory standards consist of the *PLT Competency Standards for Entry-Level Lawyers* (revised October 2017), the *Uniform Standards for PLT Courses and Providers* (amended October 2017) and the *LACC Standards for PLT Workplace Experience*. LACC has also developed *Guiding Principles for Integrating Academic and PLT Courses*.
- At the post-admission stage, the regulatory regime is comparatively light touch, consisting of an initial period of supervised practice that has no mandated learning outcomes, and an ongoing requirement for ten hours of annual CPD distributed over four broad areas. As a number of international reviews have observed, there is no particular evidence that hours-based CPD makes an assured contribution to maintaining continuing competence. Supervised practice and CPD aside, there is no overarching regulatory requirement for

‘continuing competence’ as against articulated standards, once practitioners are admitted to practice.

- In 2009, CALD adopted the *Australian Law School Standards*, with aspirations for common policy and approaches to aspects of legal education regulation. The CALD *Australian Law School Standards* were revised in 2013 to include the TLOs. They were most recently revised in 2020 and now include *Guidance Notes*.
- The CALD Standards were considered by LACC’s constituent admitting authorities not to provide sufficient precision for regulatory harmonisation. LACC subsequently developed its own *Accreditation Standards for Australian Law Courses*, which contain a mixture of input- and output-based measures.

1.1 Introduction and a brief history

To interrogate the possibilities for reimagining the professional regulation of Australian legal education, it is salutary to canvass first a brief history of Australian legal regulation that has led to the current state, while also taking account of the dual imperatives of professional and higher education (**HE**) regulatory regimes. It feels as though legal education has progressed such a long way from the hard dichotomies described by Twining in ‘Pericles and the Plumber’:¹ the academic isolated from the practical; theory divorced from practice; liberal education at odds with vocational training; and law sequestered from other disciplines. But as this review is undertaken in 2021, many of these issues, albeit with contemporary and more nuanced emphases, present afresh for re-examination. Particularly, the legacy of the hard regulatory juxtaposition between the knowing and the doing, and how it became so deeply entrenched in pre-admission professional regulation, requires careful consideration. Looking at Australian legal education and training (**LE&T**) through a wide-angled 21st-century regulatory lens suggests that there is much more that can be done to assure the professional futures of our students and graduates, the academy and the practising profession. Moreover, given a number of recent, high-profile professional transgressions, it seems timely also for the discipline to refocus on honouring its professional responsibility to the rule of law, the promotion of ‘justice, fairness and morality’² and the public professional role of societal service for positive social, economic and political outcomes.

From its earliest colonial days, Australia broadly adopted the English system of legal education – the apprenticeship model of ‘on-the-job’ training – and that jurisdiction’s rules for admission to practise and the examination of candidates.³ As James records, Australian legal education has been, and to some extent continues to be, dominated by doctrinal approaches to, and the profession’s understanding of, legal education: ‘initially, legal education in Australia was little more than the uncritical transmission of legal doctrine by legal practitioners’.⁴ As Barker explains in his book, *A History of Australian Legal Education*, the early law school approach to the legal curriculum was ‘laissez-faire’.⁵ Each individual law school would require students to complete its own particular group of law subjects because there were no core content areas that Australian law schools were mandated to teach.⁶ Although some admission boards did require certain subjects to be included

- 1 William Twining, ‘Pericles and the Plumber’ (1967) 83 *Law Quarterly Review* 396, 421-2; Sally Kift, ‘Lawyering Skills: Finding Their Place in Legal Education’ (1997) 8(1) *Legal Education Review* 43 (‘Lawyering Skills’).
- 2 American Bar Association, *Legal Education and Admissions to the Bar, Legal Education and Professional Development – An Educational Continuum* (Report, 1992) (‘MacCrate Report’) 3. See also more recently, Law Council of Australia, *The Lawyer Project* (Report, September 2021) <<https://www.lawcouncil.asn.au/policy-agenda/access-to-justice/the-lawyer-project-report>>; Legal Services Board, *Reshaping Legal Services: A sector-wide strategy* (Strategy, March 2021) <https://legalservicesboard.org.uk/wp-content/uploads/2021/03/Strategy_FINAL-For-Web2.pdf>.
- 3 Nickolas J James, ‘A Brief History of Critique in Australian Legal Education’ (2000) 24(3) *Melbourne University Law Review* 965, 965. See also Hon Robert French AC, ‘Legal Education in Australia – A Never Ending Story’ (Conference Paper, Australasian Law Teachers’ Association Conference, 4 July 2011) <<https://www.hcourt.gov.au/assets/publications/speeches/current-justices/frenchcj/frenchcj04july11.pdf>>.
- 4 James (n 3) 965.
- 5 David Barker, *A History of Australian Legal Education* (Federation Press, 2017); This sentiment is also reflected in Sandford D Clark, ‘Regulating Admissions: Are We There Yet?’ in Kevin Lindgren, Justice François Kunc and Michael Coper (eds), *The Future of Australian Legal Education* (Thomson Reuters, 2018) (‘Regulating Admissions’) 69, where he recalls that during his first year of law school, [w]e were left largely to fend for ourselves with the odd part-time lecturer ...!
- 6 Barker (n 5) 5.

before accrediting the curriculum, there was essentially no uniformity across the states and territories.⁷ It was not until the emergence of the professional law teacher in Australia after World War II that a more scholarly approach started to imbue the teaching of law.

The profession's early influence over curricular content and teaching approaches was cemented by regulatory requirements for approval of courses by local admission authorities controlled by the Supreme Courts. For example, the Barristers Admission Board was initially unwilling to accept many law subjects taught at the University of Sydney and therefore did not provide those law graduates with an exemption from the Board's admission examinations. In contrast, University of Melbourne law graduates were exempt from taking the Supreme Court's admission exams because their course was accredited.⁸ There are many excellent expositions of the history of Australian LE&T, and the intent here is not to rehearse them further. It is probably sufficient to record, as Chesterman and Weisbrot did when writing about university legal education up until the 1960s, that:

... law faculties, although situated in universities, were generally viewed as adjuncts to the legal profession rather than truly academic institutions dedicated to liberal educational aims. They had few full-time academic members: instead, law teaching was chiefly a part-time activity for practitioners. They suffered from limited recurrent funding, low staff ceilings, small libraries, scant research funds and assistance, and poor infrastructural facilities. Little legal research was done and the general approach in the courses taught was fairly uniform.⁹

⁷ Ibid 5.

⁸ Ibid 34, 49-50.

⁹ Michael Chesterman and David Weisbrot, 'Legal Scholarship in Australia' (1987) 50(6) *Modern Law Review* 709, 711 <<https://doi.org/10.1111/j.1468-2230.1987.tb01735.x>>.

1.2 The Academic Requirements: Priestley 11

Steps towards the establishment of the *Academic Requirements*, known colloquially as the ‘Priestley 11’, began after the 1971 Ormrod Report was published in the United Kingdom (UK).¹⁰ The Ormrod Committee conceived of legal training as taking place in the three distinct stages that remain to this day: academic, vocational/professional and continuing education or training.¹¹ Ormrod recommended the teaching of five basic core subjects – constitutional law, contract law, torts, land law and criminal law.¹² In Australia, at a National Conference on Legal Education in 1976, the Australian Legal Education Council (ALEC) was established with the intent to emulate the Ormrod Committee’s work by identifying a core group of compulsory subjects that would serve as the academic requirements for those seeking admission as legal practitioners.¹³ In 1979, the Victorian Council of Legal Education established a committee – led by Justice McGarvie – to identify and recommend subjects that law students should be required to complete in order to satisfy the academic qualification for admission in Victoria. Also in 1979, the Consultative Committee of State and Territorial Authorities (‘Consultative Committee’), the predecessor of today’s Law Admissions Consultative Committee (LACC), was convened by Sir Laurence Street in an effort to reach a consensus between all admission authorities on the subjects that should be required of all law graduates seeking admission to the profession.¹⁴

Before the *McGarvie Report* was published in 1982,¹⁵ the Consultative Committee made recommendations on the uniform requirements for all overseas applicants seeking admission in Australia, and ALEC also published its *Report on Core Subjects* and made final recommendations.¹⁶ This meant that the McGarvie Committee had the opportunity to review both the Consultative Committee’s and ALEC’s conclusions before making its own recommendations, which ultimately were substantially the same as ALEC’s.¹⁷ Significantly, the *McGarvie Report* recommended that a *limited* number of required knowledge areas be prescribed, at a time when the regulatory requirements were becoming much more demanding than they are today.¹⁸ This was due to several reasons, including that:

- Over-prescription would turn many subjects that law schools treated as optional into de facto compulsory subjects for admission.

10 United Kingdom, *Report of the Committee on Legal Education* (Report, 1971) (‘Ormrod Report’). A detailed discussion of the *Ormrod Report* can be found in Legal Education and Training Review, *Literature Review* (2013) Chapter 2 <<https://letr.org.uk/wp-content/uploads/LR-chapter-2.pdf>>.

11 See Legal Education and Training Review, *Literature Review* (2013) Chapter 2, 3 <<https://letr.org.uk/wp-content/uploads/LR-chapter-2.pdf>>.

12 French (n 3) 29 citing *Ormrod Report* (n 10) [100].

13 Law Admissions Consultative Committee (‘LACC’), *Background Paper on Admission Requirements* (Paper, 21 October 2010) (‘*Background Paper on Admission*’) 1-2 <https://www.lpab.justice.nsw.gov.au/Documents/background_paper_on_admission_requirements_211010.pdf>; Barker (n 5) 139. ALEC was jointly convened in 1977 by the Law Council of Australia and the Australasian Law Schools Association (the predecessor to today’s Australasian Law Academics Association).

14 *Background Paper on Admission* (n 13) 1.

15 Victorian Council of Legal Education, *Report on Legal Knowledge Required for Admission to Practice* (Report, October 1982) (‘*McGarvie Report*’).

16 *Background Paper on Admission* (n 13) 1-2, referring to the ALEC Subcommittee, *Report on Core Subjects* (Report, 1981) chaired by Professor Horst Lucke, which led to ALEC’s final recommendations being made in March 1982.

17 More detail on the recommendations made in the *McGarvie Report* can be found in *Background Paper on Admission* (n 13).

18 Sandford D Clark, ‘Regulating Admissions: Are We There Yet?’ (2017) 91 *Australian Law Journal* 907, 908.

- University law schools lacked flexibility to adjust their teaching and courses in highly systemised university structures.
- Students might find learning engagement difficult if they were required to study areas they considered to be unimportant or unnecessary but were mandated for admission eligibility.¹⁹

Ultimately, the 1982 *McGarvie* and *ALEC Reports* provided the bases for the final recommendations made by the Consultative Committee, leading to the 11 Academic Requirements we have today – the ‘Priestley 11’, so called after Justice L J Priestley, who chaired the Consultative Committee at the relevant time.²⁰ The current Priestley 11 comprise the following prescribed academic areas of knowledge:

- Criminal Law and Procedure
- Torts
- Contracts
- Property (including Torrens System Land)
- Equity (including Trusts)
- Company Law
- Administrative Law
- Federal and State Constitutional Law
- Civil Dispute Resolution (including ‘Alternative dispute resolution’)
- Evidence
- Ethics and Professional Responsibility (including Trust Accounting).

The *Academic Requirements* initially set out a list of topics for each subject area only. However, after concerns were expressed by some law schools that the list would be seen as prescriptive, a more ‘general description’ was added to each subject.²¹ A secondary justification for the general descriptor was to ensure some level of flexibility in its application.²² Despite this, practice has varied over the years, and some law schools and admitting authorities have treated the list of topics as prescriptive while others have not.²³ It is interesting to observe that the English and Wales *Legal Education and Training Review (LETR)* in 2013 recommended that a ‘broad content specification should be introduced for the Foundation subjects’ and that a level of prescription ‘akin to the level of content description provided by the “Priestley 11” would seem desirable’.²⁴

While the *McGarvie Report* had recommended seven-yearly reviews for all of the specified areas of knowledge and topics, that never came to pass.²⁵ The Priestley 11 have remained

¹⁹ Ibid 908–9.

²⁰ LACC, *Prescribed Academic Areas of Knowledge* (December 2016) <<https://www.legalservicescouncil.org.au/Documents/prescribed-academic-areas-of-knowledge.pdf>>. See also *Background Paper on Admission* (n 13) 3.

²¹ *Background Paper on Admission* (n 13) 2.

²² Clark, ‘Regulating Admissions’ (n 5) 73.

²³ Clark (n 18) 909.

²⁴ Legal Education and Training Review, *Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales* (Report, June 2013) (‘*LETR Report*’) 144, Recommendation 10 <<https://paulmaharg.com/letr/wp-content/uploads/LETR-Report.pdf>>.

²⁵ Clark (n 18) 909–10.

largely unchanged since 1982 and have been written into the admission rules of every state and territory (see **Appendix A**). In 2000, the Australian Law Reform Commission (**ALRC**), referencing the Priestley 11, described the ‘dynamically changing working environment of Australian lawyers ... [and] was critical of the relative stasis in legal education, which appeared frozen in time.’²⁶ Minor amendments were made to them in 2008, and further amendments were made to the description of Civil Dispute Resolution and Evidence in 2016.²⁷

There have been several attempts by LACC to review the Priestley 11 over the years, none of which has been successful.²⁸ LACC released a discussion paper in 2010 suggesting that the Priestley 11 should be realigned to reflect international developments at that time,²⁹ particularly: three reports out of the United States (**US**),³⁰ and recent developments in the UK and Scotland that suggested the emergence of ‘outcome measures’ as the basis for accreditation of law courses. Ultimately, no change was made at that time.

When the Threshold Learning Outcomes (**TLOs**) for law were developed in 2010,³¹ LACC was prompted to ventilate a proposal to reconcile the Priestley 11 with the TLOs. The TLOs were developed under the auspices of a national *Learning and Teaching Academic Standards (LTAS)* project led by ‘Discipline Scholars’ charged with facilitating broad-based disciplinary consensus as to what law students needed to know, understand and be able to do as a result of their legal education in the pre-practical legal training (**PLT**) phase. A specific objective of the LTAS project was to seek to harmonise LACC’s professional accreditation requirements with the regulatory regime for academic quality assurance due to commence with the advent of a new HE regulator in 2012, the Tertiary Education Quality and Standards Agency (**TEQSA**). The approach that LTAS Discipline Scholars took to the Priestley 11 was to incorporate them by reference to ‘fundamental areas of legal knowledge’ in the first of the six TLOs ultimately agreed (TLO 1 ‘Knowledge’), using the CALD *Australian Law School Standards*’ language in that regard as the mechanism for integration. In this way, the Priestley 11 *Academic Requirements* were accommodated, as was obviously necessary for professional accreditation purposes, but the framing was considered to be ‘flexible enough to allow for subsequent developments as negotiated between CALD and the law admitting authorities’, in an attempt to avoid entrenching the Priestley 11’s stasis in the TLOs’ articulation of graduates’ knowledge requirements.³²

26 David Weisbrot, ‘What Lawyers Need to Know, What Lawyers Need to Be Able to Do: An Australian Experience’ (2002) 1 *Journal of the Association of Legal Writing Directors* 21, 35 <<https://ssrn.com/abstract=1095486>>. See also Margaret Thornton, ‘The Challenge for Law Schools of Satisfying Multiple Masters’ (2020) 62(2) *Australian Universities’ Review* 5 (‘The Challenge for Law Schools’).

27 Clark, ‘Regulating Admissions’ (n 5) 74.

28 See LACC, *Specifying Learning Outcomes for Contract Law* (Report, 17 September 2018) (‘*Specifying Learning Outcomes*’) 7 <https://www.lawcouncil.asn.au/files/web-pdf/LACC%20docs/252098968_6_LACC%20-%20Specifying%20Outcomes%20for%20Contract%20Law.pdf>.

29 LACC, ‘Rethinking Academic Requirements for Admission’ (Discussion Paper, February 2010) (‘Rethinking Academic Requirements’).

30 LACC reviewed the following US reports: *MacCrate Report* (n 2); R Stuckey et al, *Best Practices for Legal Education: A Vision and a Road Map* (Report, Clinical Legal Education Association, 2007) (‘*Stuckey Report*’); WM Sullivan et al, *Educating Lawyers: Preparation for the Profession of Law* (Report, Carnegie Foundation for the Advancement of Teaching, 2007) (‘*Carnegie Report*’).

31 Sally Kift, Mark Israel and Rachael Field, *Learning and Teaching Academic Standards Project* (Statement, Australian Learning and Teaching Council, December 2010). See also discussion at **Section 3.2.4**.

32 *Ibid* TLO 1, 12–13.

While there was support to harmonise the Priestley 11 with the TLOs from at least three admitting authorities in 2010, there was also some hesitancy, particularly from NSW, because: the proposed new national regulator, TEQSA, had not yet been constituted; no TLOs existed for the Juris Doctor (**JD**) program; the Priestley 11 were ‘necessary and sufficient’; and it was uncertain how the TLOs might be changed or deployed.³³ Ultimately, LACC concluded that it would not adopt a model that linked the *Academic Requirements* with the TLOs. Reflecting later, LACC’s then Chair noted that a further reason for rejecting this proposal in 2010 was that ‘many presently competent and practising lawyers could not or were not inclined to “collaborate effectively” [as the TLOs required]. They would thus not meet all of the TLOs, but were undoubtedly good practitioners!’³⁴ On the collaboration point, it is interesting to observe that the NSW Law Society’s *The Future of Law and Innovation in the Profession (FLIP)* Report in 2017 opined that ‘[c]larify, practicality, understanding your client, *being prepared to work collaboratively across disciplines and closely with the client* are timeless qualities. As budgets shrink and competition grows, they are increasingly the attributes of successful lawyers of the future.’³⁵

In 2015, in the wake of the LETR examination in England and Wales and following commentary from the Australian Productivity Commission, LACC again attempted a review of the Priestley 11, albeit limited in scope. The focus of this review was whether certain areas of knowledge – civil procedure; company law; evidence; and ethics and professional responsibility – were still fundamental threshold knowledge required for all entry-level lawyers and, particularly, whether statutory interpretation should be included. The review was opposed by CALD, the Australasian Professional Legal Education Council (**APLEC**) and others on the basis that a more ‘wholesale’ review was required and that it would be inappropriate to draw conclusions about Australian circumstances from the research underlying the LETR in England and Wales.³⁶

The inclusion of statutory interpretation in the *Academic Requirements* had always been a point of contention. Although statutory interpretation had not ultimately been incorporated in the original Priestley 11, it was an academic area that various compilations had considered necessary since before 1982; its omission was suggested to have been more of an oversight than intentional.³⁷ Absent broader agreement, and in response to judicial urging, LACC introduced a *Statement on Statutory Interpretation* in 2010,³⁸ written in terms of expected student outcomes. Since then, CALD has developed a *Good Practice Guide on Statutory Interpretation*³⁹ and statutory interpretation now forms part of LACC’s 2018 Accreditation

33 LACC, ‘Reconciling Academic Requirements and Threshold Learning Outcomes’ (Discussion Paper, 24 June 2011) <<https://www.lawcouncil.asn.au/files/web-pdf/LACC%20docs/20110624-ReconcilingAcademicRequirementsandThresholdLearningOutcomes-DiscussionPaper.pdf>>.

34 Clark (n 18) 911, 914.

35 Law Society of NSW, *The Future of Law and Innovation in the Profession* (Report, 2017) 16 (emphasis added) <<https://www.lawsociety.com.au/sites/default/files/2018-03/1272952.pdf>>.

36 Clark (n 18) 911.

37 Ibid 914 for discussion of the history of statutory interpretation as a required academic area.

38 LACC, *Statement on Statutory Interpretation* (February 2010). The statement can be viewed in CALD, *Good Practice Guide to Teaching Statutory Interpretation* (Guide, 2015) 39-40 <<https://cald.asn.au/wp-content/uploads/2017/11/Council-of-Australian-Law-Deans-Good-Practice-Guide-to-Teaching-Statutory-Interpretation.pdf>>.

39 CALD, *Good Practice Guide to Teaching Statutory Interpretation* (Guide, 2015) <<https://cald.asn.au/wp-content/uploads/2017/11/Council-of-Australian-Law-Deans-Good-Practice-Guide-to-Teaching-Statutory-Interpretation.pdf>>.

Standards for Australian Law Courses ('LACC Accreditation Standards'). Under the LACC Accreditation Standards, the relevant admitting authority is charged with determining whether a law course meets the Priestly 11 requirements and also 'meets the requirements of the LACC Statement on Statutory Interpretation'.⁴⁰

Most recently, in 2019, LACC considered the feasibility of recasting the Priestley 11 descriptions to better align with the TLOs, and for them to be expressed as learning outcomes statements as had been recommended by work undertaken for the sector's Higher Education Standards Panel (HESP) in 2017.⁴¹ A Steering Committee was commissioned to consider how this might be done in a pilot for Contract Law in the first instance, following which a draft of revised descriptions for all Priestley 11 subject areas, expressed as learning outcomes, was developed in a collaboration between LACC and CALD.⁴² A key consideration was also to ensure that the Priestley 11 descriptions should be taken as 'indicative' rather than 'prescriptive', which was said to have always been the intent despite some admitting authorities having acted to the contrary.⁴³ For this particular reason, it was decided that it would be inappropriate to be overly specific by adopting the detailed approach taken, for example, in the LACC *PLT Competency Standards for Entry-level Lawyers* because '[s]uch a detailed enunciation of anticipated performance criteria would inevitably be interpreted as prescriptive, rather than indicative'.⁴⁴ Instead, in 2019, prefatory comments were recommended to make clear that the descriptions did not seek to prescribe where or how subject matter is taught nor to limit innovation in teaching techniques.⁴⁵

LACC also thought it worthwhile to explore the potential for regulatory harmonisation in this exercise: 'how the TLOs and the Academic Requirements should interact and might complement one another, [given] modern law courses are required to comply with both requirements'.⁴⁶ Therefore, the Steering Committee included in the prefatory comments a statement to clarify the relationship between the TLOs and the Priestley 11 for accreditation purposes. Further, 'Guiding Principles' were articulated for the development of the learning outcomes descriptions as follows: capable of replication; maintain present content and scope; indicative not prescriptive; adaptable to change; and complementary to, and compatible with, the TLOs.⁴⁷ Although a report was published in 2019 recommending that LACC adopt the revised descriptions of the Priestley 11⁴⁸ (subject to a number of amendments to be made in response to submissions),⁴⁹ LACC ultimately resolved to indefinitely defer the adoption of these updated Priestley 11 descriptions in September 2020.

40 LACC, *Accreditation Standards for Australian Law Courses* (Standards, July 2018) ('LACC Accreditation Standards') Standard 3(a)(ii) <<https://www.legalservicescouncil.org.au/Documents/accreditation-standards-for-law-courses.pdf>>.

41 Department of Education and Training, *Professional Accreditation: Mapping the Territory* (Final Report, February 2017) ('PhillipsKPA Report') <<https://docs.education.gov.au/documents/professional-accreditation-mapping-territory>>.

42 LACC, 'Redrafting the Academic Requirements for Admission' (Discussion Paper, 2019) ('Redrafting the Academic Requirements').

43 Clark (n 18) 909.

44 *Specifying Learning Outcomes* (n 28) 7.

45 *Ibid* 6.

46 *Ibid* 2.

47 *Ibid*. See also 'Redrafting the Academic Requirements' (n 42).

48 See LACC, *Prescribed Areas of Knowledge* <<https://www.legalservicescouncil.org.au/Documents/prescribed-areas-of-knowledge.pdf>>.

49 See LACC, *Redrafting Academic Requirements: Report on Submissions* (Report, March 2019).

In summary, therefore, at the time of writing this Report in 2021, the Priestley 11 *Academic Requirements* remain essentially in the same form as they first appeared when originally proposed in 1982 (with minor amendments only). The Productivity Commission, in its *Access to Justice Arrangements Inquiry*, observed in this regard in 2014 that LACC has found it difficult to achieve consensus among its constituent admitting authorities, which ‘presented a reason for not re-opening [the *Academic Requirements*]’.⁵⁰ In a similar vein, the ALRC also recorded that the relationship between the academy and the profession had been, quite fundamentally, ‘uneasy’ over a long period.⁵¹ More recently, there have been some positive signs of improvement in LE&T interactions between CALD and LACC.⁵²

... the 11 prescribed areas have proved to be extremely difficult to change. In the case both of Evidence and Civil Procedure, fundamental changes in the law, practice, and what was taught by law schools, had long occurred before agreement was recently reached to bring their descriptions up to date. This is manifestly undesirable.

(Source: Law Admissions Consultative Committee, Specifying Learning Outcomes for Contract Law (17 September 2018) 7)

Qualifications that are accredited by the respective state and territory professional bodies as approved ‘academic qualifications’ for the purposes of satisfying the LACC *Academic Requirements*⁵³ are currently offered across three levels of the Australian Qualifications Framework (AQF):

- Level 7 (Bachelor Degree – Bachelor of Laws (**LLB**))
- Level 8 (Bachelor Honours Degree with embedded honours – Bachelor of Laws (Honours) (**LLB(Hons)**), and
- Level 9 (Masters Degree (Extended) – Juris Doctor (**JD**)).

In New South Wales (**NSW**), the Legal Profession Admission Board (**LPAB**) also offers a Diploma of Law.

50 Productivity Commission, *Access to Justice Arrangements* (Inquiry Report No 72, 5 September 2014) (*‘Access to Justice Report’*) 252 <www.pc.gov.au/inquiries/completed/access-justice/report>.

51 Dennis Pearce, Enid Campbell and Don Harding, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (Report, 1987) (*‘Pearce Report’*) cited in Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System* (Report No 89, 2000) (*‘ALRC Managing Justice Report’*) 147 [2.75].

52 A particular milestone was the convening by the Australian Academy of Law of *The Future of Australian Legal Education Conference 2017*, which brought together judges, practitioners and educators for a landmark discussion: see <www.academyoflaw.org.au/lec2017> and Kevin Lindgren, Francois Kunc and Michael Coper (eds), *The Future of Australian Legal Education* (Thomson Reuters 2018). The collaboration between LACC and the academy to re-draft the content of the Priestley 11 as learning outcomes (cf. inputs) statements was also positive, but unfortunately was ultimately abandoned as discussed in this Section.

53 See **Appendix A**.

1.3 Critique of the Priestley 11

1.3.1 Introduction

While there is some support, particularly amongst practitioners, for retaining the current *Academic Requirements* in their Priestley 11 form, the overwhelming sentiment in the academy is that they need to be reconsidered, or at least be subjected to a contemporary rendering. Beyond that consensus, however, there is little agreement on what exactly needs to change or how change might be optimally effected. It is fair to say that the stasis that the ALRC lamented in 2000 (and which continues today) is due more to a reluctance on the part of many to embark on a process that could lead to an even greater over-specification of knowledge requirements, given that the 11 Priestley requirements already situate Australia at the upper end of the number of prescribed academic areas internationally (see **Appendix G**). A salutary example of the potential Pandora's box that opening up the Priestley 11 for debate could be was provided in 2017 when the NSW Law Society's FLIP Commission recommended the curricular addition of:

... at least four areas of substantive knowledge, eight sets of skills and eight personal values or characteristics which every entry-level practitioner now requires ... [*in addition to the existing*] "traditional black letter law areas of knowledge and lawyer skill sets being maintained ... No existing areas of law or skills were identified as being able to be removed from the law degree, PLT or [Continuing Legal Education]".⁵⁴

Even with the best of intentions for the profession's future capability, to identify so much *additional* curriculum content as 'necessary for law graduates'⁵⁵ to be 'taught within existing curricula',⁵⁶ without any corresponding reduction in degree scope,⁵⁷ is both an impractical expectation and a fundamental misunderstanding of the law school role in entry-level lawyer formation. Commenting on the FLIP Commission's recommendation in this regard, the previous Chair of LACC said that it was 'unrealistic to assume that law schools or PLT providers can readily include all of these proposed new requirements' and that 'any attempts to do so would effectively eliminate any optional elements in the pre-admission education of legal practitioners'.⁵⁸ Rather, the then LACC Chair argued against further FLIP-type additions, suggesting instead that additional knowledge, skills and values could be acquired '*in the context of a legal workplace*', which could be achieved by setting mandatory prescriptions for the supervised practice period currently undertaken post-admission, in a similar way to

54 Clark (n 18) 911, citing Law Society of New South Wales, *The Future of Law and Innovation in the Profession* (Report, 2017) ('*FLIP Report*') 77-78, Table 6.1. The *FLIP Report* recommended the introduction of: technology (and a 'baseline of technology aptitude'); practice skills (teamwork, collaboration, writing and drafting, interview skills, presentation skills, advocacy and negotiation skills); business skills (including basic accounting and finance); project management; internationalisation and cross-border practice of law; interdisciplinary experience (interaction with clients and other professionals); and resilience, flexibility and ability to adapt to change.

55 *FLIP Report* (n 54) 8 (Recommendation 8).

56 *Ibid* 6 (Findings: Chapter 6).

57 Alex Steel, 'Reflections on Approaches to Drafting Regulatory Standards: Finding Ways to Quicken, Not Deaden, the Spirit of Legal Education' in Kevin Lindgren, François Kunc and Michael Coper, *The Future of Australian Legal Education* (Thomson Reuters, 2018) 99.

58 Clark (n 18) 911, 921.

the regulatory requirements already in existence for supervised workplace experience at the PLT stage.⁵⁹

It is, however, unrealistic to assume that law schools or PLT providers can readily include all of these proposed new requirements [as recommended by the FLIP Commission] in their existing programs. Rather, we need to re-conceive legal education as a continuum, and allocate responsibilities for sequential components to other elements of the profession, after law schools and PLT providers have made their initial threshold contributions. Further, we may need to regulate each part of that continuum consistently. Where can additional knowledge, skills and values best be acquired by entry-level lawyers? When can this realistically occur? How can we make it happen?

(Source: Sandford Clark, 'Regulating Admissions: Are We There Yet?' (2017) 91 Australian Law Journal 907, 911-12)

The development of the TLOs in 2010 (LLB/LLB(Hons)) and 2012 (JD), which went some way towards re-balancing the *Academic Requirements* with the belated integration of explicit legal skills and values as required by the AQF, has served as something of a pre-admission circuit breaker for the Priestley 11 debate. However, to understand the arguments made for reimagining professional regulation at the academic stage, the next section will now turn to a discussion of some of the many critiques of the Priestly 11 over the decades since their inception.

1.3.2 Priestley 11: 'Frozen knowledge'⁶⁰

Many challenge the Priestley 11 on the basis that they do not reflect the current needs or practices of a modern profession; for example, most recently, as regards climate change.⁶¹ Obvious examples include the impact of technology on the law (for example, blockchain contracts and the implications of e-discovery for evidence and civil procedure)⁶² and the demands of technological competence, both of which are completely absent. Thornton argues strongly against the current formulation on the basis that it perpetuates the idea that law schools primarily prepare students for private practice as a 'trade school', when that

⁵⁹ Ibid 921.

⁶⁰ Margaret Thornton, 'Dreaming of Diversity in Legal Education' in Ron Levy et al (eds), *New Directions for Law in Australia* (ANU Press, 2017) ('Dreaming of Diversity') <<https://press-files.anu.edu.au/downloads/press/n2641/html/imprint.xhtml?referer=&page=2#>>.

⁶¹ Law Council of Australia, 'Climate Change Policy to Guide Legal Evolution' (Web Page) <<https://www.lawcouncil.asn.au/media/media-releases/climate-change-policy-to-guide-legal-evolution>>. the Law Council of Australia released its Climate Change Policy in December 2021 and said that 'Australia's laws, the legal profession, legal education and legal practice must all keep pace with the challenges and opportunities created by climate change'. See also more generally, *FLIP Report* (n 54) 78; Kate Galloway, 'A Rationale and Framework for Digital Literacies in Legal Education' (2017) 27 *Legal Education Review* 117; Rachael Field and Alpana Roy, 'A Compulsory Dispute Resolution Capstone Subject: An Important Inclusion in a 21st Century Australian Law Curriculum' (2017) 27(1) *Legal Education Review* 73.

⁶² *FLIP Report* (n 54); Simon Rice, 'Why Prescriptive Legal Education Demands Critical Perspectives' in Kevin Lindgren, François Kunc and Michael Coper, *The Future of Australian Legal Education* (Thomson Reuters, 2018) 217.

is not the reality.⁶³ She rues the opportunity lost by LACC in not broadening its regulatory approach, particularly given the explosion of new law schools since 1992, and asks, 'What is the point of multiple law schools all being pale copies of one another?'⁶⁴ Thornton also points out that the Priestley 11 'ignored the broadening of the curriculum that had been occurring with the modernisation of the teaching of law and the embrace of social liberalism from the 1970s onwards'.⁶⁵ This is echoed by Rice who states that the legal profession having 'a sense of ownership is understandable, but no longer legitimate'⁶⁶ and argues that the Priestley 11 are narrow conceptions of legal practice that provide students with no reason for learning the law other than to know it, and 'no ostensible reason to think of law in other than positivist terms, deliberately abstracted ... from its social and historical context'.⁶⁷ Rice takes particular issue with the fact that the prescribed content does not include legal theory and opines that its absence leaves all students, irrespective of their career destination, unprepared for the complexities of law in society.⁶⁸ In 2014, the former Chief Justice of the High Court of Australia, The Honourable Robert French AC, referred to law school curriculum overhauls being hampered by the need to 'navigate a number of constraints, including resources, professional accreditation – the dead hand of Priestley 11 – a couple of regulations and, of course, the managerial framework of the university itself'.⁶⁹

The *Academic Requirements* obviously privilege discipline knowledge even if, as Furlong posits, a broader framing beyond substantive law knowledge (only) could include 'experiential' aspects of 'substantive law *competence*'; that is, competence for 'the skills, systems, and solutions in any given practice area that can help bring the client to their desired goal'.⁷⁰ Do and Wilson-Rogers similarly argue that without technical legal skills, law students have a limited ability to fully appreciate the discipline knowledge areas.⁷¹ Bennett Moses also says that legal education should be concerned with the capabilities a student needs beyond knowledge, though she suggests this on the basis that technology will become better at *knowing* information.⁷² As early as 2004, it was suggested by Keyes and Johnstone that the influence of the Priestley 11 was regressive because of its focus on the acquisition of knowledge expertise rather than skills.⁷³ As Thornton frames the issue, doctrinal

63 Thornton, 'Dreaming of Diversity' (n 60) 549; Thornton, 'The Challenge for Law Schools' (n 26) 9; Kate Galloway et al, 'The Legal Academy's Engagements with Lawtech: Technology Narratives and Archetypes as Drivers of Change' (2019) 1(1) *Law, Technology and Humans* 27, 31. See further [Section 3.1](#).

64 Thornton, 'The Challenge for Law Schools' (n 26) 9.

65 *Ibid* 9.

66 Rice (n 62) 217.

67 *Ibid* 223.

68 *Ibid*.

69 Misa Han 'University No 'Trade School' for Lawyers', *Australian Financial Review* (online, 23 October 2014) <<https://www.afr.com/policy/health-and-education/university-no-trade-school-for-lawyers-20141023-11awap>>.

70 Jordan Furlong, *Lawyer Licensing and Competence in Alberta: Analysis and Recommendations* (Report, Law Society of Alberta, November 2020) ('*Furlong Report*') 16 <https://documents.lawsociety.ab.ca/wp-content/uploads/2020/12/08212906/LawyerLicensingandCompetenceinAlbertaReport_Designed.pdf>.

71 Christina Do and Nicole Wilson-Rogers, 'Business, Law and Regulation: A Model for Developing Critical Thinking Skills in Future Law Graduates' in Kevin Lindgren, François Kunc and Michael Coper, *The Future of Australian Legal Education* (Thomson Reuters, 2018) 229, 230.

72 Lyria Bennett Moses, 'The Need for Lawyers' in Kevin Lindgren, François Kunc and Michael Coper, *The Future of Australian Legal Education* (Thomson Reuters, 2018) 355, 366.

73 Mary Keyes and Richard Johnstone, 'Changing Legal Education: Rhetoric, Reality, and Prospects for the Future' (2004) 26(4) *Sydney Law Review* 537, 557. See also Kift, 'Lawyer Skills' (n 1); Sharon Christenson and Sally Kift, 'Graduate Attributes and Legal Skills: Integration or Disintegration?' (2000) 11(2) *Legal Education Review* 207; Sally Kift, 'A Tale of Two Sectors: Dynamic Curriculum Change for a Dynamically Changing Profession' (2004) 2(2) *Journal of Commonwealth Law and Legal Education* 5.

knowledge areas only provide students with knowledge ‘frozen’ at the time they are taught, which can be out of date by the time graduates enter the profession.⁷⁴ Thornton, therefore suggests that the focus of the *Academic Requirements* could instead be on principles and transferable knowledge, with a particular focus on ethics and professional responsibility, as well as statutory interpretation.⁷⁵ Galloway et al consider that the ‘regulated curriculum’ should prioritise graduate *capabilities* rather than doctrinal knowledge:⁷⁶ if the *Academic Requirements* were re-drafted with more of a focus on capabilities, then a law school would have the freedom to design curriculum to address the particular skills, knowledge areas or fields of practice that suit its stakeholders.⁷⁷

‘The Chief Justice [Chief Justice French] said curriculum overhauls were also constrained by academic and professional bureaucracies. “In devising the new curriculum, UNSW had to navigate a number of constraints, including resources, professional accreditation – the dead hand of Priestley 11 – a couple of regulations and, of course, the managerial framework of the university itself.”

(Source: Misa Han, University No ‘Trade School’ for Lawyers, Australian Financial Review (online, 23 October 2014))

As might be expected, there have been numerous exhortations to both add and subtract specific academic areas from the Priestley 11 list. Writing in 2010, the then Chair of LACC referred to the seven ‘Foundations of Legal Knowledge’ that had been adopted in England and Wales as a list that is ‘both concise and specified in the broadest possible way’.⁷⁸ Thornton argues that the question that should be asked is whether ‘a designated area of knowledge is foundational to a law degree, not whether it is a useful addition’, citing the instances in which there is overlap between the Priestly 11 and PLT – for example, civil procedure, company law and evidence, which could be omitted – but retaining ethics and professional responsibility, which, even though it is addressed in both, is foundational to all employment, not just legal practice.⁷⁹ Thornton also notes that the Priestley 11 remain ‘resolutely domestic’,⁸⁰ despite the reality of globalisation and the 2012 Australian Government Office for Learning and Teaching (OLT) project recommending that the law degree be internationalised.⁸¹ Field and Roy support the inclusion of a compulsory core subject on the growing area of dispute resolution.⁸²

74 Thornton, ‘Dreaming of Diversity’ (n 60) 533.

75 Ibid.

76 Galloway et al (n 63) 40.

77 Ibid. See also and to a similar effect Rebecca Huxley-Binns, ‘What is the “Q” For?’ (2011) 45(3) *The Law Teacher* 294 <10.1080/03069400.2011.622463>.

78 LACC, ‘Rethinking Academic Requirements’ (n 29) 24. The seven ‘Foundations of Legal Knowledge’ subject areas are set out in **Appendix G** in the entry for ‘England and Wales, Bar Standards Board’. With the adoption by the Solicitors Regulation Authority (SRA) of the Solicitors Qualifying Exam (SQE) (discussed in **Section 4.4.3**), the SRA list of ‘Functioning Legal Knowledge’ has now grown to 15 academic areas.

79 Thornton, ‘Dreaming of Diversity’ (n 60) 553.

80 Ibid 553-54.

81 Duncan Bentley et al, *Internationalising the Australian Law Curriculum for Enhanced Global Legal Practice* (Final Report, 2012) 553-4 <https://ltr.edu.au/resources/PP10_1789_Bentley_Report_2012.pdf>.

82 Field and Roy (n 61) 73.

Grant and Lestrell argue further that the growing field of online dispute resolution warrants specific inclusion in the Priestley 11.⁸³ And there have been many other suggestions.

Writing for the 2013 LETR examination in England and Wales, in the context of training delivery, Susskind observed the difference between ‘just-in-case’ knowledge and ‘just-in-time’ knowledge.

Historically, most legal education and training has fallen into my category of ‘just-in-case’ training. Looking forward, the Review should address the ways in which ‘just-in-time’ techniques and technologies can most fruitfully be exploited. One possibility here, for example, is that lectures and presentations delivered in a ‘just-in-case’ setting are recorded, along with any slides, for later use on a ‘just-in-time’ basis.⁸⁴

It is interesting to consider the current constitution of the *Academic Requirements* from this perspective. Might it be possible to take a higher-level view of ‘just-in-time’ core, foundational principles in, or even across, the Priestley 11 academic areas that should be learnt, taught and assessed? Reflecting on 40-plus years as a legal educator, Menkel-Meadow suggested as follows, in response to the question, ‘Is there a core of subjects to be taught to all students?’

1. What is an enforceable contract? (Different in writing and online? Different in common law and civil law systems?)
2. What is a compensable injury (in tort or other legal theories, in private life, at the workplace, in public life)?
3. What is property (who got there first or some other conceptions?) and how should it be allocated, regulated? What are more modern forms of property – real, personal, intellectual, and virtual?
4. How should legal disputes be resolved? (Formal procedure and courts, mediation and other forms of less brittle winner-take-all results, in person, online, focus on past facts and adjudication, or possible future relationships of parties, who should participate, only parties or others affected by dispute, e.g., environmental disputes?)
5. Who are the parties to particular legal issues or disputes? (In modern times there are almost none that are only plaintiff versus defendant – there are insurers, family members, customers, employees, always others involved in any dispute); why do we keep studying P versus D cases in our appellate casebooks?
6. How should we regulate, punish or reward lawbreakers or compliers?
7. How does the law manage new entities/ideas/products/services that were not conceived of when the legal rules were framed? (the ‘no vehicles in the park’ problem; think ‘Uber’, ‘Airbnb’ and ‘Taskrabbit’).⁸⁵

83 Genevieve Grant and Esther Lestrell, ‘Bringing ODR to the Legal Education Mainstream’ in Catrina Denvir (ed), *Modernising Legal Education* (Cambridge University Press, 2020) 92.

84 *LETR Report* (n 24).

85 Carrie Menkel-Meadow, ‘Thinking or Acting Like a Lawyer’ in Ben Golder et al (eds), *Imperatives for Legal Education Research: Then, Now and Tomorrow* (Routledge, 2019) 223, 237-238.

Menkel-Meadow does not at all suggest that ‘this is it’ for the law degree — she sets out an expansive proposal for what ‘a good legal education should consist of’: a 1–2 year core; sequenced skills/experiential learning; some big picture study of the ‘functions, purposes, contexts and critiques of law and legal institutions’; some limited ‘deep dive’ specialisation; and some consideration of patterns of legal change versus disruptive societal change.⁸⁶ The fundamental question posed by both Susskind and Menkel-Meadow in this way is an interesting one that goes to the heart of 21st-century LE&T: what is ‘just-in-time’ and ‘just-in-case’ LE&T when distributed sequentially across the professional lifelong learning continuum?

In 2011, speaking at the (then) Australasian Law Teachers’ Association Conference, former Chief Justice of the High Court of Australia, The Honourable Robert French AC, set out his own ‘not exhaustive’ and ‘necessarily aspirational’ list of ‘some of the attributes of the law graduate today’ for consideration, in somewhat similar terms to Menkel-Meadow’s higher-level approach to ‘just-in-time’ LE&T. In French’s view, the law graduate should have at least:

- Basic knowledge of the principles and doctrines of important areas of the law.
- Basic knowledge of the ways in which law is made and interpreted and applied.
- Basic skills, transferable across subject areas, which enable the graduate to identify, define and analyse legal problems, to formulate options for their resolution, to advise clients, and to use negotiation, alternative dispute resolution or litigation, if necessary, for their resolution.
- Awareness of and sensitivity to ethical issues and the ability to respond ethically to them.
- A commitment to legal practice as a species of public service.
- An awareness of the ongoing need for reform of the law and a readiness and ability to contribute to reform.⁸⁷

Historically, most legal education and training has fallen into [Susskind’s] category of ‘just-in-case’ training. Looking forward, the Review should address the ways in which ‘just-in-time’ techniques and technologies can most fruitfully be exploited. One possibility here, for example, is that lectures and presentations delivered in a ‘just-in-case’ setting are recorded, along with any slides, for later use on a ‘just-in-time’ basis.

(Source: Legal Education and Training Review, Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales (Report, June 2013))

⁸⁶ Ibid 239.

⁸⁷ Hon Robert French AC, ‘Legal Education in Australia – A Never Ending Story’ (Conference Paper, Australasian Law Teachers’ Association Conference, 4 July 2011) 29.

1.3.3 Priestley 11: A full page of critique

In early 2010, prompted by the development of the TLOs in law, the then Chair of LACC, Emeritus Professor Sandford Clark, developed a Discussion Paper titled 'Rethinking Academic Requirements for Admission'. Wanting to provoke thought about whether a review of the *Academic Requirements* was required, Clark canvassed the history of the Priestley 11; acknowledged that there had been 'substantial development in educational theory about the integration of teaching in professional skills and values';⁸⁸ and summarised the main criticisms that had been made of the Priestley 11 content areas of legal knowledge. He presented a full page of collated and mercifully succinct critique, which is worth recording here. In 2010, Clark wrote:

8.2 Other criticisms

Apart from the ALRC Report, numerous other studies and commentators have offered explicit or implicit criticism of the Academic Requirements since 2000. They include criticism that the Academic Requirements, as they are presently stated:

- a. do not reflect the acknowledged best practices relating to outcome measures now driving change in legal professional standards in USA, Canada, England and Scotland;
- b. neglect the experience and established practices of other professions in Australia and overseas in fixing professional standards;
- c. neglect the generic graduate capabilities required by all employers, such as analysis, communication, leadership, team work and IT skills;
- d. neglect law-specific skills relating to attitudes, cognition, communication and relationships;
- e. taken with the National PLT Competencies, provide and fortify an outmoded sequential dichotomy between academic and practical training;
- f. promote the notion that law schools need not, and should not, teach lawyering skills and professional values;
- g. portray artificial categories, by neglecting the dynamic nature of law and the propensity of one assumed category of law to bleed into others;
- h. employ outmoded areas of law by concentrating on areas of substantive local law which are now less relevant and important to the realities of modern society, and to legal practice, than other areas that are not included;
- i. neglect [I]ndigenous content and perspective;
- j. are pre-occupied with local substantive law, which is undesirable in an era of global business and legal services;
- k. skew students' perception of the law and lawyering, thus restricting the ability of law schools to impart, and of students to learn, a critical perspective of the legal system;
- l. promote a dysfunctional law school curriculum:

The LLB has become dysfunctional through too much being packed into it – both in number of subjects and size of each subject ... This seems to happen because the legal profession still demands generalist graduates, even though most students want to get into the big end of legal practice which isn't like that at all. [As quoted in International

⁸⁸ LACC, 'Rethinking Academic Requirements' (n 29) 2.

Legal Education and Training Committee, *Internationalisation of the Australian Law Degree* ILSAC (2003) p 7 (Triggs Report).]

- m. impede curriculum design and student choice;
- n. discourage innovation and effective integration of imparting skills and values as well as knowledge; and
- o. hamper student choice, thereby possibly limiting students' opportunities after graduation.⁸⁹

In short, the critique of the Priestley 11 has been sustained and substantial and the quality of LE&T in Australia has been maintained and enhanced in spite of the regulatory regime and the 'light' or 'dead' hand of Priestley, depending on the perspective taken. In 2021, the efficacy of a 1982 articulation of 11 siloed areas of content knowledge must be questioned, especially in the face of the double disruption tsunami presented by Industry 4.0's technological imperative for lifelong learning to sustain future work, which has now been accelerated by significant digitisation and digitalisation in response to the global pandemic. As will be discussed in [Section 2](#), the current context and drivers of change suggest that it is timely now for the profession and the academy to come together to engage in productive exploration of alternative approaches to the accreditation of the *Academic Requirements* for better graduate outcomes across legal, non-legal and even lawtech destinations.

⁸⁹ Ibid 19.

1.4 Practical Legal Training requirements

Similarly to the genesis of the *Academic Requirements* for Australian LE&T, the ‘professional’ phase did not start out as well developed as is the case today. Articled clerkships were the accepted process for qualifying as a solicitor until the early 1970s, after which institutionalised PLT programs began to emerge in response to concerns that there were insufficient articling positions available.⁹⁰ This development also coincided with the Ormrod Report (referred to above), which promoted a move away from the apprenticeship system of articles to a more institutionalised PLT stage.⁹¹

The introduction of PLT courses in a number of states and territories prompted the quest for uniform principles and standards between jurisdictions that could also serve as the basis for mutual recognition and guard against the least onerous standards becoming dominant.⁹² In 1992, the (then) Standing Committee of Attorneys-General (**SCAG**) requested that the various professional bodies reach agreement on a common curriculum for the PLT programs being offered.⁹³ With assistance from the Law Council of Australia (**LCA**), some agreement was reached but consensus was not achieved in many areas. This prompted LACC to undertake an examination in 1993, which led to a proposal for 12 PLT Requirements that was endorsed by the Council of Chief Justices (‘Priestley 12’). Despite this, each admitting authority continued to pursue its own approach towards PLT.⁹⁴

Eventually, the increasing number of PLT program providers in Australia led the ALRC to recommend in 2000 that there was a ‘need to clarify the goals, improve the content and develop a set of national minimum standards and competencies’ for PLT provision.⁹⁵ The consequent Recommendation 5 also suggested the possibility of more bespoke PLT opportunities: that, while ‘ensuring that specified standards of minimum competency are achieved, admitting authorities should render practical legal training requirements sufficiently flexible to permit a diversity of approaches and delivery modes.’⁹⁶

At the time of the ALRC’s *Managing Justice Report* in 2000,⁹⁷ two sets of standards existed for PLT programs: the Priestley 12, endorsed by the Council of Chief Justices, which providers found to be ‘ill-defined’ and difficult to assure; and nine fields of training, specifying 45 competencies, that had been developed by APLEC.⁹⁸ To resolve the issue, in 2000, LACC and APLEC assumed joint responsibility for drafting the *PLT Competency Standards for Entry-*

90 Barker (n 5) 9-10.

91 Anneka Ferguson and Elizabeth Lee, ‘Desperately Seeking ... Relevant Assessment? A Case Study on the Potential for Using Online Simulated Group Based Learning to Create Sustainable Assessment Practices’ (2012) 22(1) *Legal Education Review* 121, 123.

92 Clark, ‘Regulating Admissions’ (n 5) 77.

93 Barker (n 5) 140.

94 Clark, ‘Regulating Admissions’ (n 5) 79.

95 *ALRC Managing Justice Report* (n 51) 165 [2.114].

96 *Ibid* 165 Recommendation 5.

97 *Ibid* 160 [2.106].

98 This also coincided with APLEC seeking to further define the skills, values, and practical abilities that each student should be able to demonstrate upon completing a PLT course. See Clark, ‘Regulating Admissions’ (n 5) 79-80.

Level Lawyers ('PLT Competency Standards').⁹⁹ LACC and APLEC sought to describe the *PLT Competency Standards* in terms of learning outcomes because clear articulation of the PLT skills and values in these terms from the outset:

- Enables better quality curriculum design
- Assists trainers to determine how to task and monitor progress
- Allows assessors to devise exercises to test compliance
- Positions students better to monitor and adjust their own progress.¹⁰⁰

The *PLT Competency Standards* were recommended by LACC to all admitting authorities and were subsequently adopted in 2002.¹⁰¹ The standards were revised in 2014 to add an optional practice area and to spell out a number of regulatory provisions. The revised Standards came into effect in all jurisdictions on 1 January 2015 (see **Appendix B**) and require in short form as follows:

Skills

- Lawyer's Skills
- Problem Solving
- Work Management and Business Skills
- Trust and Office Accounting

Compulsory Practice Areas

- Civil Litigation Practice
- Commercial and Corporate Practice
- Property Law Practice

And two of the following **Optional Practice Areas**

- Administrative Law and Practice
- Banking and Finance
- Criminal Law Practice
- Consumer Law Practice
- Employment and Industrial Relations Practice
- Family Law and Practice
- Planning and Environmental Law Practice
- Wills and Estate Practice

Values

- Ethics and Professional Responsibility.¹⁰²

One obvious omission in this formulation is focused attention on capability development for collaboration, which is now frequently mentioned in discussions of future workforce requirements and in the various discipline reviews that are discussed in this report (**Sections 3 and 4**), including the 2017 NSW *FLIP Report* (referred to in **Section 1.3**). Under the current *PLT*

⁹⁹ See LACC, *Practical Legal Training Competency Standards for Entry-Level Lawyers* (Standards, October 2017) ('*PLT Competency Standards*') <<https://www.legalservicescouncil.org.au/Pages/about-us/law-admissions-consultative-committee.aspx>>.

¹⁰⁰ Clark (n 18) 914.

¹⁰¹ See *PLT Competency Standards* (n 99).

¹⁰² See *Ibid*. Note that some modifications apply in Tasmania (see **Appendix B**).

Competency Standards, there is one relevant Element prescribed in ‘Work Management and Business Skills’: Element 5 ‘Working cooperatively’, the Performance Criteria for which is ‘worked with support staff, colleagues, consultants and counsel in a professional and cost effective manner’. The ‘Lawyer Skills’ competency focuses on various aspects of communication but not on collaboration. An opportunity exists for the PLT stage to build on the foundational collaboration skills developed in law schools over the *Academic Requirements* phase, as required by the AQF at all of levels 7, 8 and 9. The potential for the inclusion of a greater focus on Indigenous cultural competency is discussed in [Section 2.6.1](#) below.

While the LACC *PLT Competency Standards* are predominately outcomes-focused, there are a small number of input requirements (for example, the qualifications of instructors and supervisors, and assessment approaches). The *Competency Standards* were most recently revised in October 2017. In 2016, LACC introduced the *Standards for PLT Workplace Experience*,¹⁰³ which have been adopted by all admitting authorities.¹⁰⁴ The 2016 *Standards for PLT Workplace Experience* specify learning outcomes and other quality assurance measures for supervised workplace experience to assure its educational value and contribution in the context of a PLT course. Uniform Standards have also been developed for the accreditation of PLT Courses and Providers,¹⁰⁵ which incorporate both the LACC *PLT Competency Standards* and the *Standards for PLT Workplace Experience* by reference, and prescribe quite a large number of input requirements (for example, length of course, qualifications of teachers and their professional development, and assessment requirements). LACC has also developed *Guiding Principles for Integrating Academic and PLT Courses*.¹⁰⁶

Each of the skills, practice areas and values in the *PLT Competency Standards* is required to be demonstrated by a range of activities (transactional steps or tasks or actions) called ‘Performance criteria’.¹⁰⁷ The pedagogies and assessment methods adopted are particularly important because PLT practitioners must decide whether or not to issue a certificate of PLT completion for each student before they apply for admission to practise, certifying that the student has satisfied the quite detailed specifications for each of the relevant competencies as set out in the *PLT Competency Standards*.¹⁰⁸ Greaves highlights that the certificate of completion is arguably a representation to court and that therefore, indirectly, PLT providers and their practitioners could potentially mislead the court if they do not take due care in the certification process.¹⁰⁹

There are currently 14 HE providers offering an AQF Level 8 qualification – a Graduate Certificate or Graduate Diploma of Professional Legal Practice/Legal Practice (all **GDLP**

103 LACC, *Standards for PLT Workplace Experience* (Standards, 2016) (*Standards for PLT Workplace*). <<https://www.legalservicescouncil.org.au/Documents/standards-for-PLT-workplace-experience.pdf>>.

104 Clark, ‘Regulating Admissions’ (n 5) 80.

105 LACC, *Uniform Standards for PLT Courses and Providers* (Standards, October 2017) <<https://www.legalservicescouncil.org.au/Documents/uniform-standards-for-PLT-providers-and-courses-Oct-2017.pdf>>.

106 LACC, *Guiding Principles for Integrating Academic and PLT Courses*. <<https://www.legalservicescouncil.org.au/Documents/Guiding-principles-for-integrating-academic-and-PLT-courses-revised-Oct-2017.pdf>>

107 *PLT Competency Standards* (n 99) 2, Item 2.2(b).

108 Ibid.

109 Kristoffer Greaves, ‘Is Scholarship of Teaching and Learning in Practical Legal Training a Professional Responsibility?’ (2015) 49(1) *The Law Teacher* 22, 28.

hereafter) – that meets the *PLT Competency Standards*. In Western Australia (WA), the Piddington Society also offers a PLT course that meets the requirements for admission to legal practice in that state. The University of Newcastle and Flinders University offer the GDLP integrated with their JD/LLB offerings (not as standalone courses) and Swinburne offers the LLB and GDLP (with the Leo Cussen Institute) as a ‘Dual Award’.

It is observed that there is little evidence of critique or interrogation of the content or assurance of Australian PLT requirements. In a bibliometric and computer-aided qualitative data analysis of over 780 items of legal education scholarship focusing on literature discussing ‘practice-based pedagogies’ between 2011 and 2015 and in eight journals, Greaves found ‘no critical discussion of curriculum frameworks specific to practical legal education or training’.¹¹⁰ One matter raised by LACC’s Assuring Professional Competence Committee (APCC) in 2017 was whether the amount of mandated work experience before qualification is sufficiently ‘substantial’.¹¹¹ The APCC Discussion Paper refers to international benchmarking work that was conducted by the Solicitor Regulation Authority (SRA), which suggests that the LACC PLT requirement is at the lower end of the international range.

Of the 18 jurisdictions studied by the SRA, 15 require between 6 and 24 months’ workplace experience before “qualification” as a solicitor. Only 3 require 6 months or less. Under the present PLT Competencies for Entry-level Lawyers some Australian applicants for admission need to complete only 15 days of legal workplace experience, which may be accumulated at a rate of 2 half-days per week.¹¹²

McNamara criticises LACC’s PLT professional accreditation regime for its lack of clear definitions and regulatory guidance regarding the nature and quality of the supervision required for PLT workplace experience and for its imprecision around the form of restricted legal practice provided given the absence of student practice rules in Australian jurisdictions. For example, even though the *PLT Competency Standards* require that supervisors have ‘substantial or current’ experience in law,¹¹³ and the *Standards for PLT Workplace Experience* require ‘appropriate’ supervision,¹¹⁴ McNamara points out that no further guidance is provided on what either of these requirements entails.¹¹⁵ He similarly observes that, while the *PLT Competency Standards* require PLT providers to assist students with resilience, mental health and well-being,¹¹⁶ there is no link made between this requirement and student supervision. The relevant well-being PLT Standard is mostly satisfied by information provision, and support for mental health and well-being in the curriculum, or as a matter of competency development, is not mandated. McNamara also notes that, although the *PLT Competency Standards* are incorporated in state and territory admission rules, giving them legislative

110 Kristoffer Greaves, ‘A Meta-survey of Scholarship of Learning and Teaching in Practice-based Legal Education’ in Ben Golder et al (eds), *Imperatives for Legal Education Research: Then, Now and Tomorrow* (Taylor and Francis, 2019) 107, 115.

111 Assuring Professional Competence Committee, ‘What We Need to Do’ (Discussion Paper) 8 <<https://www.lawcouncil.asn.au/docs/490542a9-1665-e711-93fb-005056be13b5/Assuring%20Professional%20Competence%20-%20What%20we%20need%20to%20do.pdf>>.

112 Ibid.

113 See *PLT Competency Standards* (n 99) 6, Standard 4.5(a).

114 *Standards for PLT Workplace* (n 103) 4, Standard 6(b).

115 Michael John McNamara, *Supervision in the Legal Profession* (Palgrave Macmillan, 2020) 26-27.

116 See *PLT Competency Standards* (n 99) Standard 4.7 ‘Resilience and well-being’.

force, 'it is not clear to what extent the Workplace Experience Standards have actually been implemented'.¹¹⁷

While the PLT regime in Australia is relatively stable, aside from the limited critique just canvassed, it is interesting to look briefly to international developments over the last couple of years for comparative approaches. For example, as is discussed below (*Section 3.4.2*), the SRA in England and Wales has this year moved away from formalised PLT. With the introduction of the new Solicitors Qualification Examination (SQE) in September 2021, prospective solicitors are not required to undertake any degree-based vocational training;¹¹⁸ the Legal Practice Course (LPC, which is equivalent to the Australian PLT) is no longer a necessary step in the admission pathway.¹¹⁹ The SQE reform still requires applicants to complete two years of 'qualifying work experience' but assurance of the vocational phase will now be by way of a common summative assessment (only), the SQE2 'Legal Skills Assessment',¹²⁰ that provides little assured opportunity for aspiring lawyers to receive and reflect on structured feedback for formative and iterative developmental improvement.¹²¹ While the *LETR Report*¹²² had indicated that some improvement was needed in the delivery of the LPC, Burke and Zillmann describe the recent move by the SRA as one which 'rejects the value of well-constructed PLT as an experiential learning paradigm that positions a "student within a construct that perpetuates realization of and constant thought about professional skills and values"'.¹²³ Though 'solicitor apprenticeships' are permitted as an alternative qualification route, noting that solicitor apprentices must also pass the SQE,¹²⁴ Burke and Zillmann highlight that these apprenticeships are not underpinned by any educational regime that coherently blends teaching, learning and cognitive development.¹²⁵

The fact that the SRA's new two-year qualifying work experience will take place without regulatory oversight of the individual work experience and without any considered pedagogical structure¹²⁶ has led to concerns being expressed that some SQE2 examinees will not obtain adequate preparation in comparison to others. McNamara describes the SRA's two-year qualifying work experience approach as 'an informal forum' for skills acquisition, observing that it is:

117 McNamara (n 115) 26-27.

118 Jack Burke and Hugh Zillmann, 'Creating a Gold Standard for Practical Legal Training in Common Law Countries' (2018) 5(1) *Journal of International and Comparative Law* 9, 9-10. 18. There is also no requirement to have a legally specific degree; 'a degree in any subject or a qualification or experience that is equivalent to a degree, such as a solicitor apprenticeship which combines on the job experience and training' will suffice (see <<https://sqe.sra.org.uk/>>).

119 Solicitors Regulation Authority ('SRA'), 'The Solicitors Qualifying Examination' (Web Page) <<https://sqe.sra.org.uk/>>.

120 See *Appendix H* for the SQE2 skills assessment domains.

121 Burke and Zillmann (n 118) 20.

122 *LETR Report* (n 24).

123 Burke and Zillmann (n 118) 14-5 citing Daniel M Schaffzin, 'So Why Not an Experiential Law School...Starting with Reflection in the First Year?' (2014) 7(1) *Elon Law Review* 383, 391.

124 SRA, 'Solicitor Apprenticeships' (Web Page) <<https://www.sra.org.uk/become-solicitor/sqe/solicitor-apprenticeships/>>.

125 See Burke and Zillmann (n 118) 16 citing Ronald Fletcher, 'Legal Education and Proposed Regulation of the Legal Profession in England and Wales: A Transformation or a Tragedy?' (2016) 50(3) *The Law Teacher* 371, 380-2.

126 See *Ibid* 16 citing Ronald Fletcher, 'Legal Education and Proposed Regulation of the Legal Profession in England and Wales: A Transformation or a Tragedy?' (2016) 50(3) *The Law Teacher* 371, 380-2.

... an entirely unstructured period of 'legal work experience under the supervision of a solicitor'. Rather than addressing gaps in the previous system, for example by connecting supervision with processes for workplace learning, the SQE system positions the qualifying work experience requirement as an informal forum where law students have the 'opportunity' to develop the competences needed to qualify for admission.¹²⁷

As the SRA in England and Wales moves away from regulated and/or degree-based vocational training, the shift has been more in the other direction in North America. Law graduates in the US have traditionally not been required to undertake a PLT program prior to admission. However, following critique from each of the *MacCrate Report* (1992), the *Carnegie Report* (2007) and the *Stuckey Report* (2007), which all identified the need to impart practical skills prior to admission,¹²⁸ the American Bar Association (ABA) amended its *Standards and Rules of Procedure for Approval of Law Schools* (see [Appendix H](#)). Law schools are now required to provide at least six credit hours of experiential learning in professional skills,¹²⁹ which allows for a better quality experience in which content and supervision can be monitored and learning outcomes assured through various forms of assessment.¹³⁰ In further recent developments, as discussed in [Sections 3.4.7](#) and [3.4.8](#), issues with the standardised common assessment, the Uniform Bar Exam (UBE), over the course of the pandemic have led a number of jurisdictions to consider afresh the possibilities of alternative pathways to licensure, which include a range of PLT-like options. The implementation of competency frameworks in Canada (discussed in [Section 4.5.2](#)) has focused discussion on the contribution that PLT-like courses can make to competence development.

127 McNamara (n 115) 28. See *MacCrate Report* (n 2); *Stuckey Report* (n 30); *Carnegie Report* (n 30).

128 See for example, *MacCrate Report* (n 2); *Stuckey Report* (n 30); *Carnegie Report* (n 30).

129 See discussion in Burke and Zillmann (n 118) 25-6.

130 *Ibid* 27.

1.5 Pre-admission regulation

LACC's particular role is to achieve national consensus on admission and admission-related issues as between the bodies that are represented by its members.¹³¹ Although it has facilitated agreement regarding the content of both the *Academic Requirements* and the *PLT Competency Standards* (as discussed above), unfortunately, there continues to be inconsistency in relation to the administration and application of the pre-admission requirements and accreditation processes, despite various attempts by different actors over the years to achieve harmonisation and national uniformity.

In 1992, LACC developed the *Uniform Admission Rules* to provide guiding principles for admission and accreditation processes. Since 1992, the Rules have been revised, in 2002, 2008 and 2014. While all jurisdictions generally applied the principles, they did so in varying ways.¹³² In 2009, the Council of Australian Governments (**COAG**) appointed the National Legal Profession Reform Taskforce to make recommendations and propose draft legislation for a national framework for legal profession regulation. After an initial consultation process, in early 2010, the Taskforce released a draft *National Law* and *National Rules* for further public consultation, leading to an Interim Report in November 2010 and amended draft legislation in December 2010. While most jurisdictions agreed in principle to implement the new regulatory regime (except WA and South Australia (**SA**)), over time, Tasmania, the Australian Capital Territory (**ACT**), Queensland and the Northern Territory (**NT**) began expressing reservations and ultimately announced their intention not to participate in the scheme. NSW and Victoria continued and introduced the *Legal Profession Uniform Law* and *Uniform Rules* in their respective jurisdictions over 2013 and 2014.¹³³ Most recently, WA has taken steps towards implementing the *Legal Profession Uniform Law* and *Rules* and is currently in the process of introducing legislation.¹³⁴

The Legal Services Council (**LSC**) and the Commissioner for Uniform Legal Services Regulation oversee the operation of the *Legal Profession Uniform Law* scheme. The LSC oversees the rules and policy that underpin the *Uniform Law*, ensuring it is applied consistently across participating States. The Commissioner also has dispute resolution and compliance functions. An Admissions Committee, appointed by the LSC, develops the Admission Rules used by the relevant local admission boards and advises the Council on admissions policy in the *Uniform Law* states. The LSC now also provides secretariat services to LACC, and LACC documentation has been moved to the LSC website (from the LCA website, where it was previously housed). In 2015, LACC published updated and renamed *Model Admission Rules* (previously the *Uniform Admission Rules*), which are the Rules, for example, that WA applies

¹³¹ This includes the admitting authorities in all Australian jurisdictions, APLEC, CALD and the LCA. LACC is generally responsible to the Council of Chief Justices of Australia and New Zealand (**CCJ**), which appoints the Chair, though it is not a committee of the CCJ.

¹³² *Background Paper on Admission* (n 13) 4.

¹³³ Law Society of New South Wales, 'New Framework for the Legal Profession Uniform Law' (Web Page) <<https://www.lawsociety.com.au/practising-law-in-NSW/rules-and-legislation/legal-profession-uniform-law/new-framework>>.

¹³⁴ The *Legal Profession Uniform Law Application Bill 2020* (WA) is currently in the Legislative Council Second Reading stage.

at the present time, pending its implementation of the *Uniform Law*.¹³⁵ Despite LACC's attempts at the request of the Council of Chief Justices of Australia and New Zealand (**CCJ**) to develop uniform approaches, it remains the case that the various states and territories have divergent approaches to the application of admission requirements¹³⁶ and the accreditation of academic and PLT courses.¹³⁷

To conclude this part and in anticipation of the discussion to follow in **Section 3.2**, the tripartite distinction across the academic, professional and Continuing Professional Development (**CPD**) stages of LE&T, as enunciated by Ormrod and Martin (above) and reflective of historical admission practices, has never seriously been called into question by any major review, other than by the Australian Productivity Commission in 2014 (and then not acted on; see discussion in **Section 3.2.1**).¹³⁸ The pre-admission requirements for each Australian state and territory are set out in **Appendix C** to this report. They are all broadly similar and uniform in the *Uniform Law* states: to be eligible for admission, an individual must be a 'fit and proper person' and have attained an approved academic qualification (or corresponding qualification) and satisfied the PLT requirements (or corresponding requirements). No other overarching statement of entry-level professional competence otherwise exists. State and territory provisions for the accreditation of the *Academic Requirements* and the *PLT Competency Standards* are set out in **Appendix D**.

135 LACC, *Model Admission Rules 2015* (Rules, 2016) <<https://www.legalservicescouncil.org.au/Pages/about-us/law-admissions-consultative-committee.aspx>>. LACC rebranded their *Uniform Admission Rules* to '*Model Admission Rules*' to avoid confusion with the NSW and Victorian Uniform Legislation and Rules. The *Model Admission Rules* sets out the principles that are generally reflected in the regulatory arrangements in all Australian jurisdictions.

136 See **Appendix A** for the Academic Requirements in each state and territory and **Appendix B** for the PLT Requirements in each state and territory.

137 See **Appendix D**.

138 Productivity Commission, *Access to Justice Report* (n 50).

1.6 CALD Australian Law School Standards and LACC Accreditation Standards

In 2005, CALD agreed that it should articulate a set of standards for a self-regulatory framework to enhance the quality of broad aspects of Australian law school operations. It was hoped that such a framework might enable greater standardisation of accreditation approaches nationally and provide a mechanism for admitting authorities to harmonise their accreditation and review processes with those undertaken by other regulators, when and where possible. In 2009, CALD adopted the *Australian Law School Standards*,¹³⁹ with aspirations for common policy and approaches to aspects of legal education regulation.¹⁴⁰ In early positive signs, LACC encouraged and supported the development of the *CALD Standards*, but later said that 'Admitting Authorities have subsequently found that the CALD Standards do not offer sufficiently precise criteria for an Admitting Authority to be confident of applying each standard consistently in all cases'.¹⁴¹ As a result, LACC went on to develop its own *Accreditation Standards for Australian Law Courses*,¹⁴² which contain a mix of input and output measures.

The LACC *Accreditation Standards for Australian Law Courses* seek to regulate not only assurance of 'each of the specified elements in each of the prescribed areas of knowledge' required for admission and the requirements of the *Statement on Statutory Interpretation* (Standard 4.4, emphasis added) but also matters that are within the remit of the Higher Education Standards Framework (HESF), for example, as regards: the duration of the degree; teaching hours; teaching methods so that students acquire 'appropriate understanding and competence in each element of every prescribed area of knowledge' (Standard 4.5, emphasis added) with the requirement for 'face-to-face instruction and learning' and 'direct interaction between teacher and student' (Standard 4.5.b.iii); qualifications of teaching staff; access to legal information resources; and assessment practices. The LACC *Accreditation Standards* make little attempt to harmonise their requirements with the HE regulatory standards and have been criticised for being more far-reaching than the *CALD Standards*.¹⁴³

Despite LACC's reservations, the *CALD Standards* have gone on to be implemented as intended: as a self-regulatory, certification scheme, under the auspices of the Australian Law Schools Standards Committee (ALSSC), established under Standard 12.¹⁴⁴ Thirty-four out of 38 law schools have now been certified (as at 9 March 2020), following an initial certification

139 These standards were recently updated with the addition of guidance notes to explain how law schools can show compliance with the standards. See CALD, *Australian Law School Standards with Guidance Notes* (Standards, 30 July 2020) ('*CALD Standards with Guidance Notes*') <<https://cald.asn.au/wp-content/uploads/2020/07/Australian-Law-School-Standards-v1.3-30-Jul-2020.pdf>>.

140 Barker (n 5) 161. See also Michael Coper, *A Brief History of the CALD Standards Project* (March 2008) <https://cald.asn.au/wp-content/uploads/2017/11/CALDStandardsforAustralianLawSchoolsProjectBrief_History1.pdf>.

141 LACC *Accreditation Standards* (n 40) 3.

142 Ibid.

143 See Olivia Rundle and Lynden Griggs, 'Law Schools and the Burden of Bureaucracy: Release the Yoke (A Plea from the Coalface). Part 1: Over-regulation in Australia' (2019) 93 *Australian Law Journal* 389 ('Law Schools and the Burden of Bureaucracy, Part 1').

144 Michael Black, 'The CALD Standards for Australian Law Schools: Much More than Course Content' in Kevin Lindgren, François Kunc and Michael Coper, *The Future of Australian Legal Education* (Thomson Reuters, 2018) 127.

round on the papers,¹⁴⁵ with a second certification round due to commence in 2022. The *CALD Standards*, which are a mix of inputs and outputs and core and aspirational measures, cover matters such as educational and infrastructure requirements, as well as broader issues including the law school's mission, values and commitment to the rule of law and support for student and staff mental health and well-being. Since 2009, the *CALD Standards* have been amended twice: in March 2013 to incorporate the LLB and JD TLOs (discussed in [Section 3.2.4](#)); and most recently in 2020 to reflect contemporary educational developments, the requirements of the HESF against which TEQSA regulates all HE providers, the changing operations of law schools and for the appropriate acknowledgement of First Nations peoples and development of Indigenous cultural competency. The revised Standards were adopted and republished in 2020 with Guidance Notes incorporated.¹⁴⁶

¹⁴⁵ CALD, *Certification Status of Australian Law Schools as at 9 March 2020* <<https://cald.asn.au/wp-content/uploads/2020/10/Certified-Law-Schools-as-at-9-Mar-2020.pdf>>.

¹⁴⁶ *CALD Standards with Guidance Notes* (n 139) 1-2.

1.7 Post-admission regulation

Pre-admission regulation exists broadly to ensure that those who enter the legal profession are appropriately qualified in the interests of the administration of justice and for the protection of consumers of legal services. The post-admission requirements are also aimed at protecting the consumers of legal services, many of whom are not in a position to assess a lawyer's competence.¹⁴⁷ Post-admission requirements comprise a period of 'supervised practice' before an unrestricted practising certificate can be obtained, unless an exemption has been granted,¹⁴⁸ and include CPD obligations that are tied to the practising certificate. It is noteworthy that there are no educational outcomes prescribed for post-admission supervision, nor are there articulated standards to quality assure the supervisory engagement similar to those that exist in the pre-admission phase (as stipulated by LACC's *2016 Standards for PLT Workplace Experience*).

Beyond the period of post-admission supervision, continuing competence of legal professionals is assured through the CPD regulatory requirements. As referred to earlier, the content of the CPD obligations varies between the state and territories and, in most jurisdictions, there are further differences between the requirements for solicitors and barristers.¹⁴⁹ CPD in Australia is regulated in a fragmented manner by each of the state and territory professional bodies,¹⁵⁰ and there is no post-admission regulatory body nationally with the equivalent remit that LACC has for pre-admission requirements.

In his 2020 review of Victorian CPD requirements, Humphreys found that the legal profession has a 'relatively basic approach to the learning requirements of its members once they have commenced practice' and an absence of a 'professional culture of learning and reflection'.¹⁵¹ The contrast between lawyers and professionals in other disciplines (for example, medicine) was found to be stark.

In medicine, continued learning and development is an integral and essential part of practice. It is expected that doctors will reflect on their practice, will keep journals, engage with their peers in discussion groups and to review their work, as well as attend seminars and conferences.¹⁵²

Humphreys was particularly concerned for the experience of newly admitted solicitors during their period of supervised practice and for barristers in their first three years. He recommended that consideration be given to requiring completion of prescribed CPD as a

147 G E Dal Pont, 'Unauthorised Practice of Law' (2018) 45 *Australian Bar Review* 224.

148 See [Appendix E](#).

149 See [Appendix F](#). See also Chris Humphreys, *Getting the Point?: Review of the Continuing Professional Development for Victorian Lawyers* (Report, Victorian Legal Services Board and Commissioner, November 2020) ('*Getting the Point?*') 66-71 <https://lsbc.vic.gov.au/sites/default/files/2020-11/CPD_Report_Final_0.pdf>.

150 Some states have multiple professional regulatory bodies (for example, Qld, NSW and Victoria). See *Getting the Point?* (n 149) 66-71.

151 *Ibid* 4.

152 *Ibid*.

precondition for the grant of an unrestricted practising certificate (Recommendation 8)¹⁵³ and that newly admitted lawyers be required to have a learning plan and keep a reflective journal during the supervision period (Recommendation 9). He also found that the development of a competency framework was quite critical for newly admitted lawyers who were ‘unaware of what level of competence is expected of them at completion of their supervision period. A framework would provide them and their supervisors with valuable guidance and form a basis for discussing the supervisory relationship and training goals.’¹⁵⁴

Completion of a Practice Management Course is usually a requirement for lawyers who wish to become a principal in a firm, for example in sole practice. The Law Society of WA in its 2017 *The Future of the Legal Profession* report observed in this regard that:

... it may be worth considering whether completion of a one year period of restricted practice and undertaking a practice management course are likely to provide sufficient experience and training for a lawyer to then set up their own firm. It is unsurprising that practitioners who commence sole practice with limited experience attract complaints in disproportionate numbers.¹⁵⁵

The various state and territory requirements for post-admission supervised practice are set out in **Appendix E**, and the requirements for CPD are set out in **Appendix F**.

1.7.1 Post-admission supervised practice

Quality-assured supervision is an important aspect of all experiential learning and equally so for novice lawyers on entry to the profession. Without appropriate supervision, the ability for entry-level lawyers to develop new skills and knowledge in the practice context will be diminished, with likely associated impact on their mental health and well-being.¹⁵⁶ Poor supervision has also been identified as a potential factor in the unethical behaviour of junior lawyers.¹⁵⁷ While supervision in the legal profession can also draw on good practices in Clinical Legal Education (CLE) supervision (**Section 2.6.3**), McNamara notes that CLE is primarily focused on educational outcomes, which it not well aligned with the realities of legal practice and demands of clients.¹⁵⁸

153 Ibid 38, Recommendation 8: ‘The VLSB+C should investigate the options for ensuring that CPD undertaken by newly admitted solicitors during their supervised period of practice and barristers within their first three years of practice helps them to develop values and behaviours that will sustain their career, including in the areas of ethics, diversity and inclusion, sexual harassment, family violence, and health and well-being. One option would be to make completion of such requirements a precondition for the grant of an unrestricted practising certificate.’

154 Ibid 23.

155 Law Society of Western Australia, *The Future of the Legal Profession* (Report, 12 December 2017) 2 <<https://www.lawsocietywa.asn.au/wp-content/uploads/2015/10/2017DEC12-Law-Society-Future-of-the-Legal-Profession.pdf>>.

156 See McNamara (n 115) 4, 8.

157 Ibid 8 citing Andrew Francis, ‘Legal Ethics, the Marketplace and the Fragmentation of Legal Professionalism’ (2005) 12(2) *International journal of the Legal Profession* 173.

158 Ibid 11.

There is no formal mandated benchmarking of competencies, skill development, or ethics requirements [for supervised practice]. In fact, the only formal requirements for education or training, during the supervised practice period is the general CPD requirements, which are in place for all practitioners alike.

*(Source: Michael John McNamara, *Supervision in the Legal Profession* (Palgrave Macmillan, 2020) 33)*

Post-admission supervised practice was envisaged by the LCA in its 1994 *Blueprint for the Structure of the Legal Profession* ('*Blueprint*') as a further stage of legal education that would include a program of professional learning.¹⁵⁹ Although the LCA's *Blueprint* envisaged supervised practice to have prescribed legal practice skills, this did not eventuate.¹⁶⁰ However, even if such skills were prescribed for post-admission supervised practice, McNamara points out that there is currently no clear connection between the content of PLT courses and the training provided during supervised practice.

The various state and territory requirements for post-admission supervised practice are set out in **Appendix E**.

Rule 37 of the *Australian Solicitors' Conduct Rules 2015* also provides more generally that: '[a] solicitor with designated responsibility for a matter must exercise reasonable supervision over solicitors and all other employees engaged in the provision of the legal services for that matter'. The most comprehensive position taken by an Australian regulator in relation to supervised practice is in South Australia where *Guidelines for the Supervision of Newly Admitted Practitioners* ('*SA Guidelines*') have been in existence since 2016,¹⁶¹ which have also been incorporated into the *Rules of the Legal Practitioners Education and Admission Council 2018* (SA).¹⁶² The *SA Guidelines* make clear that the purpose of supervised practice is:

... the continuation of a newly admitted practitioner's practical legal training, and is the culmination of his or her formal legal education. Experiential learning has always been an important part of legal education, as demonstrated by the fact that articles of clerkship were for many years the primary means of obtaining the final qualification necessary for practice as a solicitor. However, concerns about the quality of the work offered and supervision provided to articulated clerks led to the institutionalisation of practical legal training ...¹⁶³

The *SA Guidelines* make provision for the junior practitioner, for example: to be 'fully inducted into the administrative processes of the employer' (Guideline 2); to be supervised for ethical development (Guideline 11); and for the development of a range of competencies in supervised practice (Guideline 8), which are similar to the requirements originally specified

159 Ibid 32 citing Law Council of Australia, *Blueprint for the Structure of the Legal Profession: A National Market for Legal Services* (1994).

160 Ibid citing Law Council of Australia, *Blueprint for the Structure of the Legal Profession: A National Market for Legal Services* (1994) 8-9, 10-1.

161 Legal Practitioners' Education and Admissions Council ('LPEAC'), *Guidelines for the Supervision of Newly Admitted Practitioners* (Guidelines, 2016) ('*SA Guidelines*') <https://www.lawsocietysa.asn.au/pdf/EP_Guidelines_for_the_Supervision_of_Newly_Admitted_Practitioners.pdf>.

162 *Rules of the Legal Practitioners Education and Admission Council 2018* (SA) ('*LPEAC Rules*') Rule 5(2) <<https://www.courts.sa.gov.au/wp-content/uploads/wp-download-manager-files/court-rules/07-lpeac-rules/LPEAC%20Rules%202018.pdf>>.

163 *SA Guidelines* (n 161) 1.

in the LCA's 1994 *Blueprint* (in Principle Seven) for the supervised practice stage of training. The Guideline 8 competencies are as follows:

8. Competencies

It is important to ensure that a range of competencies is developed during the period of supervised practice. The following is a list of the competencies that must be addressed, to ensure that the junior practitioner's formal legal education is satisfactorily completed:

- Interviewing clients, taking instructions and generally dealing with clients;
- Advising, orally and in writing;
- Undertaking legal research;
- Ascertaining and analysing facts against the legal framework of a matter;
- Legal writing, including:
 - Correspondence;
 - Pleadings;
 - Contracts/deeds/equivalent.
- Advocacy, dispute resolution/negotiation
- Planning the ongoing conduct of matters.

This list is not exhaustive and there may be other matters that can be addressed during the period of supervised practice.¹⁶⁴

No reporting appears to be required under the *SA Guidelines*, by either the supervising practitioner or the junior practitioner, to close the supervised practice training loop for this 'final formal component of a practitioner's legal education'.¹⁶⁵ The Victorian Legal Services Board + Commissioner (**VLSB+C**) has also developed *Guidelines for Supervisors* and notes the relationship between the quality of supervised practice and lawyer mental well-being.¹⁶⁶

Regulatory oversight of workplace legal training and/or supervised practice is a live issue internationally. The system in England and Wales that operated until September 2021 required law students to have completed a two-year training contract pre-admission. This training contract was supported by regulatory parameters around the professional learning objectives of the 'supervised practice' period, which included some limited guidance for supervision.¹⁶⁷ McNamara observes that, even so, the 'system [did] not provide any significant insight about the process of supervision, or how learning in the context of work may best be achieved'.¹⁶⁸ Under the new SQE route introduced by the SRA this year (see **Section 4.4.3**), the two years of full-time (or equivalent) 'qualifying work experience' (**QWE**) required to

¹⁶⁴ Ibid 5.

¹⁶⁵ Ibid 2.

¹⁶⁶ Victorian Legal Services Board + Commissioner ('VLSB+C'), *Guidelines for Supervisors* (Guidelines) <<https://www.lsbvc.vic.gov.au/lawyers/practising-law/professional-obligations/guidelines-supervisors>>. See generally also: Law Society of New South Wales, *Supervised Legal Practice Guidelines* (Guidelines, 2021) <<https://www.lawsociety.com.au/practising-law-in-NSW/working-as-a-solicitor-in-NSW/supervised-legal-practice>>; Legal Practice Board of Western Australia, *Supervised Legal Practice Guidelines* (Guidelines, 2018) <[https://www.lpbwa.org.au/Legal-Profession/Restricted-Practice-and-Supervised/Supervised-Legal-Practice-Guidelines-\(Legal-Profes](https://www.lpbwa.org.au/Legal-Profession/Restricted-Practice-and-Supervised/Supervised-Legal-Practice-Guidelines-(Legal-Profes)>; Victoria Legal Services Board, *Supervised Legal Practice Policy* (Policy, 2016) <https://lsbc.vic.gov.au/sites/default/files/2020-02/Policy-Supervised_Legal_Practice-2016.pdf>.

¹⁶⁷ See McNamara (n 115) 27 citing SRA, *Training Trainee Solicitors: Guidance to the SRA Regulations on Training Contracts* (Guidelines, 10 April 2013).

¹⁶⁸ Ibid 27.

be undertaken prior to admission is now completely unstructured in terms of how the supervision should develop the competences required for the SQE.¹⁶⁹ While there is guidance provided by the regulator about ‘meeting our standards for good [QWE]’, the assurance of work experience is satisfied solely by the subsequent SQE assessment of the competences developed. There is no system of supervised practice post-admission as in Australia, other than a restriction on independent practice until the practitioner has practised for at least three years.¹⁷⁰ In the US, there are generally no pre-admission requirements for supervised practice or practical training, nor are there any requirements to undertake a period of post-admission restricted practice (except ‘modest apprenticeship requirements’ in Vermont and Delaware).¹⁷¹ The ABA requirement that law schools offer six credit hours of experiential learning in professional skills has been referred to above (**Section 1.4**).

An example of more rigorous quality assurance, similar to the Australian PLT *Competency Standards*, may be seen in Canada, where the Law Society of Ontario (**LSO**) makes explicit provision for ‘Experiential Training Competencies’.¹⁷² These are described as ‘the necessary skills, knowledge and tasks for entry to the profession’ and account for ‘the learning that both the Articling Program and the Law Practice Program are expected to fulfill’ based on the Federation of Law Societies of Canada (**FLSC**) *National Entry to Practice Competency Profile*.¹⁷³ Candidates are required to demonstrate their skill level in five competency areas by completing specific tasks, and it is expected that all tasks and activities will be performed in a supervised capacity.¹⁷⁴ Supervisors are required to appraise candidates’ performance against the competencies using an Articling Program Reporting Tool, and candidates are required to report on their experience against the competencies in a similar Tool.¹⁷⁵ This is a comprehensive model that could be easily transferred for better regulatory assurance of supervised practice in Australia, if that was considered to be desirable. Canadian competency frameworks are further discussed in **Section 4.5.2**.

1.7.2 Continuing Professional Development Requirements

There was no statutory requirement for lawyers to undertake CPD upon admission to the profession in any Australian state or territory until NSW made it mandatory for all solicitors in 1986.¹⁷⁶ This was despite the fact that the Martin Report¹⁷⁷ had recognised CPD as the ‘third stage of legal education’ in Australia in 1964,¹⁷⁸ as had Ormrod in the UK in 1971. Even

169 SRA, ‘Qualifying Work Experience’ (Web Page) <<https://www.sra.org.uk/become-solicitor/sqe/qualifying-work-experience/>>; Ibid 28.

170 McNamara (n 115) 33.

171 See Ibid 34.

172 Law Society of Ontario, ‘Experiential Training Competencies’ (Web Page) <<https://lso.ca/becoming-licensed/lawyer-licensing-process/articling-principals/filing-and-reporting/experiential-training-competencies#14-practice-management-7>>.

173 Ibid.

174 The five competency areas are: 1) Establishing the Client Relationship; 2) Conducting the Matter – Matter Management; 3) Conducting the Matter – Advocacy; 4) Ethics and Professionalism; and 5) Practice Management.

175 Law Society of Ontario, ‘Record of Experiential Training’ (Web Page) <<https://lso.ca/becoming-licensed/lawyer-licensing-process/articling-principals/filing-and-reporting/record-of-experiential-training>>.

176 *ALRC Managing Justice Report* (n 51) 172 [2.130].

177 Committee on the Future of Tertiary Education in Australia, *Tertiary Education in Australia* (Report, 1964).

178 Barker (n 5) 10.

when the ALRC *Managing Justice Report* was published in 2000, while all legal professional associations in Australia encouraged participation in CPD activities, NSW continued to be the only state that imposed mandatory CPD requirements.¹⁷⁹ Therefore, the ALRC recommended that all legal practitioners be obliged to complete CPD activities to maintain their practising certificates so that ‘more emphasis [is] on a commitment to lifelong learning as an incident of being a competent professional’.¹⁸⁰

The Centre for Legal Education published two reports in 1993 emphasising the importance of CPD for both new and senior solicitors.¹⁸¹ Prompted by these reports and the ALRC Report, a number of other state and territory law societies began mandating CPD requirements. However, a paper by Rosemary Budavari for the LCA in 2008 found that the ACT and Tasmania still had no CPD requirements for solicitors at that time, and that, while the other states and territories required 10 hours of CPD each year, the NT required solicitors to undertake 12 hours.¹⁸² Humphreys records that CPD requirements became relatively uniform over the decade 2005–2015, particularly as regards: the 10-credit point annual requirement; the four core subject areas (for example, in Victoria — ‘Substantive Law’, ‘Professional Skills’, ‘Practice Management and Business Skills’, and ‘Ethics and Professional Responsibilities’); and prescribed delivery modes.¹⁸³ WA goes further and also requires that its CPD providers are accredited by the Legal Practice Board of WA. Though CPD has been the subject of significant interrogation in many jurisdictions internationally in recent times (see [Section 3.2.6](#) and [Section 4.5.1](#)), especially in the context of maintaining continuing professional competency for lawyers post-admission, until 2020, this had not been the case in Australia: ‘[CPD] has not been much scrutinised in recent years, despite a growing awareness of the inadequacies of the current scheme’.¹⁸⁴ The most recent Australian review is the 2020 report commissioned by the VLSB+C on the CPD requirements for Victoria’s 24,000 lawyers and how that regime might be improved. This will be further discussed below (see [Section 3.2.6](#)).

179 The only exception being certified specialists in Victoria and Qld. See *ALRC Managing Justice Report* (n 51) 172 [2.130].

180 *Ibid* 177 [2.146].

181 See John Nelson, *A Study of the Continuing Legal Education Needs of Beginning Solicitors* (Report, Centre for Legal Education, 1993); Christopher Roper, *Senior Solicitors and their Participation in Continuing Legal Education* (Report, Centre for Legal Education, 1993).

182 Barker (n 5) 175, citing Rosemary Budavari, *Continuing Legal Education or Professional Development Requirements: Comparative Tables as at May 2008, Solicitors and Barristers* (Law Council of Australia, 2008).

183 *Getting the Point?* (n 149) 10. See also Hook Tangaza, *International Approaches to Ongoing Competence: A Report for the LSB* (Report, March 2021) <<https://legalservicesboard.org.uk/wp-content/uploads/2021/05/International-approaches-to-Ongoing-Competence.pdf>>; *Furlong Report* (n 70).

184 *Ibid* 2.

1.8 Higher Education Regulation

In addition to the professional accreditation requirements set out above, Australian LE&T is regulated by a multiplicity of frameworks at the national and state and territory levels, including institutional governance arrangements.¹⁸⁵ Since 2012, Australian HE, and legal education as a subset of it, have been regulated by an independent regulatory agency, TEQSA. TEQSA regulates against a standards-based quality framework guided by the three principles of regulatory necessity, risk and proportionality.¹⁸⁶ Relevant legislative and policy instruments in this regard include:

- *Tertiary Education Quality and Standards Act 2011 (TEQSA Act)*
- *Higher Education Standards Framework (Threshold Standards) 2021 (HESF)*, which includes the requirement that the learning outcomes of all HE qualifications must be consistent with the relevant level classification in the *Australian Qualifications Framework (AQF)*¹⁸⁷
- *Education Services for Overseas Students Act 2000 (ESOS Act)* and its associated instruments,¹⁸⁸ including the *National Code of Practice for Providers of Education and Training to Overseas Students 2018 (National Code 2018)*.

Pursuant to the *TEQSA Act*, universities are deemed 'self-accrediting' providers, while other HE providers without self-accrediting authority have their courses of study accredited by the regulator. Under this regime, both self-accrediting and non-self-accrediting HE providers are also required to have a comprehensive array of policies and procedures that imposes a further level of regulatory detail on course design, approval, oversight and review, including statements of institutionally identified graduate attributes.

The HESF sets out the specific regulatory requirements that every HE provider must meet, initially and on a continuing basis, to be registered by TEQSA in order to operate as an Australian HE provider. The Framework is structured to align with the student lifecycle (for example, the first Standard is 'Student Participation and Attainment') and is intended to provide an institutional framework for internal monitoring and quality assurance of a provider's HE activities.¹⁸⁹

As might be expected, many of the standards in the HESF are relevant to the regulation of courses offered by law schools and PLT providers in Australia. For example, Standard 1.4.1 provides that 'The expected learning outcomes for each course of study are specified,

185 Sally Kift, 'A Virtuous Journey through the Regulation Minefield: Reflections on Two Decades of Australian Legal Education Scholarship' in Ben Golder et al (eds), *Imperatives for Legal Education Research: Then, Now and Tomorrow* (Routledge, 2019); Rundle and Griggs, 'Law Schools and the Burden of Bureaucracy, Part 1' (n 143).

186 Tertiary Education Quality and Standards Agency (Web Page) <<http://www.teqsa.gov.au/>>.

187 *Higher Education Standards Framework (Threshold Standards) 2021 (Cth) ('HESF')* Standard 1.5.3 <<https://www.legislation.gov.au/Details/F2021L00488>>.

188 See Department of Education, Skills and Employment (Cth), 'The ESOS Legislative Framework' (Web Page) <<https://internationaleducation.gov.au/regulatory-information/Education-Services-for-Overseas-Students-ESOS-Legislative-Framework/ESOS-Regulations/Pages/default.aspx>>.

189 See Tertiary Education Quality and Standards Agency, 'Higher Education Standards Framework (Threshold Standards) 2021' (Web Page) <<https://www.teqsa.gov.au/higher-education-standards-framework-2021>>.

consistent with the level and field of education of the qualification awarded, *and informed by national and international comparators*’. The italicised text in Standard 1.4.1 is intended to include the Discipline Standards Statements that developed the TLOs over 2010–2012, and would also include the LACC *PLT Competency Standards* and other accreditation statements. In Standard 3.1.2 ‘Course Design’, regulatory requirements as to currency of content and learning activities are made clear, with specific reference also made to course design encompassing ‘study of the underlying theoretical and conceptual frameworks of the academic disciplines or fields of education or research represented in the course’. Other notable regulatory imperatives include:

- Assurance of student acquisition of learning outcomes (Standard 1.4.4)
- Assurance of the validity and reliability of assessment design (Standard 1.4.3)
- The requirements in Standard 2 ‘Learning Environment’ for adequate provision of facilities (including facilities in which external placements occur), infrastructure and learning support (both virtual and physical, and including library resources)
- The necessity for continuous monitoring, review and improvement of courses under Standard 5.3, which includes the requirement for external referencing or other benchmarking activities for quality assurance purposes
- The imperative generally to assure the quality of the student experience, and specifically to engage in iterative quality improvement having regard to ‘regular external referencing of the success of student cohorts against comparable courses of study’, other student performance data and student feedback on courses and teaching (Standard 5.3).

Standard 3.2.3 Staffing also requires teaching staff to be suitably qualified and have, inter alia:

- a. knowledge of contemporary developments in the discipline or field, which is informed by continuing scholarship or research or advances in practice
- b. skills in contemporary teaching, learning and assessment principles relevant to the discipline, their role, modes of delivery and the needs of particular student cohorts, and ...¹⁹⁰

As regards the link between professional regulation and HE regulation, the HESF in Standard 1.4.2.c specifically requires that the learning outcomes for each course of study ‘encompass discipline-related and generic outcomes, including ... c. knowledge and skills required for employment ... *including those required to be eligible to seek registration to practise where applicable*’.¹⁹¹

There seems to be limited understanding in the practising profession generally, and amongst professional accrediting bodies particularly, of the regulatory import of the HE regulator’s existence and the impact of the HESF and the AQF (by virtue of its incorporation into the HESF), on the quality assurance and professionalism of modern LE&T. The regulatory

¹⁹⁰ HESF (n 187) 3.2.3.

¹⁹¹ HESF (n 187) 1.4.2 (emphasis added).

requirements under the HESF for assurance of learning outcomes and currency of curricular content, of learning activities and resources, and of pedagogical content knowledge seem also underappreciated. This is not peculiarly an Australian issue. It is to be remarked that the numerous disciplinary reviews internationally also show little engagement with the broader HE regulatory environment in those jurisdictions and rarely consider HE regulation's interaction with professional regulation. It is the case in Australia that, while the increased regulatory burden imposed under the TEQSA regime is considered by some to have been disruptive and overly intrusive,¹⁹² the articulation of the HESF sector-wide regulatory standards, which are not subordinate to professional regulatory standards in any respect but rather supplement them, has enabled greater transparency and quality provision of LE&T.

This is not to say that there have not been issues in attempting to harmonise the regulatory intents of multiple bodies. To their credit, Universities Australia (UA), the Government, the Higher Education Standards Panel (HESP)¹⁹³ TEQSA and LACC have all, at different times, pursued opportunities to reduce the regulatory burden. For example, TEQSA has a commitment to engage with professional bodies to work towards 'complementary approach[es] to course accreditation processes and requirements' and to encourage 'alignment of professional outcomes with learning outcome requirements of the [AQF]'.¹⁹⁴ In this regard, TEQSA has signed Memoranda of Understanding with a number of industry and professional accreditation bodies 'to facilitate the sharing of information and reduce regulatory burden on HE providers through joint and streamlined approaches to assessment'.¹⁹⁵ There does not appear to be any relevant Memorandum of Understanding as regards LE&T.

In a similar vein, in 2016, UA and (then) Professions Australia (now the Australian Council of Professions) signed a *Joint Statement of Principles for Professional Accreditation (Joint Statement)* signalling closer collaboration between those two peak bodies and a shared 'responsibility to develop complementary approaches to course accreditation ... [and] alignment of professional standards and the learning outcomes requirements of the Higher Education Standards Framework'.¹⁹⁶ The *Joint Statement* is 'well regarded by the sector ... [and] designed to ensure that professional accreditation processes operate in a transparent, accountable, efficient, effective and fair way'.¹⁹⁷

192 For example, Rundle and Griggs, 'Law Schools and the Burden of Bureaucracy, Part 1' (n 143); Olivia Rundle and Lynden Griggs, 'Law Schools and the Burden of Bureaucracy: Release the Yoke (A Plea from the Coalface). Part 2: International Comparators and a Proposal' (2019) 93 *Australian Law Journal* 499; Margaret Thornton, 'The Challenge for Law Schools' (n 26).

193 The Higher Education Standards Panel (HESP) is an expert statutory advisory body, established under the *TEQSA Act*, with responsibility to provide independent advice on the HESF to the responsible federal ministers.

194 Tertiary Education Quality and Standards Agency, *Engagement with Professional Bodies* (Web Page) <<http://www.teqsa.gov.au/engagement-professional-bodies>>.

195 *Ibid.*

196 Universities Australia and Professions Australia, *Joint Statement of Principles for Professional Accreditation* (Statement, 2016) 5 <<https://www.professions.org.au/wp-content/uploads/Joint-Statement-of-Principles-for-Professional-Accreditation-2016.pdf>>. No law accrediting body is a member of the Australian Council of Professions: <<https://www.professions.org.au/membership/>>.

197 Higher Education Standards Panel, *The Higher Education Standards Panel's Advice on the Impacts of Professional Accreditation in Higher Education* (2017) 2 <<https://www.dese.gov.au/higher-education-standards-panel-hesp/resources/higher-education-standards-panels-advice-impacts-professional-accreditation-higher-education>>.

Reviews and other efforts to pursue an agenda of harmonisation to reduce the regulatory burden on Australian LE&T providers are discussed further below in **Section 3.2**.

Law schools are drowning in bureaucracy. Multiple bodies accredit, certify, regulate and/or monitor the “what” and “how” in Australian legal education.

(Source: Olivia Rundle and Lynden Griggs, ‘Law Schools and the Burden of Bureaucracy: Release the Yoke (A Plea from the Coalface). Part 1: Over-regulation in Australia’ (2019) 93 Australian Law Journal 389, 389)

2 Current Context and Drivers of Change

Key points

- In 2021, many factors are converging to create a climate of readiness for change that sets the context for a reimagining of the professional regulation of Australian legal education and training (LE&T).
- Pervasive technological transformation in particular is changing the world of legal and lawyer work, for example, as regards: ways of legal working and types of legal structures, legal workers and legal tasks; how consumers access legal information; and changing expectations for more client-focused and holistic legal service provision.
- Other factors are also contributing to reform imperatives, including: globalisation; recent high-profile lapses in ethical behaviour and professional conduct; reconciliation with Australia's First Nations peoples; hyper-competition; increased personal and business mobility; demographic shifts; a focus on professional health and well-being; and a more robust approach to professional regulation internationally.
- To inform the considerations that follow, this section examines the current Australian landscape and drivers of change from three different perspectives: the changing professional context for legal services; the changing context for LE&T; and the changing context for legal professional regulation.
- Drivers identified as regards the changing professional context for legal services include:
 - Increasing competition and globalisation
 - New ways of legal working
 - The segmentation and unbundling of legal work from lawyer work
 - Issues of professional conduct and continuing competency
 - Evolving business structures
 - Changing legal workforce profiles
 - Unmet legal needs and access to justice
 - Mental health and well-being.
- Drivers identified as regards the changing context for LE&T include:
 - Fit-for-purpose course architecture, content and pedagogy
 - Increased regulation of educational provision
 - Growing complexity and the multi-functionality of providers' missions, circumstances and offerings
 - Enhanced learning, teaching and assessment practices
 - Increases in law student and graduate numbers
 - New and different learning needs to assure 'practice-ready' graduates,
 - Indigenous cultural competency and professional commitment to First Nations justice
 - Mental health and well-being.
- Drivers identified as regards the changing context for professional regulation include:
 - Broader attention to and sophistication of regulatory oversight
 - Quality concerns about entry-level competence
 - Concerns about the quality of support for and development of new lawyers

- Other concerns around assuring continuing competence, including the efficacy of CPD regimes
- Calls for evidence-based regulatory approaches
- Regulatory co-operation and harmonisation.
- The section concludes with a short review of the evidence base for educational quality and professionalism in Australian LE&T, as demonstrated at the pre-admission stage.
- It has been observed that many of the professional and LE&T issues being raised now are not new. This is true to a large extent, but there are two things that are different in 2021. The first point of difference is the pervasiveness of the step change that technology has wrought on all aspects of legal services and legal education, which has been accelerated now by the global pandemic. The second point of difference is the regulatory consequences of understanding that lifelong learning must become a practical reality for all workers and learners, including lawyers, legal educators and law students.
- In this climate, reimagining professional regulation is a broad agenda that should be pursued collaboratively, in good spirit and with goodwill, by all arms of the profession acting in their public professional role and in the interests of the administration of justice. In 2021, the discipline's tendency to default to inward-looking and hyper-incremental responses is neither valid nor sustainable. A bolder reset is required.

2.1 Introduction

There are a number of factors driving the imperative for change in legal education and training (**LE&T**) and its regulation in Australia. The professional landscape is undergoing a period of enormous disruption globally, and has been for some time. Technological transformation in particular is pervading and unsettling the world of legal and lawyer work: its structures, ways of working, tasks and workers; how consumers access legal information; and changing expectations for more client-focused service. But other factors are contributing also, such as: globalisation and connectivity; recent high-profile lapses in ethical behaviour and professional conduct; reconciliation with Australia's First Nations peoples; hyper-competition; increased personal and business mobility; demographic shifts; a necessary focus on professional health and well-being; and more besides. The dynamic change experienced in the legal services sector is also impacting the legal academy and, beyond them both, is being felt more broadly across all professions and higher education (**HE**) remits. And now COVID-19 has accelerated Industry 4.0's pervasive labour market disruption with rapid shifts in digitisation and digitalisation, challenging afresh the relevance and sustainability of pre-pandemic business models across all sectors. The underpinning role of technology as a driver of change is embedded throughout the discussion that follows. The specific issue of assuring technological competence as a regulated aspect of professional competence is considered in [Section 4.6.4](#).

Internationally, the regulatory landscape is also transforming rapidly, as will be examined in [Sections 3.4](#) and [4](#), with a particular focus on competence-based approaches across the professional lifespan. Domestically, the recent review of the Council of Australian Law Deans (**CALD**) Standards, the change in leadership and focus of the Law Admissions Consultative Committee (**LACC**), and the regulatory disruption to business-as-usual HE forced by COVID-19 (and legal education as a subset of it), have converged to cement a climate of readiness for change. In short, the imperatives are aligning for a comprehensive review of the present system of professional regulation of Australian LE&T, with a view to identifying options for an alternative, more contemporary and relevant system in which CALD could play a critical role, leveraging its educational expertise and credentials.

This reimagining also occurs at a time when the potential for harmonising professional and HE regulatory requirements could be fruitfully pursued. An aspect of this must be to develop an appropriate and considered response to reports such as the NSW Law Society's *Future of Law and Innovation in the Profession* (**FLIP**) Commission as regards their implications for the pre-admission stage of LE&T. As mentioned earlier in [Section 1.3](#), the FLIP Commission identified a range of 'skills and areas of knowledge'¹ deemed necessary for law graduates' entry-level proficiency, *in addition to* retaining all of the existing Priestley 11 (and statutory

¹ Law Society of NSW, *The Future of Law and Innovation in the Profession* (Report, 2017) ('*FLIP Report*') 78-79, Table 6.1 <<https://www.lawsociety.com.au/sites/default/files/2018-03/1272952.pdf>>.

interpretation) requirements and PLT competencies,² conceding that '[f]urther consideration and research ... [is] necessary to determine how these skills and knowledge areas could be taught within existing curricula'.³ In the course of rejecting the FLIP Commission's recommendations in this regard as 'unrealistic', the previous Chair of LACC, Emeritus Professor Sandy Clark, suggested that:

Rather, we need to re-conceive legal education as a continuum, and allocate responsibilities for sequential components to other elements of the profession, after law schools and PLT providers have made their initial threshold contributions. Further, we may need to regulate each part of that continuum consistently. Where can additional knowledge, skills and values best be acquired by entry-level lawyers? When can this realistically occur? How can we make it happen?⁴

The 2018 *Comprehensive Review of Legal Education and Training in Hong Kong* concurred, stating:

Meeting all of the FLIP requirements (or some equivalent), over and above the existing curriculum would be an impossible task. Some of these skills, in any event, may be better developed at the vocational stage.⁵

In the circumstances, it seems apposite that the primary focus on pre-admission regulation of LE&T should expand and shift to a more contemporary rendering of broader-based, continuing competence assurance, as is now commonly occurring internationally. Long-standing professional concerns, including from the Council of Chief Justices of Australia and New Zealand (**CCJ**), the Large Law Firm Group and the Law Council of Australia (**LCA**), about the adequacy of the pre-admission phase need to be tested and better understood, and the possibilities explored, as Clark has proposed, for a more sensible and appropriate allocation of 'responsibilities for sequential components to other elements of the profession, after law schools and PLT providers have made their initial threshold contributions.'

In 2014, the Productivity Commission recommended a systematic review of the current status of the three stages of legal education – the academic, practical legal training (**PLT**) and Continuing Professional Development (**CPD**).⁶ That recommendation has not been actioned. As **Section 3** will address in more detail, there has been a number of important reviews in common law jurisdictions over recent decades (in England and Wales, Canada, Hong Kong, the United States and New Zealand), while the onset of COVID-19 has forced some major

2 Sandford D Clark, 'Regulating Admissions: Are We There Yet?' (2017) 91 *Australian Law Journal* 907, 911. The *FLIP Report* (n 1) 78-79 identified seven 'skills and areas of knowledge' that were deemed 'necessary for success in future law practice': technology; practice skills (interpersonal skills such as teamwork and collaboration. Professional skills such as writing and drafting skills, interview skills, presentation skills, advocacy/negotiation skills); business skills; project management, internationalisation and cross-border practice of law; interdisciplinary experience, and resilience, flexibility and ability to adapt to change.

3 *FLIP Report* (n 1) 6.

4 Clark (n 2) 911-12.

5 Standing Committee on Legal Education and Training, *Comprehensive Review of Legal Education and Training in Hong Kong* (Report, April 2018) 74 ('*Hong Kong Review*') <<https://www.scler.gov.hk/eng/pub.htm>>.

6 Productivity Commission, *Access to Justice Arrangements* (Inquiry Report No 72, 5 September 2014) 252 ('*Access to Justice Report*') <www.pc.gov.au/inquiries/completed/access-justice/report>.

rethinking in the US, in particular on the efficacy of the Uniform Bar Exam (**UBE**) as the sole pathway for assurance of entry-level competence. None of these intensive exercises has focused solely on the pre-admission stage; indeed many of the opportunities for regulatory assurance and enhancement are posited from a system-wide perspective, including at the post-admission phase for continuing competency.

This is a broad agenda that needs to be pursued collaboratively, in good spirit and with goodwill, by all arms of the profession acting in their public professional role and in the interests of the administration of justice. In 2021, the discipline's tendency to default to inward-looking and hyper-incremental responses is neither valid nor sustainable. A bolder reset is required. This **Section 2** explores the Australian climate for change and the drivers of it across the professional, educational and regulatory domains.

As Garcia is quoted as saying in the American Bar Association (ABA) Commission on the Future of Legal Services, 'the future will demand our full collective resources. Law students, lawyers, judges, innovators, and legal providers of all varieties will need to work collaboratively to achieve a sustainable, relevant, and valuable legal system.'

(Source: American Bar Association, Report on the Future of Legal Services in the United States (Report, 2016) 55)

2.2 Drivers of professional, educational and regulatory change

The legal services market globally has been subjected to a period of profound change, leading to calls for LE&T and regulatory responses to similarly transform. The drivers incentivising change are canvassed in many of the recent LE&T reviews, and in the broader, voluminous global commentary, with a considerable degree of consistency. It has been observed that many of the professional and LE&T issues raised are not new. What is new in 2021 is the pervasiveness of the step change that technology has wrought on all aspects of legal services and legal education, and the regulatory consequences of accepting that lifelong learning must become a practical reality for all, including lawyers and legal educators.

An attempt is made here to collate many of these observations and themes, compendiously in the first instance, followed by specific elaboration of a number of them. These driving forces are considered under three broad heads: those impacting LE&T, which are dealt with in greater detail to set the scene for later analysis, purposely bookended on either side by: first, the changing professional context for legal services; and then last, the shifting demands of the regulatory environment. As might be expected, many of these matters are inter-related, suggesting holistic and system-wide responses are appropriate and would have greater efficacy. The profession's mental health and well-being is a good example of such an issue and is discussed in [Section 2.6.4](#).

2.2.1 Changing professional context for legal services

Matters frequently mentioned under this head include:

Increasing competition both from within traditional professional ranks (for example, the growth in corporate clients 'insourcing' their work to in-house lawyers) and from other legal service providers with new and evolving business models. Client behaviour in the hyper-competitive legal marketplace is also changing, attributable in part to reasons such as, for example, corporate cost pressures and shrinking budgets for larger clients, and the easy access to online legal information through the development of legal apps for other clients. As a result, well-informed and empowered consumers are seeking better value for money and more client-focused approaches, in what might now be considered to be a 'buyer's market' as technology-enhanced service delivery is enabling greater efficiency and cost-effectiveness.

New ways of working are being driven by globalisation, mobility and technology. Both legal work and lawyer work are being impacted by the pervasiveness of digitisation, digitalisation, automation, machine learning and artificial intelligence — trends that have been further accelerated by the pandemic's disruption. New practice areas (for example, online dispute resolution and virtual courts) and new domains for professional risk management are emerging, requiring immediate attention to assure technologically

competent lawyering.⁷ The specific issues raised by globalisation for legal services, lawyer work and legal education are discussed below in **Section 2.5.1**.

The trend towards segmentation and unbundling of legal work from lawyer work, and of legal information, knowledge and expertise more broadly. The unbundling of legal work – work that can be automated or provided by a low-cost service, to be compared with work that requires more complex, ‘bespoke’ attention – has led commentators such as Susskind to suggest that automation will replace the need for lawyers in certain aspects and areas of legal practice.⁸ For decades, access to justice initiatives have commonly resorted to the provision of unbundled or partial assistance in response to high levels of unmet legal need (for example, in under-serviced practice areas and for disadvantaged communities and individuals unable to afford bespoke advice and representation via legal clinics, community legal centres and duty lawyers (and see discussion in **Section 2.5.4**)). In 2014, the Australian Productivity Commission recommended increased unbundling of legal services given its potential benefits for closing the access-to-justice gap.⁹

Technology has accelerated a myriad of opportunities for segmentation and unbundling, for example, to: increase connectivity for some (regional and remote) clients; augment legal advice in certain practice areas; and commoditise simple legal service provision, where the potential for standardised solutions allows for cheaper access to advice and information. Similarly, routine, high-volume component tasks have been unbundled to be undertaken by legal process outsourcing. More recently, a trend towards outsourcing discrete areas of legal work at peak times for more flexible workforce solutions has been on the rise, particularly in the corporate sector. None of this is to suggest that the professional, ethical and regulatory ramifications of such approaches should be underestimated. But it is interesting to observe also that competent, diligent and efficient lawyering would now require the appropriate deployment of technology in legal practice and practice management, deployed in risk-managed and cyber-secure ways. As discussed in **Section 2.6.2**, technology’s use places a particular premium on the professional attributes of ethical standards, criticality and analytical capability, which are required to oversee the efficacy of lawtech applications, including for routine tasks.

Ethics, professional conduct and continuing competency. As the necessity for lifelong learning, with its focus on continual up- and re-skilling, has now become an accepted reality for all professions, a shift to assurance of *continuing* professional competence is being prioritised for regulatory attention. At a different level of analysis, competence in the ethics and professional conduct domain is a particular and current area of focus, given recent salient instances of lapses of professional behaviour and demeanour in a broad range of ethical and professional conduct matters, including: sexual harassment; bullying; discrimination; corruption of the administration of justice; bad work practices; workplace health and safety breaches; civility and respect; inclusion and diversity; and concern for

7 See, for example, Amy Salyzyn, ‘A Taxonomy for Lawyer Technological Competence’, *Slaw* (online, 18 December 2020) <<https://www.slaw.ca/2020/12/18/a-taxonomy-for-lawyer-technological-competence/>>. See also **Section 4.6.4**.

8 Richard Susskind, *The End of Lawyers? Rethinking the Nature of Legal Services* (Oxford University Press, 2008).

9 Productivity Commission, *Access to Justice Report* (n 6) 29-30.

mental health and well-being.¹⁰ These latter issues are the subject of specific examination in **Section 2.5.2** below and are considered more broadly from the regulatory perspective in **Section 4.6.3**.

Evolving business structures. Dissatisfaction with the cost inefficiencies of, and difficult work practices baked into, ‘OldLaw’¹¹ and/or ‘BigLaw’¹² business models have given rise to the emergence of NewLaw¹³ practices and other alternative business structures, all of which leverage the efficiencies of technological affordances. The dominance of the BigLaw firm model is being challenged by NewLaw’s adoption of different and innovative fee structures, including more flexible, fixed fee arrangements,¹⁴ which have shifted the billing focus from time recording to one of producing value.¹⁵ The increasing number of regulatory sandboxes internationally speaks to an appetite for legal service transformation and the potential for a proliferation of new legal service market entrants. Consumers of legal services, corporate and individual alike, are also pushing providers to take more holistic, cross-disciplinary and client-centric approaches in response to the issues on which advice is sought, for joined-up, wrap-around solutions that address the inter-relatedness of clients’ needs, only one aspect of which may be a legal need. A corollary of this also has been an increasing trend for clients to look for lawyers who understand the broader commercial context within which business operates, wanting that commercial acumen and integrated perspective to nuance the technical legal advice provided. This highlights the desirability of lawyers having a broader understanding of commercial settings, focusing on client relationships for a ‘whole client’ approach, and being prepared and able to work collaboratively with other discipline professionals.¹⁶ Increasing the integration of both legal and advisory services, as well as other multidisciplinary services, is also assisting law firms to compete with external competition (for example, from major accounting firms).¹⁷

Changing legal workforce profiles. The decline in ‘general practice’ lawyering and the rise in specialisations and employment of in-house counsel are raising challenging questions about the necessary scope and focus of initial education and training, and what constitutes ‘core’ (professional) knowledge for entry-level competence. The role of

10 For mental health and well-being see, for example: Minds Count Foundation, *TJMF Psychological Wellbeing: Best Practice Guidelines for the Legal Profession* (Guidelines, 2021) (*TJMF Psychological Wellbeing*) <<https://mindscount.org/wp-content/uploads/2021/06/200214-Minds-Count-Tristan-Jepson-Memorial-Foundation-Guidelines.pdf>>.

11 Jordan Furlong and Sean Larkan, ‘A Brief Inventory of NewLaw in Australia’, *AMPLA Blog* (Blog Post, 24 August 2014) <<http://www.alpma.com.au/a-survival-guide-for-legal-practice-managers/inventory-of-new-law-in-Australia>>.

12 George Beaton and Eric Chin, ‘The Last Days of the BigLaw Model’, *The Global Legal Post* (online, 20 September 2013) <<http://www.globallegalpost.com/blogs/global-view/the-last-days-of-the-biglaw-model-70515817/>>: “BigLaw” is not about big law firms. It’s description of the business model used by firms generating more than 99% of law firm revenues today (that is, it excludes micro and sole practitioner ‘firms’ and the handful of alternative business model firms): See also George Beaton, ‘Who Coined NewLaw?’ (Blog Post, 8 August 2018) <<https://remakinglawfirms.com/who-coined-newlaw/>>.

13 George Beaton, *NewLaw New Rules: A Conversation about the Future of the Legal Services Industry* (Beaton Capital, 2013) (*NewLaw New Rules*); Beaton, ‘Who Coined NewLaw?’ (n 12).

14 For example, this was recognised in Productivity Commission, *Access to Justice Report* (n 6) 195-7.

15 As highlighted in the *FLIP Report* (n 1) 19, one of the more fundamental objections to hourly rates is that the clock-watching mindset is antithetical to efficiency and the production of value.

16 *Ibid* 16.

17 Quantum House Australia, *Industry Report – Legal Services in Australia: Current Performance with 5 Years Outlook* (Report, July 2020) <https://www.quantumhouse.com.au/wp-content/uploads/2020/09/Industry-Performance-and-Outlook_Legal-Services-2021.pdf>.

in-house lawyers and general counsel is also changing. Corporate counsel are becoming more specialised and often act as business advisors, supplementary to their legal advisor role, which is causing ethical issues for the lawyers,¹⁸ many of whom now find they have reduced access to external checks and balances to guide ethical accountability. At the same time, the demand for in-house lawyers has increased, a trend that has also been evident internationally. This was recognised in the *FLIP Report* in 2017 as a ‘major trend that may prove to be cyclical.’¹⁹ However, Mahlab’s report in 2021 suggests that the shift towards building in-house teams in order to reduce the spend on external legal work continues to rise.²⁰ The changing role of corporate in-house counsel and their increasing numbers are other factors behind many law firms shifting from a black letter law focus to developing expertise in commercial strategies and risk,²¹ as mentioned above. The rise in specialisation and changing workforce profiles has led Webb and others to warn against over- or under-specifying competences and standards for pre-admission lawyers.²² Goldsworthy suggests that LE&T should not fall into the instrumental trap of equipping students with quickly obsolete skills but, rather, should provide a ‘broad, liberal education enabling interdisciplinary insights, creativity and social intelligence’.²³

Unmet legal need and access to justice. This driver of change has been an enduring and wicked problem on which each of the three legal domains – professional, educational and regulatory – is continuing to work to develop new solutions. For example, as regulatory responses become more sophisticated and nuanced, the multiple purposes of legal professional regulation have been ventilated, highlighting that, amongst other things, regulation should be in and for the public interest (see further [Section 4.2](#)). Significantly, shifts in regulatory practice under the auspices of public interest have enabled the development of ‘regulatory sandboxes’ to facilitate controlled exploration of alternative business structures and innovative legal service delivery models, many of which aspire to improve access to affordable justice (see [Section 4.2.2](#)).

Such explicit signalling of regulatory intent underscores the professional responsibility of all lawyers to promote justice, fairness and service in their public professional role. Lawyers have a duty to the administration of justice and promotion of the rule of law, including equality before the law, an aspect of which is to uphold access to justice. These elements of professional responsibility are essential for social cohesion, fairness and prosperity, especially important in these challenging times of societal disquiet and divisiveness. However, endemic underfunding of public legal assistance despite rising demand, particularly from disadvantaged citizens who frequently present with complex

18 See Law Society of Western Australia, *The Future of the Legal Profession* (Report, 12 December 2017) (*‘Future Legal Profession’*) <<https://www.lawsocietywa.asn.au/wp-content/uploads/2015/10/2017DEC12-Law-Society-Future-of-the-Legal-Profession.pdf>>. See also discussion in [Section 2.5.2.1](#) regarding the Banking Royal Commission.

19 *FLIP Report* (n 1) 17 citing Andrew Price’s testimony for the FLIP Commission (19 October 2016).

20 Mahlab, *Report 2021: Private Practice and Corporate* (Report, 2021) (*‘Report 2021’*) <<https://www.mahlab.com.au/wp-content/uploads/2021/07/Mahlab-Report-2021.pdf>>.

21 Law Society of Western Australia, *Future Legal Profession* (n 18) 2.

22 Julian Webb, ‘Galloping off Madly in One Direction: Legal Education Reform, the (Im?)possibility of Evidence-based Policy Making and a Plea for Better Design Thinking’ in Ben Golder et al (eds), *Imperatives for Legal Education Research: Then, Now and Tomorrow* (Taylor and Francis, 2019) 196, 206.

23 Daniel Goldsworthy, ‘The Future of Legal Education in the 21st Century’ (2020) 41(1) *Adelaide Law Review* 243, 260.

legal issues, has given rise to significant and sustained unmet legal needs. And then there is the ‘missing middle’, those individuals, businesses and organisations that are ineligible for the limited public assistance available but not wealthy enough to afford legal services on a private basis. Low levels of legal literacy – knowing that a problem is a legal one and where to find legal assistance for it – is another access-to-justice barrier. Members of the profession valiantly attempt to bridge the access-to-justice gap, for example, via: provision of legal assistance (legal aid, Aboriginal and Torres Strait Islander Legal Services, community legal centres, family violence support, and like services); other pro bono contributions; and responding in times of national disaster (such as the recent bushfire crisis and over the course of the pandemic). But legal demand still far exceeds available legal service supply. One constant professional response has been for lawyers to engage in proactive advocacy: for social and legal change; for policy and law reform, to advance social justice and the interests of vulnerable citizens; and to promote accountability and transparency across actions taken by government, agencies and other key public institutions.

As mentioned earlier, technology and innovation can play a key role in addressing the perennial issues of access to justice and unmet legal needs – for example, there are many innovative online legal self-help tools – though it is also acknowledged that inequitable access to technology (devices, internet and bandwidth) may further exacerbate the divide between those who can and those who cannot afford legal services. Other solutions include: the provision of unbundled or partial legal assistance (mentioned earlier in this part); limited licensing in underserved practice areas; and more affordable ‘low bono’ fee arrangements to supplement other fee structures options (such as, conditional fee agreements, no-win/no-fee models (where allowed) and litigation funding). Many law school curricular responses to legal tech have a focus on developing access to justice responses (for example, Law Apps elective courses and co-curricular hackathons). The Productivity Commission’s Access to Justice Arrangements report in 2014 canvassed many of these issues and is discussed below in [Sections 2.5.4](#) and [3.2.1](#).

Without wishing to detract from the importance of the other specific findings, it is worth noting that the [FLIP Commission] Inquiry found (perhaps not unsurprisingly) that:

- *clients seeking greater value for legal services and increased competition amongst lawyers are fuelling change, as is the increasing use of technology;*
- *change has also brought with it new ethical and regulatory issues*
- *there is an increased awareness that future law graduates need to be equipped with new skills to meet the current and future demands of the profession and*
- *the wellbeing and mental health of our lawyers needs to be safeguarded by appropriately supporting them through the process of change.*

(Source: Law Society of NSW, The Future of Law and Innovation in the Profession (2017) 2)

2.2.2 Changing context for legal education and training

Matters frequently mentioned under this head include:

Course architecture, content (broadly conceived) and pedagogy are all in scope when seeking to determine fit-for-purpose pre-admission responses to the changing professional context. Such issues present a wicked and ‘socially complex’ problem²⁴ for Australian LE&T, with a (re)focus on issues that have been intractable for decades. Whither the Priestley 11? How to enable warmer handovers between and across the three phases of LE&T – academic to practical to CPD – in a way that assures educational and professional outcomes for the lifelong legal learner? Responses to the diversification and segmentation of legal and lawyer work have led to debates around curriculum broadening versus curriculum specialisation, for both LLB/JD and PLT course design. How is the need for ‘hyperspecialisation’²⁵ on the one hand, to be balanced with enhanced opportunities for multi-skilling across a range of areas of expertise, on the other? Existing approaches to course architecture in law, as for other disciplines, are due for reconceptualisation. Should there be more offerings that integrate academic-with-PLT requirements to take advantage of the skills and values development already occurring in the pre-PLT stage (as required by the Australian Qualifications Framework (AQF))? Might more of this be the best way to breach the longstanding regulatory disjunct between the academic and the practical?

Increased regulation of education provision. The HE regulatory landscape has changed considerably over the last decade in Australia, with the advent of the Tertiary Education Quality and Standards Agency (TEQSA), the Higher Education Standards Framework (HESF) and its incorporation of the AQF, the development of the CALD Law School Standards and the Threshold Learning Outcomes (TLOs) for law and increased (internal) university quality assurance requirements. The changing context and assurance impact of HE regulation and accreditation should be acknowledged and sought to be harmonised with professional accreditation requirements. Moreover, the regulatory response to changing demand and increased competition from non-university providers, including those that offer shorter-form credentials (sometimes called ‘micro-credentials’) to up- and re-skill existing legal workforces (for example, by way of CPD), require thoughtful incorporation into an overarching LE&T ecosystem.

‘Growing complexity and multi-functionality’ of LE&T.²⁶ The increasing ‘multi-functionality’ of LE&T has seen law schools move away from solely, or even necessarily predominately, serving the needs of the profession and/or having any gatekeeping role, even if the latter was considered to be objectively desirable. The complexity and constraints under which HE, including legal education, now operate in a massified and poorly funded sector – about which the practising profession has been singularly silent

24 Legal Education and Training Review, *Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales* (Report, June 2013) (*LETR Report*) 4 <<https://paulmaharg.com/letr/wp-content/uploads/LETR-Report.pdf>>.

25 Thomas W Malone, Robert Laubacher and Tammy Johns, ‘The Big Idea: The Age of Hyperspecialization’ (2011) 89(7/8) *Harvard Business Review* 56.

26 *Hong Kong Review* (n 5) 37.

— have meant that law schools are sometimes ‘encouraged’ by their universities to enrol large numbers of students in law degrees that make a significant financial contribution to the institutional bottom line. It is no secret that law degrees offer cash-strapped institutions an attractive reputational and budgetary value proposition, given that they: are ostensibly prestigious; attract high funding income per enrolled undergraduate student; and are considered by university management to be relatively cheap to offer (to be compared with, for example, the resources and infrastructure required for medicine, dentistry, veterinary science and engineering). In addition, the rise in international student mobility and course offerings that do not depend on accreditation is also changing the dynamic of the profession-academy relationship. Non-accredited law courses include, for example: postgraduate courses; law for non-lawyer courses; shorter-form credentials, including micro-credentials; multidisciplinary offerings; and courses for new legal workers. The more recent conceptualisation of law as a desirable ‘generalist’ qualification — one that is of broad application and employability value — is discussed in [Section 2.5.4.1](#) below.

Enhanced learning, teaching and assessment practice. The rise of teaching expertise and professionalism in a regulated and competitive sector and the enhanced capability for good curriculum design to prepare graduates for the world of future work have been significant factors in driving the LE&T agenda forward, in spite of the regulatory regime. Many reviews now routinely refer to examples of pedagogical good practice in, for example: skills training; experiential learning; clinical legal education; technological innovation and entrepreneurial opportunities provided for students (hackathons and the like); *and* the technological innovations deployed by teachers for enhanced learning outcomes (such as simulated learning environments). Contemporary pedagogical understandings are now being leveraged to enable enhanced and integrative course design that delivers the quality, real-world outcomes that Industry 4.0 and the world of future legal work require. Recent foci have included, for example: more authentic²⁷ and authenticated²⁸ assessment that demonstrates coherent, integrated learning;²⁹ more flexible and efficient online and blended learning delivery (mirroring technical enhancements to legal practice);³⁰ and clearer opportunities for (micro)credentialing and specialisation, including the recognition of other forms of learning.³¹

27 For example, Margaret Bearman et al, *Guide to the Assessment Design Decisions Framework* (Report, Office for Learning and Teaching, September 2014) <https://ltr.edu.au/resources/ID12_2254_Dawson_Guide_2014_0.pdf>.

28 For example, Tracey Bretag et al, *Contract Cheating and Assessment Design: Exploring the Connection* (Report, 2019) <https://ltr.edu.au/resources/SP16-5383_BretagandHarper_FinalReport_2019.pdf>; Phillip Dawson, *Defending Assessment Security in a Digital World Preventing E-Cheating and Supporting Academic Integrity in Higher Education* (Routledge, 2021).

29 David Boud and Associates, *Assessment 2020: Seven Propositions for Assessment Reform in Higher Education* (Report, Australian Learning and Teaching Council, 2010) <<http://www.assessmentfutures.com>>.

30 For example, Cathy Stone, *Opportunity through Online Learning: Improving Student Access, Participation and Success in Higher Education* (Report, National Centre for Student Equity in Higher Education, 2017) <<https://www.ncsehe.edu.au/publications/opportunity-online-learning-improving-student-access-participation-success-higher-education/>>.

31 Beverley Oliver, *Better 21C Credentials: Evaluating the Promise, Perils and Disruptive Potential of Digital Credentials* (Report, 2016) <<https://www.edubrief.com.au/micro-credentials.html>>; Beverley Oliver, *Making Micro-credentials Work for Learners, Employers and Providers* (Report, 2019) <<https://www.edubrief.com.au/micro-credentials.html>>; Peter Noonan et al, *Review of the Australian Qualifications Framework* (Final Report, 2019) <<https://www.dese.gov.au/reviews-and-consultations/australian-qualifications-framework-review>>.

Increases in law student and graduate numbers. What is asserted to be an ‘unsustainable’ increase in the numbers of law students and graduate lawyers (and law schools) is an issue that is frequently raised as a matter requiring urgent remediation. CALD has taken steps to assuage the moral panic that attends this charge (and see the specific discussion of law graduate numbers and graduate destinations in **Section 2.5.4** below). But there are accompanying undertones here also of concerns around quality, standards and consistency that are difficult to pin down, as both of the recent reviews in England and Wales and Hong Kong have identified.³² One important aspect of this that deserves greater attention is the maturing practice of embedding career development learning in curriculum, from first year to final year, to enable agentic career self-management in a disrupted labour market. Whatever law students’ graduate outcomes, they should be enabled with the tools and employability mindset needed to navigate their lives, learning and work futures with resilience.³³

New and different learning needs for ‘practice-ready’ graduates. Contemporary law graduates have broader and shifting requirements of *integrated* 21st-century knowledge, skills and values than did their peers in previous graduating cohorts. New(Law) professionalism for tech-enabled legal workplaces and digital literacy skills³⁴ are obvious components, but the ethical ambiguity inherent in automation, and AI in particular, places a high premium on ethical standards, moral judgment and criticality. Perhaps most crucially, today’s new lawyers should emerge from law school and PLT with a meta-cognitive commitment to lifelong learning and the capability as self-regulating learners for reflective practice and evaluative judgement,³⁵ capabilities now considered to be foundational to continuing competency across the practitioner lifespan. If equipped with these latter attributes, new professionals are more likely to be able to manage their own lifelong learning needs, particularly for those skills that are harder to automate.³⁶ Commonly mentioned skills in this regard include, for example: emotional intelligence; interpersonal skills; human logic; creativity; inter-disciplinarity (and its enabler of

32 For example, *Hong Kong Review* (n 5) 47.

33 For example, Ruth Bridgstock, Michelle Grant-Iramu and Alan McAlpine, ‘Integrating Career Development Learning into the Curriculum: Collaboration with the Careers Service for Employability’ (2019) 10(1) *Journal of Teaching and Learning for Graduate Employability* 56 <<https://doi.org/10.21153/jtlge2019vol10no1art785>>; Sally Kift, ‘A Virtuous Journey through the Regulation Minefield: Reflections on Two Decades of Australian Legal Education Scholarship’ in Ben Golder et al (eds), *Imperatives for Legal Education Research: Then, Now and Tomorrow* (Routledge, 2019) (‘A Virtuous Journey’); Sally Kift, ‘Employability and Higher Education: Keeping Calm in the Face of Disruptive Innovation’ in Joy Higgs et al (eds), *Education for Employability (Volume I): The Employability Agenda* (Brill Sense, 2019) 49 (‘Employability and Higher Education’); Sally Kift, ‘Holistic Curriculum Design for Employability’ in Joy Higgs et al (eds), *Education for Employability (Volume I): The Employability Agenda* (Brill Sense, 2019) (‘Holistic Curriculum Design’) 155.

34 For example, Department of Education, Skills and Employment (Cth), *Digital Literacy Skills Framework* (Report, April 2020) (‘*Digital Literacy Skills*’) <<https://www.dese.gov.au/foundation-skills-your-future-program/resources/digital-literacy-skills-framework>>; Jisc, ‘What is Digital Capability?’ (Web Page) <<https://digitalcapability.jisc.ac.uk/what-is-digital-capability/>>.

35 Joanna Tai et al, ‘Developing Evaluative Judgement: Enabling Students to Make Decisions about the Quality of Work’ (2018) 76(3) *High Education* 467, 467 <<https://link.springer.com/article/10.1007/s10734-017-0220-3>>; ‘Evaluative judgement is the capability to make decisions about the quality of work of self and others’. See also David Boud et al (eds), *Developing Evaluative Judgement in Higher Education: Assessment for Knowing and Producing Quality Work* (Routledge, 2018).

36 For example, Adam J Gustein and John Sviokla, ‘7 Skills That Aren’t About to Be Automated’, *Harvard Business Review* (online, 17 July 2018) <<https://hbr.org/2018/07/7-skills-that-arent-about-to-be-automated>>; AlphaBeta, *Future Skills* (Report, 2019) (‘*AlphaBeta Report*’) 8 <<https://www.alphabeta.com/wp-content/uploads/2019/01/google-skills-report.pdf>>; ‘As more knowledge and abilities become codified they can be mastered by machines, leaving workers to focus on more uniquely human skills [which are the hardest for machines to replicate]. Specifically, reference is made there to “[c]haracteristics [which] relate to the way we execute tasks, and include creativity, integrity, leadership, persistence, empathy, and attention to detail.’

collaboration skills); adaptability; resilience; design thinking; strategy; leadership; self-regulation; and empathy.³⁷ The specific issue of the profession's expectations of day-one 'practice-ready' graduates is discussed further below in [Section 2.5.3](#), while the contribution of quality-assured Clinical Legal Education (CLE) and experiential learning to narrowing the practice gap between law school and entry-level competence is considered in [Section 2.6.3](#).

Indigenous cultural competency and professional commitment to First Nations justice.

The law, the legal profession and legal education have a special responsibility to Australia's First Nations peoples to work appropriately in partnership with them to redress the role the legal system has played in enabling a dire history of exclusion and ongoing injustice. In 2021, the majority of Australians support the call by Australia's First Nations peoples to enshrine a First Nations Voice to Parliament in the Australian Constitution and agree that the Commonwealth should commit to the constitutional entrenchment of the Voice and the establishment of a Makarrata Commission to supervise the processes of agreement-making and truth-telling as set out in the *Uluru Statement from the Heart*.³⁸ However, also in 2021, it remains the case that Aboriginal and/or Torres Strait Islander peoples are significantly underrepresented in the ranks of law students, law graduates, legal academics and legal practitioners. Though there has been some recent growth in the number of Aboriginal and/or Torres Strait Islander students, completion rates for those students, and the number of Aboriginal and/or Torres Strait Islander solicitors, have both changed little over time. Moreover, in-curricular efforts to provide all law students with the knowledge, skills and understandings of Aboriginal and/or Torres Strait Islander perspectives on and intersections with the law, that form the foundations for Indigenous cultural competency, also remain a work in progress. But more promising signs are emerging. In 2020, CALD revised its *Australian Law School Standards* to include a positive statement that law curriculum will seek to develop these Indigenous knowledges and understandings and to foster 'Indigenous cultural competency'. Also in 2020, CALD established a 'Working Party on First Peoples Partnerships' that acknowledges the need for structural change to occur in Australian legal education in order to 'redress the historical exclusion of, and continuing injustices to First Peoples and their laws, knowledges and sovereignties'. The context and drivers of change regarding the development of Indigenous cultural competency and professional commitment to First Nations justice are discussed further below in [Section 2.6.1](#).

Mental health and well-being. Given future workforce needs around adaptability and resilience,³⁹ and being cognisant of the vulnerable state of the mental well-being of law students, law academics and legal practitioners, specific curriculum and CPD

37 For example, World Economic Forum, *Future of Jobs Report 2020* (Report, 2020) ('*Future of Jobs Report*') <https://www3.weforum.org/docs/WEF_Future_of_Jobs_2020.pdf>; Quacquarelli Symonds, *The Global Skills Gap in the 21st Century* (Report, 2018) ('*Global Skills Gap Report*') <<http://www.qs.com/portfolio-items/the-global-skills-gap-in-the-21st-century/>>, which identifies that the top five most important skills for employers globally are: problem solving, teamwork, communication, adaptability, and interpersonal skills. The biggest skills gaps were to be found in the core skills of: problem solving, communication, resilience, and leadership.

38 *Uluru Statement from the Heart* (Statement, 2017) <<https://ulurustatement.org/>>.

39 For example, World Economic Forum, *Future of Jobs Report* (n 37); *Global Skills Gap Report* (n 37).

attention must be directed to building resilience and self-management, and assuring the profession's mental health and well-being, so that all are enabled to survive and thrive in the world of future legal work. Fortunately, Australian legal education is already well positioned to take this imperative forward for students, both in curricula and via co-curricular approaches, while the lessons learnt from the legal education focus might also be able of assistance to the profession's efforts in this regard.⁴⁰ Mental health and well-being is discussed further below in **Section 2.6.4**.

2.2.3 Changing context for legal professional regulation

Matters frequently mentioned under this head, set out here for the purpose of initial context setting and examined in greater detail in **Sections 3** and **4**, include:

Broader attention to and sophistication in regulatory oversight, often driven by demands for greater accountability and transparency in the interests of (legal client) consumer protection and enabling access to justice. Over the last decade in particular, regulatory attention internationally has been directed to assuring the post-entry competence of lawyers for 'continuing competence'. This has led to the development of competency frameworks in many jurisdictions and rigorous examination of the quality and assurance of all aspects of LE&T across the professional lifespan, including post-admission supervised practice and CPD. Entity regulation is another mechanism gaining traction.

Quality concerns about entry-level competence. Webb observes that '[q]uality concerns are widely expressed in current regulator discourse. However, with little substantive evidence behind them, the debate proceeds on terms that are largely impressionistic and inchoate'.⁴¹ The recurring agitation in this space is around assuring entry-level competence, with the discussion often defaulting quickly to the introduction of a common, national entry-level assessment (such as the UBE and see, for example, **Section 3.4.8**).

40 Australasian Law Students' Society, *WellBeing Tips and Tricks* (Guidelines, 2017); Council of Australian Law Deans, *Promoting Law Student Well-Being Good Practice Guidelines for Law Schools* (Guidelines, 2014) <<https://cald.asn.au/wp-content/uploads/2017/11/Promoting-Law-Student-Well-Being-Good-Practice-Guidelines-for-Law-Schools-March-2013-and-revised-September-2014.pdf>>; Rachael Field, *Promoting Law Student Well-Being Through the Curriculum* (Report, 2014) ('*Promoting Law Student Well-Being*') <https://ltr.edu.au/resources/Field_R_NTF_report_2014%20.pdf>; Norm Kelk et al, *Courting the Blues: Attitudes Towards Depression in Australian Law Students and Lawyers* (Report, Brain & Mind Research Institute, 2009) ('*Courting the Blues*') <<https://cald.asn.au/wp-content/uploads/2017/11/BMRI-Report-Courting-the-BluesLaw-Report-Website-version-4-May-091.pdf>>. See also website resources at: 'Wellness Network' (Web Page) <<https://www.tjmf.org.au/wellness-network/>>; Minds Count Foundation (Web Page) <<https://mindscount.org/>> (previously Tristan Jepson Memorial Foundation); and 'Enhancing Student Wellbeing' (Web Page) <<http://unistudentwellbeing.edu.au/>>.

41 Webb (n 22) 200.

Concerns about the quality of support for new lawyers. A number of recent reviews⁴² have highlighted the lacuna in regulatory oversight of, and support for, new lawyers in their first three or so years of practice, when almost all recent graduates in Australia are in supervised practice.

Calls for an evidence-based regulatory approach. The absence of an evidence base on which to found regulatory action has been identified in modern regulatory discourse as problematic and requiring urgent attention as regulators shift to more considered and sophisticated regulatory approaches. For example, as regards CPD, the efficacy of the traditional hours-based input approach has been questioned, with little data or research evidence available to inform assessment of its effectiveness.

Regulatory cooperation and harmonisation. As set out in **Section 1**, there is a frequently expressed intent to enable harmonisation and reduce duplication across multiple regulatory regimes (both professional and HE).

42 For example, in Australia, Chris Humphreys, *Getting the Point?: Review of the Continuing Professional Development for Victorian Lawyers* (Report, Victorian Legal Services Board and Commissioner, November 2020) ('*Getting the Point?*') <https://lsbc.vic.gov.au/sites/default/files/2020-11/CPD_Report_Final_0.pdf>. In Canada, Jordan Furlong, *Lawyer Licensing and Competence in Alberta* (Report, Law Society of Alberta, November 2020) <https://documents.lawsociety.ab.ca/wp-content/uploads/2020/12/08212906/LawyerLicensingandCompetenceinAlbertaReport_Designed.pdf> ('*Furlong Report*').

2.3 A Digital, Divergent and Differentiated Future

These various and often intersecting considerations have led to calls for a legal services workforce that is enabled for a more dynamic ‘digital, divergent and differentiated future’,⁴³ one in which every practitioner will reflexively and iteratively up- and re-skill for continuing professional competence, supported and enabled by a responsive LE&T ecosystem and a regulatory regime that is harmonised, evidence-based, reflective of risk and proportionate in its application.

In many respects, the rise of ‘NewLaw’ is a case study in contemporary legal services transformation.⁴⁴ The growth in NewLaw models of practice has been accelerated by technology adoption, changing client needs and expectations, the high cost of legal services, generational shifts and particularly by a generation of ‘millennial lawyers’ who are, it is said, ‘not remotely as technophobic as Boomer lawyers were, and ... won’t fear technology’s tendency to reduce hours.’⁴⁵ NewLaw, according to Beaton, has a ‘business model [that] is the antithesis of the BigLaw model’.⁴⁶ It has been defined by Furlong and Larkan as ‘[a]ny strategy, structure, model, process, or way of delivering legal services that represents a significantly different approach to the creation or provision of legal services than what the legal profession has traditionally employed’.⁴⁷ NewLaw’s adaptive mindset has harnessed more agile business practices, disruptive technology, new fee structures and more flexible work arrangements.⁴⁸ NewLaw has had the equivalent impact on the delivery of legal services that specialist private competitors, Massive Open Online Courses (**MOOCs**), micro-credentialing, and other unbundling of the education product have had on universities and the efficacy of their HE business models.

Though not frequently articulated, the realisation that the challenges facing the future of legal services and their innovation are fundamentally similar to the disruptive forces confronting higher and legal education, should serve as a joint call to action. The big challenges are shared – those of technological transformation, competition, questioned relevance, moribund business models, increased regulatory oversight and financial constraints – and the ramifications of them for the two professional arms are also concurrent, for example: a focus on technology uplift, specialisation, personalisation, user (client) experience and assurance of equity. The good news is that a ‘never-waste-a-crisis’ ethos squarely presents the opportunity for a new era of productive collaboration between the practising and academic arms, in which joint enterprise for mutual professional benefit and transparent assurance of competence should be the common goal. The less good news is that, while the imperative

43 Australasian Legal Practice Management Association, *Preparing Australasian Law Firms for a Digital, Divergent, Differentiated Future* (Report, 2015) <<https://www.alpma.com.au/download-2015-alpmalexisnexus-research-report-preparing-australasian-law-firms-digital-divergent-dif>>.

44 Beaton, *NewLaw New Rules* (n 13); Beaton, ‘Who Coined NewLaw?’ (n 12). See also, for example, *FLIP Report* (n 1).

45 Jordan Furlong, *The Rise of the Millennial Lawyer: 14 Ways a Generation Is Changing the Rules* (Report, Lawyers on Demand, 2017) 12 <<https://www.lodlaw.com/au/our-thinking/reports/the-rise-of-the-millennial-lawyer/>>.

46 George Beaton, ‘What Voltaire might have said about NewLaw’, *Bigger. Better. Both? The Beaton Capital Blog* (Blog Post, 18 October 2013). See also Beaton, *NewLaw New Rules* (n 13).

47 Furlong and Larkan (n 11).

48 Ilina Rejeva, ‘What Is NewLaw and How It Is Changing the Legal Industry Forever!’, *LegalTrek* (Blog Post, 29 April 2016) referring to virtual workspaces, fewer permanent staff and more transient ‘supertemps’.

is urgent and well-understood, the legacy issues of disjunction across the three LE&T stages, together with the practical and financial constraints of the post-COVID era, suggest that, if you were looking for new solutions, you probably would not start here. But here we are.

The national and international context and literature, canvassed in this **Section 2** and **Sections 3–4** to follow, present the case for inevitable regulatory reform to assure the legal education continuum — from pre-admission to entry-level admission, of course, but just as importantly, beyond day-one competence for continuing competence. Reform is inevitable because no matter how much is crowded into pre-admission curriculum, it will never be sufficient to sustain dynamic, modern legal practice in the months and years that will follow. Reform is inevitable because knowledge obsolescence, in combination with increasing skills instability, makes obvious that day-one competence will not suffice for ongoing competence. Reform is inevitable also because, in the age of Google, knowledge acquisition per se is not the challenge, and has long ceased to be the sole preserve of education providers in any event. For the ‘whole lawyer’⁴⁹ of today and tomorrow, the workforce holy grail is the capability for iterative knowledge application in shifting practice contexts, enabled by continuously refreshed skills and a lifelong learning disposition, and underpinned by a resilient growth mindset and deeply-held professional values.

49 Institute for the Advancement of the American Legal System (IAALS), *Foundations for Practice: The Whole Lawyer and the Character Quotient* (Report, 2016) (*Foundations for Practice*) <<https://iaals.du.edu/publications/foundations-practice-whole-lawyer-and-character-quotient>>.

2.4 American Bar Association’s Commission on the Future of Legal Education

Before turning to consider the Australian legal profession-academy ecosystem in greater detail, it may be helpful to recall the big picture framing and professional ideal for this work, lest it gets lost in the cacophony of detail to follow. In that spirit, a final piece of apposite context setting is offered for an approach that could be adopted by any Australian socialisation exercise that seeks to build consensus and momentum for regulatory change. In 2020, the ABA’s *Commission on the Future of Legal Education* considered afresh the issues and systemic obstacles facing efforts to better align legal education and ‘licensure’ to modern requirements for access to justice. The Commission worked over 2019–2020, engaging in research and extensive consultation, and published its ‘Principles and Commentary’ in February 2020.⁵⁰ The Commission found widespread agreement on what it called ‘Foundational Principles’⁵¹ as follows:

STEWARDSHIP	We are guardians of the legal system within our democracy and accordingly work to defend liberty, pursue justice, and maintain the rule of law for future generations.
INQUIRY	We promote critical inquiry and scholarship about law and legal institutions.
ACCESS	We are committed to developing a legal system that provides affordable and effective legal assistance, guidance, and protection to all.
SERVICE	We are a service profession and endeavor continually to better serve our clients, our institutions, and society as a whole.
INCLUSIVITY	We are committed to developing an inclusive profession that values diverse backgrounds, viewpoints, and roles.
ADAPTABILITY	We strive to ensure that our legal institutions and service models anticipate and reflect our rapidly evolving and technology-enabled world.

Table 1. ABA, Commission on the Future of Legal Education: ‘Foundational Principles’⁵²

The Commission also developed ‘Operational Principles’ for guidance around how the Foundational Principles might be used as the basis for change. Those Operational Principles⁵³ are as follows:

VALUE FOCUS	The costs of legal education and licensure should be designed to advance the quality and availability of legal services. Today, these costs do the opposite—they act as a barrier. We should address the cost of both becoming and hiring a legal professional.
ONE SIZE DOES NOT FIT ALL	Law schools should be able to follow distinct missions serving their students and communities, while reflecting the variation of roles needed for the widespread provision of legal services. Our service delivery models and our system of licensure should also reflect this variation of roles.

50 American Bar Association Commission on the Future of Legal Education, *Principles for Legal Education and Licensure in the 21st Century: Principles and Commentary* (Report, 2020) (*Principles for Legal Education*) <https://www.americanbar.org/groups/leadership/office_of_the_president/futureoflegaleducation/>.

51 Ibid 6.

52 Ibid.

53 Ibid.

PROBLEM SOLVING FOCUS	Every legal problem is embedded within a larger context. Legal professionals should develop exceptional problem-solving, legal-reasoning, and communication skills for a multi-disciplinary, team-oriented world.
21ST CENTURY COMPETENCIES	We should collaborate across and beyond the legal profession to identify the competencies needed in the rapidly evolving legal services landscape. Law schools and employers should work together to ensure these competencies are being developed. Licensure should certify entry-level proficiency in the competencies required for these roles.
LEVERAGING TECHNOLOGY	Technology continues to drive change at an accelerating pace, affecting how—and even whether—legal professionals are needed for tasks traditionally considered exclusive to lawyers. Legal professionals should be able to identify where technology can or potentially could improve service and access.
VALID MEASURES	Legal educators, licensing authorities, testing organizations, and employers should develop fair, valid, and reliable measures to assess progression and competence.
MOBILITY	Our system of legal education and licensure should eliminate unnecessary barriers to living and working in our globalized, interconnected, and mobile world.
WELL-BEING	We should address, improve, and support the well-being of current and aspiring legal professionals. Well-being promotes the strength of the rule of law and our legal system, and the quality of service to clients.

Table 2. ABA, Commission on the Future of Legal Education: 'Operational Principles'⁵⁴

The Commission recommended that educators, regulators and practitioners align their work with the Foundational and Operational Principles and collaborate accordingly for transformational systemic change in legal education and licensure to better meet legal needs and address access to justice issues. For legal education, the Commission particularly encouraged the imperatives of future-ready graduates, lifelong learning, evidence-based pedagogical innovation and the development of shorter, more focused educational tracks for varied roles in a 'legal service delivery ecosystem'. As anticipated when introducing this ABA work, the benefit of developing organising principles such as these might be worthwhile in the Australian context as a possible first step towards a concerted and collaborative reappraisal of the professional regulation of LE&T.

Specific aspects of the changing context and drivers of change, selected from those identified in [Section 2.2](#), will now be considered in some further detail to elucidate key issues that have major implications for the future of LE&T regulation. These issues include: the impact of globalisation; recent high-profile failings in ethics and professional conduct; a more nuanced discussion around the number of law graduates and their graduate destinations; and the demand for 'practice-ready' graduates *and practitioners*, who have Indigenous cultural competence, technological capability, mental health and well-being and assured experiential learning. How regulatory approaches might better support and promote the centrality of values-based legal education and professional practice, to maintain the rule of law and the proper administration of justice, are ensure they are relevant and enmeshed considerations. The treatments that follow do not purport to be comprehensive. Rather, they are intended to present an Australian gestalt that makes an overwhelming case for significant change in the

⁵⁴ Ibid.

profession-academy-regulator ecosystem, especially when aggregated with the drivers set out earlier and the national reviews and the international reforms canvassed in the sections that follow. The philosophical framing for the chosen foci and their analyses is one of rigour and relevance, and is an attempt to inform the reimagining of professional regulation of LE&T to better serve all who interact with the law and the quality of that engagement. A regulatory-focused examination of ethics, professional conduct and technological competence is further provided in **Sections 4.6.3** and **4.6.4** below.

The American Bar Association's Commission on the Future of Legal Education found a growing disjunction between what kind of legal services are needed and the ways in which we currently prepare and license lawyers. Rather than continuing to predominantly protect the status quo, the profession must better manage for both stability and change. We must have a defensible rationale for what we retain in our current education and licensure model.

(Source: ABA Commission on the Future of Legal Education, Principles for Legal Education and Licensure in the 21st Century: Principles and Commentary (Report, 2020) 3)

2.5 The changing professional context in Australia: Key foci

Section 2.2 drew attention to the changing context for legal services delivery from a variety of perspectives, and how conceptions of graduate preparedness for practice are shifting as a consequence. Against a backdrop of such professional instability, a particular conundrum for pre-admission LE&T is how to provide both breadth and depth in the initial training stages. While the role of PLT may be more clearly defined, how do law schools in particular assure sufficient foundational coverage of just-in-time, entry-level knowledge within the Priestly 11 confines, and yet redouble LE&T effort to develop the important transferable skills and values needed to adapt and manage relentless change with resilience and competence? Many lists of preferred, desired and (sometimes) required knowledge, skills, values/dispositions and/or competences appear in the pages that follow in this report (referred to compendiously from hereon as **'knowledge, skills and values'**, utilising the *PLT Competencies* language of 'values'). Key aspects of the professional context will be first considered (globalisation, ethics and professional conduct under a number of heads, and changing conceptualisations of 'practice-ready'), followed by key aspects of the changing legal education landscape (the imperatives around Indigenous cultural competency, technological change, assurance of experiential learning and mental health and well-being).

2.5.1 Globalisation

As this report demonstrates, the globalisation of legal services, lawyers and legal education has proceeded apace. Both face-to-face and/or online, many law students now routinely study internationally in short or long bursts and many undertake postgraduate education (for example, masters and doctorates) in countries other than their own. Similarly, practitioners, academics and clients now commonly transact their legal business in an increasingly mobile and connected world, enabled by border-crossing technology that surfaces both opportunities and risks for legal service provision and LE&T's support of professional competence. As the FLIP Commission observed:

Legal services and the legal profession are evolving in the context of increasing connectivity. The spread of networks means that change can happen very quickly. Trade and people cross borders more frequently than ever before, raising questions about how we solve disputes and undertake law reform to adapt appropriately to changing behaviours.⁵⁵

Academics and practitioners alike have long been calling for law schools to internationalise LE&T to take account of the reality of increased global connectedness, mobility and cross-border transactions and disputes.⁵⁶ There is a growing body of literature outlining ways in

⁵⁵ *FLIP Report* (n 1) 95.

⁵⁶ For example, see Christophe Jamin and William van Caenegem (eds), *The Internationalisation of Legal Education* (Springer, 2016); Duncan Bentley, 'Employer Perspectives on Essential Knowledge, Skills and Attributes for Law Graduates to Work in a Global Context' (2014) 24 *Legal Education Review* 95; William van Caenegem and Mary Hiscock (eds), *The Internationalisation of Legal Education: The Future Practice of Law* (Edward Elgar, 2014); Jan Klabbers and Mortimer Sellers (eds), *The Internationalisation of the Law and Legal Education* (Springer, 2008); *FLIP Report* (n 1).

which issues stemming from globalisation can be embedded within legal curriculum, both for knowledge areas and also for skilled behaviour and approaches (for example, cultural competence and a global mindset).⁵⁷

In 2012, Bentley et al delivered a national Office for Learning and Teaching (**OLT**) report on *Internationalising the Australian Law Curriculum for Enhanced Global Legal Practice*, which identified the ways in which globalisation was impacting the legal services sector.⁵⁸ The identified impacts included:

- The growth of global law firms
- The increase of multinational corporations and corporations requiring legal services able to address cross-jurisdictional legal issues
- The growth and significance of legal services export in Australia.⁵⁹

Even in 2012, it was observed that law graduates no longer imagined only having one job or career. They expected, instead, to move countries, 'seeing themselves as part of a global elite in a worldwide market for talent'.⁶⁰ While these physical international opportunities reduced due to COVID-19 limitations,⁶¹ it remains to be seen whether the export of legal services and/or practitioner mobility have been severely impacted for the longer term. While there is little statistical information available on the current value of Australia's legal services exports, especially following the Australian Government's decision to abolish the International Legal Services Advisory Council in 2013, materials prepared by ITS Global indicated that, in 2016, the value was \$598 million, noting that 'this figure highly understates the significance of the legal industry to trade'.⁶²

In any event, globalisation also impacts local lawyers as international cross-border legal issues proliferate and international markets and trade continue to develop. The *FLIP Report* noted comments from practitioners regarding the need for lawyers to have a 'rudimentary knowledge' of international law. Although the FLIP Committee recommended that the topic be included in CPD offerings,⁶³ 'internationalisation and cross-border practice of law' were also included as two of the additional skills and areas of knowledge that FLIP considered necessary for future legal practice in an already 'crowded curriculum'.⁶⁴ The possibilities for a coherent LE&T approach to globalisation across the education continuum provide

57 For example, see Duncan Bentley et al, *Internationalising the Australian Law Curriculum for Enhanced Global Legal Practice* (Final Report, 2012) ('*Internationalising the Australian Law Curriculum*') <https://ltr.edu.au/resources/PP10_1789_Bentley_Report_2012.pdf> also at <<https://cald.asn.au/itlc/>>; Vai lo Lo, 'Before Competition and Beyond Complacency – The Internationalisation of Legal Education in Australia' (2012) 22(1-2) *Legal Education Review* 3; Afshin A-Khavari, 'The Opportunities and Possibilities for Internationalising the Curriculum of Law Schools In Australia' (2006) 16(1) *Legal Education Review* 75.

58 See Bentley et al (n 57).

59 Ibid 22.

60 Ibid 23 citing Simon Chesterman, 'The Evolution of Legal Education: Internationalization, Transnationalization, Globalization' (2009) 10(7) *German Law Journal* 883.

61 Mahlab also recognised this in their report stating that '[s]ince border closures, firms have lost far fewer lawyers to offshore jurisdictions': see Mahlab, *Report 2021* (n 20).

62 Kristen Bondiotti, *Trade Opportunities for Australian Legal Services in Australia's North Asian FTAs* (Briefing, APEC Study Centre, 21 September 2017) 2.

63 *FLIP Report* (n 1) 97-8.

64 Ibid 77, 79.

an interesting case study for the role of early, pre-admission exposure to broad principles, followed by the post-admission opportunity for greater specialisation in the context of the individual lawyer's actual area of practice.

At a different level of application, global benchmarking for regulatory trends and contemporary practice is another aspect of professional connectivity in an internationalised legal services market. As the material canvassed in **Sections 3** and **4** demonstrates, Australia is a late-mover in its consideration of competency-based regulation and its reticence, whether by design or inertia, to address the assurance of continuing competence puts it increasingly at odds with accepted global standards and practices.

2.5.2 Ethics and professional conduct

One of the bases underpinning legal professional regulation is the special monopoly that members of the profession are granted upon entry to it.⁶⁵ Another is to protect consumers from the unauthorised practice of the law, with an emphasis on lawyers' ethical duties.⁶⁶ At common law, 'professional misconduct' has been found to be conduct by a lawyer in their 'professional capacity which would be reasonably regarded as disgraceful or dishonourable by [the lawyer's] professional brethren of good repute and competency'.⁶⁷ The shift in conduct requirements for both disciplinary and consumer complaints purposes from a focus solely on 'professional misconduct' to include now also the broader scope of 'unsatisfactory professional conduct' makes clear the high standards of professionalism and competence to which practitioners are held. Essentially, the standard now required is no longer to be assessed purely by reference to professional 'good repute and competency' as judged by fellow lawyers, but also includes the standard that 'a member of the public' is entitled to expect. For example, the *Legal Profession Uniform Law 2014 (NSW)* s 296 defines 'unsatisfactory professional conduct' as follows:

unsatisfactory professional conduct includes conduct of a lawyer occurring in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer.⁶⁸

65 See G E Dal Pont, 'Unauthorised Practice of Law' (2018) 45 *Australian Bar Review* 224.

66 Victorian Government, *Royal Commission into the Management of Police Informants* (Final Report, November 2020) ('*Royal Commission into the Management of Police Informants*') <https://content.rcmpi.vic.gov.au/sites/default/files/2020-12/0214_RC_Final%20Report_06_Full%20Report_0.pdf>.

67 *Allinson v General Council of Medical Education and Registration* [1984] 1 QB 750, 763.

68 See also, for example, Office of the Legal Services Commissioner, 'Types of Complaints' (Web Page) <https://www.olsc.nsw.gov.au/Pages/lsc_complaint/olsc_type_complaint.aspx>.

While ‘Ethics and Professional Responsibility’ is one of the *Academic Requirements* and is also a *Competency Standard* under the PLT requirements,⁶⁹ the adequacy of these requirements in preparing students for legal practice has been questioned. In particular, some scholars have criticised the approach by many law schools to teach legal ethics ‘as if it were only concerned with the law of lawyering’.⁷⁰ The Bachelor of Laws/Bachelor of Laws (Hons) (**LLB/LLB(Hons)**) and Juris Doctor (**JD**) Threshold Learning Outcomes (**TLOs**) 1 and 2 take a much broader approach to ethics and professional responsibility. For example, TLO 1, under the ‘Knowledge’ head for both the LLB/LLB(Hons) and the JD, refers to ‘(c) the principles and values of justice and of ethical practice in lawyers’ roles’. TLO 2 further provides:

Graduates of the Bachelor of Laws will demonstrate:

[*JD TLOs: Graduates of the Juris Doctor will demonstrate:*]

(a) an understanding of approaches to ethical decision-making,

[*JD TLOs: (a) An advanced and integrated understanding of approaches to ethical decision making*],

(b) an ability to recognise and reflect upon, and a developing ability to respond to, ethical issues likely to arise in professional contexts,

(c) an ability to recognise and reflect upon the professional responsibilities of lawyers in promoting justice and in service to the community, and

(d) a developing ability to exercise professional judgement.

As was emphasised in the development of the TLOs, and is recorded in the Notes to them, LACC and the practising profession are of the view that ‘law [school] graduates need the support of a [PLT] program and professional practice in order to develop further their ability to address ethical issues in professional contexts and exercise professional judgement’.⁷¹

The adequacy of LE&T assurance of competence for ethics and professional conduct has come under particular scrutiny in recent times due to a number of high-profile, egregious lapses in lawyer behaviour.⁷² The issue is a vexed one, and while pre-admission LE&T should not shirk its formative role in the development of the ‘whole lawyer’,⁷³ regulation for (post-admission) continuing competence as regards professional conduct and ethical values clearly also has a decisive role to play in this most fundamental of areas. The professional conduct lapses that are discussed in the sections that follow in this part have all arisen in the context

69 Law Admissions Consultative Committee (‘LACC’), *Prescribed Academic Areas of Knowledge* (December, 2016) 5–6 <<https://www.legalservicescouncil.org.au/Documents/prescribed-academic-areas-of-knowledge.pdf>>; LACC, *Practical Legal Training Competency Standards for Entry-Level Lawyers* (Standards, October 2017) <<https://www.legalservicescouncil.org.au/Documents/PLT-competency-standards-for-entry-level-lawyers-Oct-2017.pdf>> (‘*PLT Competency Standards*’). Competency 5.8, Ethics and Professional Responsibility: ‘An entry-level lawyer should act ethically and demonstrate professional responsibility and professional courtesy in all dealings with clients, the courts, the community and other lawyers.’

70 Gonzalo Villalta Puig, ‘Legal Ethics in Australian Law Schools’ (2008) 42(1) *The Law Teacher* 29. See also John Corker, ‘The Importance of Inculcating the “Pro Bono Ethics” in Law Students, and the Opportunities to Do it Better’ (2020) 30 *Legal Education Review* 1; Maria Nicolae, ‘Legal Education, Legal Practice and Ethics’ (2015) 25(1) *Legal Education Review* 237; Lucy Maxwell, ‘How to Develop Law Students’ Critical Awareness? Change the Language of Legal Education’ (2012) 22(1) *Legal Education Review* 1.

71 Sally Kift, Mark Israel and Rachael Field, *Bachelor of Laws Learning and Teaching Academic Standards Statement* (ALTC Learning and Teaching Academic Standards Project, 2010) (‘*LLB TLOs*’) 15 <<http://disciplinestandards.pbworks.com/w/page/52746378/Law>>.

72 See also, Adrian Evans, ‘Strengthening Australian Legal Ethics and Professionalism’ in Ron Levy et al (eds), *New Directions for Law in Australia: Essays in Contemporary Law Reform* (ANU Press, 2017) 473, 473–4.

73 IAALS, *Foundations for Practice* (n 49).

of (much later) post-admission practice and/or go to basic issues of professional culture (both individual and systemic) that are indicative of a lack of concern for justice, morality, integrity and self-regulation in circumstances where it is difficult to imagine that law school and/or PLT education and training could have had much, if any, of a moderating effect.

To take a very recent instance of lawyers' 'appalling conduct' as an example, in October 2021, Justice Dixon, in *Bolitho v Banksia Securities Ltd (No 18) (remitter)*,⁷⁴ found that a litigation funder and five lawyers, including a Senior Counsel and a previous partner of a large law firm, had engaged in 'egregious conduct in connection with a fraudulent scheme, intending to claim more than \$19 million in purported legal costs and funding commission from the settlement sum in a group proceeding'.⁷⁵ His Honour said that the lawyers' conduct had 'shattered' confidence in any 'expectations of lawyers as an honourable profession' and corrupted the proper administration of justice.⁷⁶ Justice Dixon concluded that the lawyers' actions were 'appalling breaches of their respective duties to the court, particularly the paramount duty and overarching obligations imposed on them by the *Civil Procedure Act 2010 (Vic)*'.⁷⁷ His Honour ordered that: they pay damages of \$11,700,128 to approximately 16,000 group members, plus the costs of the remitter on an indemnity basis; that the two barristers be removed from the roll; the two solicitors (one further solicitor was deceased) show cause as to whether they were fit and proper to remain on the roll; and the judgment and the record of the trial be referred to the Director of Public Prosecutions for any further investigation and action thought appropriate.

The Honourable Justice John Dixon has today found that a litigation funder and five lawyers ('contraveners') engaged in egregious conduct in connection with a fraudulent scheme, intending to claim more than \$19 million in purported legal costs and funding commission from the settlement sum in a group proceeding. Justice John Dixon noted that the contraveners' conduct had shattered confidence in, and expectations of, lawyers as an honourable profession, and corrupted the proper administration of justice.

His Honour concluded that the contraveners' actions were appalling breaches of their respective duties to the court, particularly the paramount duty and overarching obligations imposed on them by the Civil Procedure Act 2010 (Vic).

(Source: Summary of Judgment. Bolitho v Banksia Securities Ltd (No 18) (remitter) [2021] VSC 666, 11 October 2021)

While cases of extremely unsatisfactory professional conduct are sadly not new, what does seem to be new in 2021 is the growing chorus of *professional* demands for change, as

⁷⁴ *Bolitho v Banksia Securities Ltd (No 18) (remitter)* [2021] VSC 666 ('*Banksia Securities*'), 676 [2123].

⁷⁵ Supreme Court of Victoria, 'Banksia Securities Limited Trial' (Web Page, 4 November 2021) 1 <<https://www.supremecourt.vic.gov.au/news/banksia-securities-limited-trial>>.

⁷⁶ *Banksia Securities* (n 74) 1 [3].

⁷⁷ Supreme Court of Victoria (n 75).

expressed in a number of significant reviews and reports that have formulated clear agendas for urgent action. Conceptualising and implementing effective LE&T and regulatory responses have been given a significant boost in this regard when many of the calls to action have focused on post-admission education and training (for example, via regulated CPD).

Of course, in raising the matters in this part, it is acknowledged that many fine and competent professionals go about their day-to-day legal work observing the highest of professional standards with great integrity and ethical accountability, without ever transgressing. But ethical practitioners' values-based practice and public service are diminished by each and every bad actor and their seemingly systemic misdeeds. It is also acknowledged that the system-level issues raised here regarding sexual harassment, bullying and discrimination, the promotion and support of inclusivity and diversity, and responsiveness to domestic and family violence concerns, are complex and multifaceted and should be tackled holistically in partnership with affected parties to ensure that no further harm nor disrespect is perpetuated, in accordance with best trauma-informed practice. While these various matters are challenging to redress separately, there is an opportunity in this reimagining exercise to effect meaningful, enduring and holistic change through professional education and training, especially when supported by strong and effective professional leadership to drive long-term reform and a robust infrastructure of comprehensive regulatory approaches.

2.5.2.1 Banking Royal Commission and ethical responsibility of in-house counsel

Major concerns for professional ethics and conduct were highlighted in the *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* ('Banking Royal Commission') over 2017–2019. The Banking Royal Commission, in the course of investigating serious misconduct uncovered in the financial services sector, surfaced perennial issues around the ethical culture and accountability of in-house counsel. Given the growth of in-house legal teams and increased in-sourcing of legal advice (see **Section 2.2.1**), the Commission highlighted the importance of addressing inherent tensions between a lawyer's ethical obligations and the loyalty they feel towards the business of their employer.⁷⁸ In-house counsel are clearly struggling with prioritising ethical duties in situations when conflicts arise and can default too easily to a lack of ethical courage when faced with the dilemma of appeasing two masters. It should be possible for law schools and PLT providers to assume a greater role in contextualising the ethical issues faced by lawyers in different types of legal practice; for example, acknowledging the growth of in-house counsel and the enhanced legal skills required in that environment, including the capability to deploy persuasive communication skills when talking with non-lawyers about ethical and legal dilemmas. Tailored CPD that addresses the unique ethical pressures of lawyers who practise in these roles would also seem an appropriate, just-in-time response. For example, Rogers has observed that:

⁷⁸ Michael Dolan, 'Ethics: In-house Challenges', *Law Institute Journal* (online, 1 March 2020) <<https://www.liv.asn.au/Staying-Informed/LIJ/LIJ/March-2020/Ethics--In-house-challenges>>.

[General Counsels'] ethics check would or might normally come from external counsel, but now that there's a lot more power in the hands of the General Counsel, law firms can be made to feel like they will shop around for other counsel if they don't get the advice they want to give to their own management ... And the General Counsels often come from those [external] firms, which means there's a bad combination of competitiveness and solidarity going on. That blend creates risks of blind spots and incentives against ethical conduct.⁷⁹

2.5.2.2 Working conditions and fair pay in legal practice

The period over which the Banking Royal Commission was conducted also brought to light the issue of overworking employees at law firms. As a result of the tight royal commission deadlines, complaints were made against top-tier firms regarding gruelling working conditions. This prompted an 'unprecedented' inquiry by WorkSafe Victoria into potential occupational health and safety breaches at King Wood Mallesons' Melbourne office.⁸⁰ SafeWork NSW also investigated Gilbert + Tobin in response to allegations that staff were forced to take supplements in order to continue working extended hours.⁸¹ While working punishing hours has long been endemic in the legal profession, and described by some as a 'rite of passage',⁸² these investigations into top-tier law firms generated broader discussion on matters such as the need to address the prevalence of overwork in the legal profession, the well-being of legal staff and guarantees for appropriate remuneration. Ultimately, the concerns relating to the overworking and underpaying of young lawyers resulted in new Fair Work rules being introduced. Law firms must now record graduate lawyers, clerks and paralegals starting and finishing times and must clearly advise these employees what overtime hours are expected and what penalty rates will apply.⁸³ However, there have been questions raised as to how effective these new rules will be, given the potential reluctance of junior lawyers to challenge standard workplace practices.⁸⁴ A 2019 national survey of law firm employees found that junior lawyers had high rates of job dissatisfaction, and that more than half of them with one to three years' experience were intending to leave their current place of employment.⁸⁵

79 Hannah Wootton, 'Ethical Dilemmas and the Royal Commission', *Law Society of New South Wales Journal* (online, 27 February 2019) <<https://lsj.com.au/articles/ethical-dilemmas-and-the-royal-commission/>>.

80 Sarah Thompson, Jemima Whyte and David Marin-Guzman, 'King & Wood Mallesons Investigated for Overworking Employees', *Australian Financial Review* (online, 12 October 2018) <<https://www.afr.com/companies/king--wood-mallesons-investigated-for-overworking-employees-20181011-h16hei>>.

81 Hannah Wootton, 'SafeWork to Investigate Top Law Firm over Work Hours', *Australian Financial Review* (online, 15 November 2019) <<https://www.afr.com/companies/professional-services/safework-to-investigate-top-law-firm-over-work-hours-20191115-p53b21>>.

82 Matilda Marozzi, 'Banking Commission's Tight Deadlines Worsened Legal Profession's Overwork Culture, Lawyers Say', *ABC* (online, 29 January 2019) <<https://www.abc.net.au/news/2019-01-29/lawyers-working-long-hours-in-royal-banking-commission/10755492>>; Ethics Centre, 'The Dark Side of the Australian Workplace' (Article, 5 June 2019) <<https://ethics.org.au/the-dark-side-of-the-australian-workplace/>>.

83 Kate Allman, "'Report Your Hours and Get Punished for It': Young Lawyers Sceptical of New Fair Work Rules', *Law Society of New South Wales Journal* (online, 9 March 2020) <<https://lsj.com.au/articles/report-your-hours-and-get-punished-for-it-young-lawyers-sceptical-of-new-fair-work-rules/>>.

84 See *Ibid*; Interview with David Field (Geraldine Doogue, ABC, 25 January 2020).

85 Jerome Doraisamy, '2 in 5 Young Lawyers Intend to Walk Out the Door', *Lawyers Weekly* (online, 4 September 2019) <<https://www.lawyersweekly.com.au/biglaw/26431-2-in-5-young-lawyers-intend-to-walk-out-the-door>>. See also Urbis, *National Attrition and Re-engagement Study (NARS) Report* (Report, March 2014) ('NARS Report') <<https://www.lawcouncil.asn.au/policy-agenda/advancing-the-profession/equal-opportunities-in-the-law/national-report-on-attrition-and-re-engagement>>.

2.5.2.3 Royal Commission into the Management of Police Informants – Lawyer X

The ‘fundamental and appalling breaches’ of a Victorian criminal defence barrister, who was known as Lawyer X, has also undermined public confidence in the legal profession and raised questions about the adequacy of professional legal ethics education.⁸⁶ In 2018, the High Court of Australia upheld the decision to allow the Director of Public Prosecutions to disclose the name of a defence barrister who had been acting on behalf of a group of convicted persons while covertly informing against them to the Victorian Police.⁸⁷ The circumstances of her informing led the Victorian Government to establish a *Royal Commission into the Management of Police Informants*.⁸⁸ The Commission’s review of professional regulation focused on the specific aspects that related to the ethical conduct of lawyers. The Commission emphasised the important role of the post-admission regulatory framework in this regard and suggested that, for example, ‘[e]mbedding legal ethics education in lawyers’ continuing professional development, including through the use of practical, scenario-based learning, would support them to understand the common ethical issues that can arise in legal practice and enhance their skills to manage those issues.’⁸⁹ The Commission also considered the rigour of the admissions process and recommended that the Victorian Government consider whether the Victorian Legal Admissions Board requires further powers to request and consider documentation to assess whether applicants are ‘fit and proper’.⁹⁰ Significantly, there was no detailed examination of the adequacy of law school curriculum or PLT in the Commission’s report, other than recognition that legal ethics forms part of these pre-admission LE&T stages.⁹¹

2.5.2.4 Sexual harassment and bullying

The global #MeToo movement, the multiple public disclosures of workplace violence and harassment across all industries, and the momentum for reform it generated, have also served to highlight the deplorable levels of sexual harassment and bullying in the legal profession. The issues are longstanding. The urgency for change and the case for significant cultural transformation are irrefutable. In 2014, the LCA found that one in four women lawyers had experienced sexual harassment in legal workplaces and it was a key reason for women to leave the profession.⁹² The more recent large body of quantitative, qualitative and anecdotal evidence demonstrates the problem has become even worse, with alarmingly high rates of sexual harassment incidents but low levels of reporting.⁹³ For example, as collated by the LCA in 2020, contemporary Australian surveys and reports indicate that:

86 *Royal Commission into Management of Police Informants* (n 66) 6, 34.

87 *AB v CD* [2018] HCA 58.

88 *Royal Commission into Management of Police Informants* (n 66) 6.

89 *Ibid* 34-5.

90 *Ibid* 99.

91 *Ibid* 71.

92 Urbis, ‘NARS Report’ (n 85).

93 Law Council of Australia, ‘Addressing Sexual Harassment in the Australian Legal Profession’ (Discussion Paper, July 2019) (‘Addressing Sexual Harassment’) 4 [11] <<https://www.lawsocietywa.asn.au/wp-content/uploads/2015/10/2019JUL16-Law-Council-Australia-Discussion-Paper-Addressing-Sexual-Harassment-in-the-Profession.pdf>>.

- In 2018, out of 242 respondents to a Women Lawyers Association NSW survey, 71% reported that they had experienced sexual harassment.
- In 2018, 57% of respondents to the Women Lawyers Association of the ACT survey reported that they had experienced sexual harassment.
- In 2018, 51% of respondents reported experiences of sexual harassment in response to the NSW Young Lawyers Human Rights Committee's survey.
- In 2019, out of 500 participants in the Women Lawyers of WA Sexual Harassment survey, 72% had personally experienced workplace sexual harassment.
- In 2019, the VLSB+C's report on sexual harassment in the legal sector found that approximately one in three legal professionals (36%) reported that they had experienced sexual harassment while working in the legal sector, with women significantly more likely to experience sexual harassment (61%) in comparison to men (12%).⁹⁴

It is clear that a number of features of the legal profession workplace operate as drivers of harassment, in particular:

- *a patriarchal and hierarchical culture characterised by intense competition*
- *a lack of cultural diversity, particularly in relation to people identifying as Aboriginal and/or Torres Strait Islander*
- *deeply entrenched gender bias that underpins discriminatory behaviour*
- *a 'culture of silence' whereby instances of harassment are minimised, normalised and kept quiet.*

(Source: Government of South Australia, Review of Harassment in the South Australian Legal Profession: Report by the Equal Opportunity Commission to the Attorney-General (Report, April 2021) ('Review of Harassment in South Australia') 5)

In 2019, allegations were made against a former High Court judge that he had sexually harassed six female Judge's Associates while serving on the court.⁹⁵ In 2020, the allegations were found to be substantiated by an independent investigation commissioned by the High Court, following which, the Chief Justice issued an apology and implemented the six recommendations made by the independent investigator.⁹⁶ A wave of fresh allegations of sexual harassment in the legal profession then surfaced evidencing that bad conduct instances were 'rife across the legal industry – from firms to the courts.'⁹⁷ The alarming rates of sexual harassment in the profession, across the entire spectrum of legal workplaces,

⁹⁴ Law Council of Australia, *National Action Plan to Reduce Sexual Harassment in the Australian Legal Profession* (National Action Plan, 23 December 2020) ('*National Action Plan*') 10 <<https://www.lawcouncil.asn.au/media/media-releases/release-of-national-action-plan-to-reduce-sexual-harassment-in-the-australian-legal-profession->>.

⁹⁵ Michelle Grattan, 'High Court Apologises for Dyson Heydon's Sexual Harassment of Six Associates', *The Conversation* (online, 22 June 2020) <<https://theconversation.com/high-court-apologises-for-dyson-heydons-sexual-harassment-of-six-associates-141215>>.

⁹⁶ High Court of Australia, 'Statement by the Hon Susan Kiefel AC, Chief Justice of the High Court of Australia' (Media Release, 2020) <<https://cdn.hcourt.gov.au/assets/news/Statement%20by%20Chief%20Justice%20Susan%20Kiefel%20AC.pdf>>.

⁹⁷ Naaman Zhou, "'Nobody Stood Up for Me': Young Lawyers Say Harassment Rife in Australian Legal Profession', *The Guardian* (online, 26 June 2020) <<https://www.theguardian.com/law/2020/jun/26/nobody-stood-up-for-me-young-lawyers-say-harassment-rife-in-australian-legal-profession>>.

continued to be corroborated over 2021. For example, in March 2021, a report on sexual harassment in Victorian Courts and the Victorian Civil and Administrative Tribunal (VCAT) detailed, amongst other matters, the impact of harassment (such as deterioration of mental health; stress, anxiety, fear, humiliation and self-blame; loss of confidence and trust; and negative impact on career progression); in April 2021, a review of harassment in the South Australian (SA) legal profession was released, in which 42% of respondents reported they had experienced sexual or discriminatory harassment, including one-third who had experienced it more than once.⁹⁸

A multitude of factors have been identified as the ‘drivers of sexual harassment’ in legal workplaces, including: issues around gender inequality and lack of wider diversity; a ‘culture of power and hierarchy’ leading to abuse of power, especially when most senior members tend to be disproportionately male; networks being as important for advancement as measurable merit; alcohol; frequent blurring of personal and professional life; high-intensity and competitive work environments (an ethos of ‘win at all costs’); and permissive work.⁹⁹ These factors point to the need for systemic responses for standards, reporting and accountability, particularly in the post-admission phase, with concomitant leadership – professional, organisational and individual – that sets expectations for fostering safe and respectful workplaces. To illustrate, recommendations that have been developed across the multiple reports include the following:

- ‘Mandate continuing professional development training on sexual harassment.’¹⁰⁰
- ‘... [T]he VLSB+C should investigate making sexual harassment training a condition on practising certificates of solicitors in their first year of practice.’¹⁰¹
- ‘Consider making it mandatory for all members of the profession to obtain one Continuing Professional Development “point” in anti-discrimination.’¹⁰²
- ‘Mandate sexual harassment training for practitioners across Australia, including for barristers and judicial officers, and as part of Practical Legal Training.’¹⁰³
- ‘... [A]ll legal profession workplaces which currently deliver in-house Continuing Professional Development courses, deliver one Continuing Professional Development

98 See Helen Szoke, *Preventing and Addressing Sexual Harassment in Victorian Courts and VCAT: Report and Recommendations* (Report, March 2021) (*Preventing and Addressing Sexual Harassment*) 41 <<https://www.shreview.courts.vic.gov.au/wp-content/uploads/2021/04/Report-and-Recommendations-Preventing-and-Addressing-Sexual-Harassment-in-Vic-Courts.pdf>>; Government of South Australia, *Review of Harassment in the South Australian Legal Profession: Report by the Equal Opportunity Commission to the Attorney-General* (Report, April 2021) (*Review of Harassment in South Australia*) 5 <<https://www.eoc.sa.gov.au/documents/Final-Report-of-the-Review-of-Harassment-in-the-South-Australian-Legal-Profession.pdf>>. See also Ipsos and VLSB+C, *Sexual Harassment in the Victorian Legal Sector* (Report, 2019) <<https://lsbc.vic.gov.au/resources/report-sexual-harassment-study>>.

99 See Law Council of Australia, *National Action Plan* (n 94) 11-3; Szoke, *Preventing and Addressing Sexual Harassment* (n 98) 31-3; International Bar Association, *Us Too? Bullying and Sexual Harassment in the Legal Profession* (Report, 2019) (*Us Too?*) <<https://apo.org.au/node/248266>>. Most recently, see Australian Human Rights Commission, *Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces*. (Report, November 2021) (*Set the Standard*) <<https://humanrights.gov.au/set-standard-2021>>.

100 Law Council of Australia, *Addressing Sexual Harassment* (n 93) Appendix 1, 14 citing Women Lawyers Association of the Australian Capital Territory (Submission No 323, *National Inquiry into Sexual Harassment in Australian Workplaces*, February 2019).

101 Szoke, *Preventing and Addressing Sexual Harassment* (n 98) 71.

102 Law Council of Australia, *Addressing Sexual Harassment* (n 93) Appendix 1, 14 citing Law Society of Tasmania’s Employment and Equal Opportunity Committee (Submission No 358, *National Inquiry into Sexual Harassment in Australian Workplaces*, 28 February 2019).

103 *Ibid* Appendix 1, 17 citing Australian Women Lawyers, *Seven Strategies for Addressing Sexual Harassment in the Legal Profession* (Report, 2019).

course per year for the next five years with respect to bullying, discrimination, including sexual harassment ...¹⁰⁴

The unsafe, disrespectful and frequently illegal behaviours catalogued by these multiple inquiries undermine the justice system as a whole, bring the profession into disrepute and are not the professional nor ethical conduct to be expected of any officer of the court. There is obviously an opportunity to reinforce professional values in the pre-admission phase, which should be done, but sexual harassment, and many of the other manifestations of unprofessional conduct that have come into the public domain in recent times (for example, bullying, racism and other forms of discrimination), are deeply entrenched and permeate the legal profession in its workplace culture and contexts, driven by power imbalances, gender inequality, exclusion and a lack of accountability as mentioned above. In December 2020, the LCA released a *National Action Plan to Reduce Sexual Harassment in the Australian Legal Profession*, and it has a dedicated web page that sets out the law in relation to workplace sexual harassment, referencing the vicarious liability of employers for employees' conduct in this regard and providing links to resources that have been developed to address sexual harassment in the legal workplace.¹⁰⁵

The 2021 review into the SA legal profession found that instances of bullying were just as prevalent in the legal profession as sexual and discriminatory harassment, echoing the findings of the 2020 *Respect@Work Report* by the Australian Human Rights Commission (AHRC), the AHRC's 2021 report *Set the Standard: Report on the Independent Review into Commonwealth Parliamentary Workplaces*,¹⁰⁶ and the LCA's 2014 *National Attrition and Re-engagement Study (NARS) Report*.¹⁰⁷ As for sexual harassment, bullying occurs across the spectrum of legal workplaces, including in the courts. In 2018, a report on the quality of working life at the Victorian Bar detailed high levels of bullying of barristers by judicial officers.¹⁰⁸ The more recent reports — for example, the *Respect @Work Report*, the *Set the Standards* inquiry into Commonwealth parliamentary workplaces and the 2021 reports on sexual harassment in the SA profession and in the Victorian Courts and VCAT — all emphasise the importance of also taking an intersectional approach to understanding how sexual harassment and bullying are experienced by individuals and how to respond to these types of behaviour. These reports detail that persons who experience other forms of discrimination

104 Government of South Australia, *Review of Harassment in South Australia* (n 98) 117-8.

105 Law Council of Australia, *National Action Plan* (n 94); Law Council of Australia, 'Sexual Harassment in the Workplace' (Web Page) <<https://www.lawcouncil.asn.au/policy-agenda/advancing-the-profession/equal-opportunities-in-the-law/sexual-harassment-in-the-workplace>>. The Queensland Law Society has recently developed a toolkit for practitioners to combat bullying, sexual harassment and discrimination in the profession, including obligations as a bystander, for CPD credit in the practice area 'Practice Management and Business Skills' see: Queensland Law Society, 'Your toolkit: Bullying, sexual harassment and discrimination' (Web Page) <<https://www.qls.com.au/Pages/Workplace-conduct/Your-toolkit-Bullying,-sexual-harassment-and-discrim>>.

106 *Review of Harassment in South Australia* (n 98) 86; Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (Report, January 2020).

<<https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020>>.
Australian Human Rights Commission, *Set the Standard* (n 99).

107 Urbis, *NARS Report* (n 92). Sophie Schroder, 'Lawyers Some of Australia's Worst Bullies?' (online, 8 October 2014) <<https://www.thelawyer.com.au/news/general/lawyers-some-of-australias-worst-bullies/197478>>.

108 Quality of Working Life Research Group, *Victorian Bar Quality of Working Life Survey* (Final Report, October 2018) <<https://www.vicbar.com.au/sites/default/files/Wellbeing%20of%20the%20Victorian%20Bar%20report%20final%20Oct%202018.pdf>>. See also Freya Michie, 'Almost Two Thirds of Victoria's Barristers Say They're Bullied in the Courtroom' (online, 18 October 2018) <<http://www.abc.net.au/news/2018-10-18/barristers-complain-of-bullying-judges-and-magistrates/10393470>>.

and harassment (for example, by reason of age, race, First Nations status, disability, culture and religion, sexual orientation and/or because they identify as lesbian, gay, bisexual, transgender, intersex, queer/questioning, asexual or other gender non-conforming identities (**LGBTIQ+**)) experience sexism and sexual harassment in other layered and additional (intersectional) ways that further perpetuate the harassment and bullying.

The *Australian Solicitors' Conduct Rules (ASCR)*,¹⁰⁹ which are a uniform set of standards to 'assist solicitors to act ethically and in accordance with the principles of professional conduct established by the common law and these Rules' (Rule 2.1), include ASCR Rule 42 that proscribes a solicitor 'in the course of practice' from engaging in conduct that constitutes discrimination, sexual harassment and workplace bullying. Given recent events, and even though the ASCR were quite recently reviewed, a further review of ASCR Rule 42 has been instigated by the LCA in 2021 to 'capture some of the problematic conduct currently occurring in the profession that is not currently captured by the Rule; and ... make clear the profession's view that discrimination and harassment (particularly sexual harassment) are unacceptable conduct for members of the profession'.¹¹⁰ In addition to its dedicated web page on 'Sexual harassment in the workplace' referred to earlier, the LCA has also collected together relevant legislative provisions in relation to workplace bullying and harassment and provides links to a range of resources that have been developed to address harassment and bullying in legal practice.¹¹¹

Looking internationally, a 2019 report by the International Bar Association (**IBA**) analysed almost 7000 survey responses from 135 countries, including Australia, across a range of legal workplaces (for example, law firms, in-house counsel, barristers' chambers, government and courts) with a view to obtaining an empirical understanding of the nature, prevalence and impact of bullying and sexual harassment in the legal profession. It found that these behaviours were endemic: approximately one in two female respondents and one in three male respondents had been bullied; and approximately one in three female respondents and one in 14 male respondents had been sexually harassed in their legal workplace.¹¹² The IBA made ten recommendations to provide a platform for change, concluding that results of the large-scale survey should serve as a 'wake-up call for the profession', especially given the conduct is 'illegal in many jurisdictions, contrary to professional obligations, and immoral'.¹¹³ The *IBA Report's* findings led the President of the IBA at the time to observe that:

*[f]ollowing the global #MeToo movement, the legal profession has regularly been called upon to advise other sectors on these issues. Our ability to advise effectively and drive broader societal change is undermined if we do not address the risk of hypocrisy.*¹¹⁴

109 Law Council of Australia, *Australian Solicitors' Conduct Rules* (Rules, 24 August 2015) <<https://www.lawcouncil.asn.au/policy-agenda/regulation-of-the-profession-and-ethics/australian-solicitors-conduct-rules>>.

110 Law Council of Australia, 'Australian Solicitors' Conduct Rules: Further Revisions to Rule 42' (Consultation Paper, 6 April 2021) 5 <<https://www.lawcouncil.asn.au/policy-agenda/regulation-of-the-profession-and-ethics/australian-solicitors-conduct-rules/public-consultation-rule-42>>.

111 Law Council of Australia, 'Bullying and Harassment in the Workplace' (Web Page) <<https://www.lawcouncil.asn.au/policy-agenda/advancing-the-profession/equal-opportunities-in-the-law/bullying-and-harassment-in-the-workplace>>.

112 International Bar Association, *Us Too?* (n 99).

113 *Ibid* 112.

114 *Ibid* 7.

Of particular interest is that the *IBA Report* analysed case studies from nine countries, including Australia, to highlight regional trends and divergences, choosing jurisdictions that were: geographically diverse; presented a mix of civil and common law systems; and of different population sizes (for example, ranging from the US (third largest country) to Costa Rica (with a population under five million)). The collation of the results from the case study jurisdictions, which appears in **Figure 1** next, does not reflect well on the Australian profession.¹¹⁵

Figure 66: prevalence of bullying and sexual harassment in case study jurisdictions (gender weighted)		
Jurisdiction	% respondents bullied	% respondents sexually harassed
Global average	43	22
Costa Rica	65.7	34.8
United States	50.3	32.6
Australia	61.4	29.6
South Africa	57.5	27.5
United Kingdom	51	21.8
Brazil	45.2	21.4
Sweden	24.1	21
Malaysia	53.6	15.3
Russian Federation	27.8	11.5

Figure 1. Prevalence of Bullying and Sexual Harassment in case study jurisdictions (IBA, 2019, 86)¹¹⁶

The *IBA Report* went on to record that almost one-seventh of the total 6980 responses to its survey were from Australia; the highest response rate by country. The Australian case study then set out that:

*58% of Australian respondents worked at law firms, with 13% from government, 12% from the bar, 9% in-house and a small percentage from the judiciary. **Bullying and sexual harassment are rife in Australian legal workplaces: 73% of Australian female respondents and 50% of Australian male respondents had been bullied in connection with their employment. These rates are significantly higher than global averages, in which women and men are bullied at rates of 55% and 30%, respectively. Australian legal professionals also report a higher rate of sexual harassment than the global average: 47% of female respondents indicated they had been sexually harassed (compared with 37% globally) and 13% of male respondents (7% globally).***¹¹⁷

¹¹⁵ Ibid 86.

¹¹⁶ Ibid.

¹¹⁷ Ibid 87 (emphasis added). In response to the *IBA US Too?* Report, the IBA collaborated with The College of Law Australia to develop an anti-harassment e-learning series 'for use by the legal profession to ensure safe, supportive and respectful workplaces for everyone': International Bar Association (with The College of Law Australia), 'Us Too? Bullying and Sexual Harassment in the Legal Profession Training' (Web Page) <<https://www.ibanet.org/Bullying-Sexual-Harassment-Training>>. See also, Emma Franklin and Kieran Pender, 'Innovation-led Cultural Change: can technology effectively address workplace harassment?' (Discussion Paper, November 2020) <<https://www.ibanet.org/bullying-and-sexual-harassment#training>>.

A significant culture and professional conduct shift is needed on these matters, and it is clear that change is underway. Pre-admission LE&T can inform law students of the current issues in the profession and legal workplaces, legislative obligations and the movement towards change. Post-admission, CPD has a particular role to play as regards assuring continuing competence and ethical conduct.

2.5.2.5 Inclusion and diversity

Efforts to increase inclusion and diversity in LE&T, the legal workplace and across the profession more broadly are critical for many reasons, not least of which is that the current lack of diversity in the profession creates a culture and context that is conducive to the sexual harassment, bullying and discrimination of under-represented groups (*Section 2.5.2.4*). Adopting an intersectional approach to addressing this bad behaviour, and promoting diversity and inclusion, are related responses and need to be understood and advanced as such: increased diversity can lead to more inclusive and respectful workplaces, while tackling harassing, bullying and discriminatory behaviour can lead to greater diversity. Enhancing diversity in the profession is also essential to reflect the multicultural and heterogeneous make-up of the Australian population, to meet diverse client needs and to promote a professional culture of respect, sensitivity, awareness and inclusion more broadly, all of which seem greatly needed.

There is little research, data and/or evidence available that can provide insight into the experiences of diverse student and practitioner populations, and a detailed treatment of the subject is beyond the scope of this report. More work needs to be done to understand the strategies necessary to encourage underrepresented cohorts to access legal education and to provide the career support and guidance required for good graduate outcomes for these students, one of which must be the assurance of entering an inclusive profession. Recent Australian research has shone a harsh light on the current inequity of access to law courses by students from low socio-economic and regional backgrounds due to 'structural, systemic, sociocultural and personal factors that can act as barriers and enablers to high-status professions'.¹¹⁸ Generally, students with disabilities often struggle to secure meaningful work after graduation.¹¹⁹ Also, students who identify as LGBTQIA+ face tremendous challenges in HE accessing the additional career support and guidance they require and have identified an urgent need for role models and mentors to ease the employment and employability path for them.¹²⁰ In 2015, although Asian Australians accounted for close to 10% of the Australian population, the Asian Australian Lawyers Association found that only 3.1% of partners in law

118 Erica Southgate, *Fair Connection to Professional Careers: Understanding Social Difference and Disadvantage, Institutional Dynamics and Technological Opportunities* (Report, 2017) 8 <http://www.ncsehe.edu.au/wp-content/uploads/2017/09/Southgate_Fair-connection-to-professional-careers.pdf>.

119 National Centre for Student Equity in Higher Education, 'Australian Universities: Choices and Issues in Careers Support for Students with Disability', *NCSEHE Student Equity Snapshots Forum* (Web Page, 30 October 2020) <<https://www.ncsehe.edu.au/ncsehe-student-equity-snapshots-forum-david-eckstein/>>.

120 National Centre for Student Equity in Higher Education, 'Research Update – Supporting Careers of LGBTQIA+ Students in Australian Universities' (Web Page, 8 March 2021) <<https://www.ncsehe.edu.au/research-update-careers-lgbtqia-students-australian-universities/>>.

firms, 1.6% of barristers and 0.8% of the judiciary were Asian.¹²¹ These various matters draw attention to the urgency of building the diversity pipeline into the profession, which is one key component of the longer-term solution for an inclusive professional culture.

Racism and cultural diversity concerns have also been exacerbated by the COVID-19 pandemic. It is unclear to what extent members of the Asian legal profession were affected by instances of discrimination, harassment and racism over the last two years; however, many Asian Australians were reported as targets of 'vitriolic and sometimes violent or other criminal forms of abuse' for the spread of coronavirus.¹²² The President and Vice-President of the Asian Australian Lawyers Association have suggested that cultural diversity efforts were being 'pushed to the backburner' as a result of the professional and financial considerations brought on by COVID-19.¹²³

In the context of this report, LE&T approaches and content that respect and value diversity and inclusion are important, as is attending to the concerted development of an ethos of inclusive professionalism to welcome underrepresented groups and persons into the law and to support proactive mitigation of barriers, both perceived and other, to entry. A broader approach to inclusivity in LE&T across the continuum (pre- and post-admission) is another response, including, for example, delivering dedicated training for: diversity (including intersectional diversity), sensitivity and awareness; unconscious bias; and cross-cultural communication (to suggest a few potential CPD topics). Associate Justice Ierodiaconou of the Supreme Court of Victoria has encouraged taking a broader view in the teaching of ethics away from its 'mere' presentation as '... a subject at law school, or rules on professional conduct', noting that this could help advance cultural diversity in the legal profession.¹²⁴ The commitment to ethical culture and values-based practice for social good can certainly be nurtured in law school and PLT, but experience has shown that it must also continue post-admission where the unprofessional conduct in the context of daily practice occurs.

In one bright spot on this topic, in 2021, Associate Professor Paul Harpur from the University of Queensland Law School, who is a leading international and comparative disability rights legal academic, was awarded a four-year Future Fellowship with the Australian Research Council entitled 'Normalising Ability Diversity through Career Transitions: Disability at Work'.¹²⁵

121 Asian Australian Lawyers Association, *The Australian Legal Profession: A Snapshot of Asian Australian Diversity in 2015* (Report, 2015) 4.

122 Jerome Doraisamy, 'Cultural Diversity Cannot be Pushed to Backburner', *Lawyers Weekly* (online, 24 September 2020) <<https://www.lawyersweekly.com.au/biglaw/29530-cultural-diversity-cannot-be-pushed-to-backburner>>.

123 Ibid.

124 Associate Justice Ierodiaconou, *Ethics and Cultural Diversity in the Legal Profession* (Speech, New Barristers' Committee CPD Event, 29 August 2016).

125 University of Queensland, 'Associate Professor Paul Harpur' (Web Page) <<https://law.uq.edu.au/profile/1110/paul-harpur>>; University of Queensland, 'Future Fellowship for Disability Rights Scholar' (Media Release, 11 August 2021) <<https://law.uq.edu.au/article/2021/08/future-fellowship-disability-rights-scholar>>.

2.5.2.6 Domestic and family violence

The professional response to the scourge of domestic and family violence is another matter not unrelated to the contemporary requirement for diversity, sensitivity and awareness in competent legal practice. Since 2017, the Meeting of Attorneys-General (**MAG**), which brings together the Commonwealth, state and territory Attorneys-General, has had a Family Violence Working Group (**FVWG**).¹²⁶ The FVWG brings together justice officials from the Commonwealth, states and territories to progress MAG priorities in relation to national family violence initiatives. Under the FVWG, the Commonwealth Attorney-General's Department and the Victorian Department of Justice and Community Safety have been working together to consider the way in which family violence competencies of professionals working on family-violence-related matters, including legal practitioners, could be strengthened.

The necessity for lawyer competency in this area has been identified by a number of inquiries and reviews. For example, the ALRC, in its 2019 report, *Family Law for the Future – An Inquiry into the Family Law System*, recommended changes to the CPD regime for legal practitioners undertaking family law work, given they are in a position to affect their client's safety or involvement in violence.¹²⁷ At present, lawyers undertaking family law work have no obligation to undertake CPD on family violence¹²⁸ and available offerings are quite limited in any event. The ALRC received a number of submissions and reviewed reports that identified gaps in lawyers' knowledge about family violence, particularly as regards risk factors that predict future violence,¹²⁹ and the complex social dynamics of family violence and violence trauma.¹³⁰ Other identified gaps in legal professional capabilities included:

- 'judgmental attitudes and lack of consistency'¹³¹
- 'lack of confidence in detecting and responding to safety issues'¹³²
- 'inadequate understanding of the dynamics of family violence and its impact on victims.'¹³³

Even though there may be some difficulty identifying all lawyers who undertake family law work,¹³⁴ in 2019, the ALRC recommended that consistent requirements be developed 'for legal practitioners undertaking family law work to complete annually at least one CPD unit

126 See Family Violence Working Group (Cth) ('FVWG'), 'Meeting of Attorneys-General Family Violence Working Group' (Web Page) <<https://www.ag.gov.au/families-and-marriage/families/family-violence#meeting-of-attorneysgeneral-family-violence-working-group>>. The FVWG has developed *Guiding Principles* with a view to providing protection to vulnerable witnesses in family violence and family law proceedings for use in all jurisdictions: Commonwealth, *Guiding Principles* (Family Violence Working Group, 25 March 2019) <<https://www.ag.gov.au/families-and-marriage/publications/guiding-principles>>.

127 See Australian Law Reform Commission, *Family Law for the Future – An Inquiry into the Family Law System* (ALRC Report 135, March 2019) 22, Recommendation 52 <https://www.alrc.gov.au/wp-content/uploads/2019/08/alrc_report_135_final_report_web-min_12_optimized_1-1.pdf>.

128 Ibid 406 [13.74].

129 Ibid 408 [13.82].

130 Ibid 405 citing Australian National Research Organisation for Women's Safety, *Submission 278* and Law Council of Australia, *Submission 43*.

131 Ibid 406 citing House of Representatives Standing Committee on Social Policy and Legal Affairs, Parliament of Australia, *A Better Family Law System to Support and Protect Those Affected by Family Violence* (Report, 2017) 260, 262.

132 Ibid 406 citing Family Law Council, *Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems* (Final Report, 30 June 2016) 139.

133 Ibid 406 citing Queensland Special Taskforce on Domestic and Family Violence, Queensland Government, *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland* (Report, 2015) 14.

134 Ibid 409 [13.85].

relating to family violence'.¹³⁵ 'Amending CPD requirements to include mandatory family violence content will contribute to increasing all family lawyers' awareness, sensitivity, and competence in cases involving family violence'.¹³⁶ While training in family violence is a matter that *informs* the assessment requirements of the Specialist Accreditation in Family Law,¹³⁷ the Family Law Council has recommended that it now be included as part of the accreditation process to become family law specialists.¹³⁸

All lawyers, regardless of what law they practice, should receive training in respecting diversity. This training should be considered fundamental for the profession and be included in training for law students, who will become our future advocates, magistrates, judges and law-makers.

The area of domestic and family violence is complex and emotive, it cuts across many other areas of law and involves serious safety and protection concerns. It is imperative that lawyers are properly equipped to deal with the legal response to domestic and family violence.

(Source: Special Taskforce on Domestic and Family Violence in Queensland, Parliament of Queensland, Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland (Report, 28 February 2015) 289)

The Queensland Government's Special Taskforce on Domestic and Family Violence recommended in its 2015 report, *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland*, that the Queensland Government work 'with universities to identify suitable ways to incorporate into professional undergraduate courses, education and training on how to identify when domestic and family violence is occurring and how to appropriately intervene'.¹³⁹ The Taskforce identified a number of competency units relating to domestic and family violence in Queensland but found most of them formed part of human services/welfare qualifications. The Taskforce suggested that including such units in other professional undergraduate degrees would raise awareness in the workforce of the seriousness of domestic and family violence and enable future professionals to support fellow employees.¹⁴⁰

The Queensland Taskforce further considered it imperative that lawyers are enabled to respond to domestic and family violence. Echoing the sentiments above as regards 'Inclusion and Diversity' (**Section 2.5.2.5**), the Taskforce specifically said that '[a]ll lawyers, regardless of what law they practice, should receive training in respecting diversity. This training should be

135 Ibid 22, Recommendation 52.

136 Ibid 405.

137 Ibid 406-7 [13.77] citing Law Council of Australia, *Submission 43*.

138 Ibid 406 [13.77] citing Family Law Council, *Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems* (Final Report, 30 June 2016) Recommendation 11.

139 Special Taskforce on Domestic and Family Violence in Queensland, Parliament of Queensland, *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland* (Report, 28 February 2015) ('*Not Now, Not Ever Report*') 201, Recommendation 65 <<https://www.justice.qld.gov.au/initiatives/end-domestic-family-violence/about/not-now-not-ever-report>>.

140 Ibid 201.

considered fundamental for the profession and be included in training for law students ...¹⁴¹ Respecting diversity was considered to be a critical factor in dealing with domestic and family violence matters because diverse clients with individual cultural and contextual factors – for example, First Nations peoples, or those who are from different cultural backgrounds, have a disability, or identify as LGBTQIA+ – will present with different needs.¹⁴² Thus, the Taskforce recommended that the Queensland Law Society ‘develop best practice guidelines for lawyers working with people who have experienced domestic and family violence’ and ensure that there are suitable CPD programs on respecting diversity and ethical conduct for managing the intersection between domestic and family violence and family law.¹⁴³

The Victorian Royal Commission into Family Violence in 2016 also called for a clear focus on developing judicial and legal sector capability.¹⁴⁴ Similarly to the ALRC *Family Law for the Future* inquiry in 2109, the Victorian Royal Commission emphasised the specific need to provide training on identifying family violence risk factors and how to respond appropriately.¹⁴⁵ The Royal Commission recommended, as did the later ALRC inquiry, that: universities should review their law curricula to ensure that family violence legal issues are addressed; and legal professional bodies should do the same for CPD requirements. The Law Institute of Victoria and the Victorian Bar were encouraged to ‘show leadership’ by working with other jurisdictions and the university sector to integrate family violence training into law curricula.

Taking up the recommendations of these various reviews, the FVWG conducted a consultation process in 2019 specifically on the issue of legal practitioners’ competencies, to which it received 43 submissions.¹⁴⁶ Most stakeholders strongly favoured a ‘tiered’ approach to family safety education and training, through foundational training at university, followed by PLT, and the consolidation of skills through CPD. As recognised in other reviews and reports, the FVWG noted that family violence is not currently covered in the mandatory areas of study in pre-admission requirements, though is addressed in elective subjects as follows:

Academic requirements: Content *could* be included on family safety within a Family Law subject; however, Family Law is not a core requirement.

PLT requirements: ‘Domestic violence’ and ‘domestic violence orders’ are included in the required content of two *optional* practice areas (criminal law and family law).

In the FVWG’s CPD consultations, it emerged that ‘family violence competencies could be considered under “soft skill” areas, such as Professional Skills, given the importance of appropriately identifying and responding to family violence.’¹⁴⁷ In summary, it seems clear that

141 Ibid 289.

142 Ibid 290.

143 See Ibid 292, Recommendations 107-110.

144 *Royal Commission into Family Violence: Summary and Recommendations* (Report, March 2016) 210 <http://rcfv.archive.royalcommission.vic.gov.au/MediaLibraries/RCFamilyViolence/Reports/RCFV_Full_Report_Interactive.pdf>.

145 Ibid 210.

146 Email correspondence with the Director, Family Violence Policy and Programs Section, Family Safety Branch, Attorney-General’s Department (July 2021).

147 Ibid.

the case is being made, from a number of different perspectives, that diversity, sensitivity and awareness training, including family safety training, is fundamental to legal professionalism and that, as identified by the Queensland Government's Special Taskforce, many of these issues, family violence included, present in all workplaces and across other practice areas.¹⁴⁸ The tiered approach to training suggested over the course of the FVWG consultation is a useful model that has application across many of the knowledge, skills and values domains considered in this report.

2.5.3 'Practice-ready' graduates

The FLIP Commission recorded that many of the submissions made to it focused strongly on the need for law schools and PLT providers to produce:

... "practice-ready" graduates who could undertake many of the elementary tasks in practice and interact with clients. There appeared to be an expectation that graduates would have not just an understanding, but an ability to employ in practice, the basics of drafting, presenting and negotiating. It was also seen as desirable that new graduates have a familiarity with basic accounting, finance concepts and how a business operates.¹⁴⁹

The often-heard call for pre-admission LE&T to prepare 'practice-ready' graduates is fraught for several reasons, not the least of which is what is meant by, and can realistically be demanded in terms of, graduates' 'practice-readiness'. While the history of Australian legal education has been one of close alignment with the profession, the emergence of the professionalised teaching academy post-World War II,¹⁵⁰ in conjunction with the recent massification of HE and an increased emphasis on transferable skills' acquisition for future work, has led to a consequential broadening of LE&T foci, especially in the law school phase. Recalling also that the postgraduate PLT stage has a dedicated remit for practice competency development in accordance with *Standards* that have been set by the professional regulator, the issue of 'practice-ready or not' is neither clear-cut nor well-articulated, particularly amidst the clamour for ever-more (additional) knowledge, skills and values to be acquired before post-admission supervised practice is undertaken.

In the US, a large-scale survey conducted by the Institute for the Advancement of the American Legal System (**IAALS**) asked what new lawyers needed when entering practice. The *Foundations for Practice* research found that only 23% of practitioners believed new lawyers had sufficient skills to practice, with the IAALS analysis distilling that successful new lawyers are 'not merely legal technicians, nor are they merely cognitive powerhouses': 'New lawyers need some legal skills and require intelligence, but they are successful when they come to the job with a much broader blend of legal skills, professional competencies,

148 See *Not Now, Not Ever Report* (n 139) 201.

149 *FLIP Report* (n 1) 77.

150 Nickolas J James, 'A Brief History of Critique in Australian Legal Education' (2000) 24(3) *Melbourne University Law Review* 965. See also discussion in [Section 1.1](#).

and characteristics that comprise the whole lawyer'.¹⁵¹ The IAALS *Foundations for Practice* report drew an important distinction between what new lawyers required in the 'short term' and what was required 'over time', reporting that 95% of practitioner respondents said that key aspects of 'professionalism' (for example: keeping information confidential; arriving on time for meetings, appointments, and hearings; honouring commitments; integrity and trustworthiness; treating others with courtesy and respect; listening attentively and respectfully) were more important to develop in the short term once in practice than many legal skills (and see further [Section 3.4.6.2](#)).

Taken together with the FLIP conceptualisation, such considerations highlight the role of professional practice in lawyer formation, particularly supervised practice at entry level, a crucial question, as it was framed by the Hong Kong Review in 2018, of 'how much skills development can and should be provided in academic and vocational training, and how much should be developed on a more "just in time" basis in practice'.¹⁵² The IAALS research found that the longstanding debate around law school as a trade school being focused on 'practice-ready' preparation versus legal education as intellectual endeavour missed the 'sweet spot', with survey respondents being clear that 'new lawyers do not require the "nuts and bolts" immediately when they begin to practice, but they do require foundations that will allow them to build and grow over time'.¹⁵³ This speaks to the larger issue that the call for 'practice-ready' graduates frequently overlooks. The concept of 'practice-ready' for novice professionals *just starting out* in practice is necessarily fluid; day-one novices will have different understandings of 'knowledge-in-use' than their more senior and expert colleagues, and they will learn and work in different ways as they gain in experience and confidence. Practice-ready, like competence, is not a 'once and for all' quality. It will shift, and be lost and gained over time¹⁵⁴ (see [Section 4.3](#)).

The ideal of 'practice-ready' is also confounding when considered in the context of the dynamic, globalised world of future work, where the impact of technology, and the persistent change in job tasks, roles and structures in the profession and legal services market are constantly shifting the job readiness goal. An analysis conducted by AlphaBeta in 2019 found that all workers will need to continually refresh their skills to accommodate changes in work functions; each decade, workers replace nearly a fifth of all job tasks that are made redundant by new tasks. Across 348 occupations, '[a]utomation and globalisation are causing tasks across all Australian occupations to change by an average of 18 per cent every decade'; in the specific instance of solicitors, there has been a 23% change in tasks in the decade 2006–2016.¹⁵⁵ The World Economic Forum (WEF) recently mapped future jobs and skills to track the pace of change and found that '[a]utomation, in tandem with the COVID-19 recession, is creating a "double-disruption" scenario for workers'.¹⁵⁶ The WEF posits that, for

151 IAALS, *Foundations for Practice* (n 49) 2.

152 *Hong Kong Review* (n 5) 53. This echoes the Susskind distinction between 'just-in-time' and 'just-in-case' legal knowledge discussed in [Section 1.3.2](#).

153 IAALS, *Foundations for Practice* (n 49) 5, 36.

154 *Hong Kong Review* (n 5) 47.

155 *AlphaBeta Report* (n 36).

156 World Economic Forum, *Future of Jobs Report* (n 37) 5.

workers who remain in their current roles, 40% of their core skills are expected to change in the next five years, while 50% of all employees more broadly will require re-skilling by 2025.¹⁵⁷ A related reality check as regards the 'practice-ready' graduate is the growing diversification and segmentation of legal work. What is considered 'practice-ready' varies considerably for practitioners according to their specific practice area and employment context, from commercial practice, to family law, to legal aid, to in-house corporate lawyer, to those in government practice, and more besides. Additionally, private practice has other fault lines that run horizontally, in terms of the various categorisation of roles (clerk, graduate, solicitor, associate, senior associate, salaried partner, equity partner and the like), and vertically in terms of the size of the firm and consequently the type of clients it serves.¹⁵⁸ One size of 'practice-ready' graduate does not fit all practice contexts.

It may be that mandated experiential learning and/or simulated practice-based learning will better prepare law students for the day-to-day realities of lawyering and the contextualised in-practice development of key skills and ethical values, beyond what is otherwise possible in traditional coursework settings. However, while the Australian Productivity Commission recommended that a review of the three stages of LE&T be conducted that included the 'relative merits of increased clinical legal education at the university or practical training stages of education',¹⁵⁹ it cautioned against:

... simply requiring clinical legal education as an 'add-on' to all existing law degrees (rather than integrated as part of the overall consideration of the best structure of a legal education). Given the increasingly generalist role of the undergraduate law degree, **a focus on elements that are specific to practising in the legal profession** (as distinct from corporate or government work) could be misplaced. However, in postgraduate study (such as JDs or PLT), the use of clinical legal education to concurrently develop knowledge and skills may prove a valuable means to expedite courses while still maintaining quality.¹⁶⁰

The Productivity Commission therefore suggested a 'tiered approach to legal education, where the law degree is a generalist one and instead the postgraduate and PLT requirements could be strengthened for those intending to practice.¹⁶¹ Steel also suggests that, once students enter their post-admission supervised practice, they could be required to undertake ongoing part-time study at specialised colleges; for example, in criminal practice, family practice or commercial practice. The consequence would be that the required doctrinal learning in the law degree is greatly reduced to a general overview of law, in a manner similar to that in current business degrees, which also better accommodates students who do not wish to enter legal practice on degree completion.¹⁶²

157 Ibid 6.

158 H W Arthurs, 'The Future of Law School: Three Visions and a Prediction' (2014) 51(4) *Alberta Law Review* 705, 706-7.

159 Productivity Commission, *Access to Justice Report* (n 6) 254, Recommendation 7.1.

160 Ibid 249, 252.

161 Ibid 252.

162 Alex Steel, 'Reflections on Approaches to Drafting Regulatory Standards: Finding Ways to Quicken, Not Deadend, the Spirit of Legal Education' in Kevin Lindgren, François Kunc and Michael Coper, *The Future of Australian Legal Education* (Thomson Reuters, 2018) 99, 112.

Finally, it should be noted here that it is now well-understood, if not also accepted by the profession, that a significant percentage of law graduates go on to work in diverse roles outside of traditional (private) professional practice, in both legal and non-legal employment. The professionally accredited degree, regulated also under the HESF, must accommodate the aspirations those students have for workforce readiness and employability.¹⁶³

2.5.4 The number of law graduates and graduate destinations

Related to the issue of whether law schools are producing ‘practice-ready’ graduates are persistent claims of an oversupply of law graduates.¹⁶⁴ In response, many scholars and commentators point to the great diversity in law graduate destinations and employment in a variety of fields and roles, and have called for the profession to have less influence in determining legal education curriculum as a consequence.¹⁶⁵ Unfortunately, there is no recent longitudinal data collection, tracking or analyses of law student and graduate intentions or destinations nationally.¹⁶⁶ In 2017, Thornton stated that ‘[l]ess than 50 per cent of law graduates embark on a career in private law firms.’¹⁶⁷ Melville observed a steady decline in law graduates entering professional practice in 2014, with only 55.3% of law graduates in full-time employment in private legal practice within four months of graduation, compared with 67.8% in 1999.¹⁶⁸

While evidence tends to show that many law graduates do not enter private legal practice, existing data are limited by their focus on whether and where students are employed, rather than their intended careers when making the decision to study law.¹⁶⁹ There is a pressing need to develop an evidence base to inform our understanding of students’ intentions on the commencement of legal studies, whether and how these might change over time on the path to graduation and, then, what happens to professional aspirations once in employment. The latter is of further and particular importance, given the high rates of attrition from the profession within three to five years post-admission. Research is also required to establish

163 Kift, Israel and Field, *LLB TLOs* (n 71) 8.

164 See, for example, Law Society of Western Australia, *Future Legal Profession* (n 18); Tom McIlroy, ‘Too Many Kids Are Doing Law’: Malcolm Turnbull Warns Against Law Degrees’, *Australian Financial Review* (online, 2 February 2018) <<https://www.afr.com/politics/too-many-kids-are-doing-law-malcolm-turnbull-warns-against-law-degrees-20180202-h0sc6h>>; Emma Ryan, ‘Universities Must Be ‘Held Accountable’ for Law Grad Oversupply’, *Lawyers Weekly* (online, 13 February 2018) <<https://www.lawyersweekly.com.au/sme-law/22737-universities-must-be-held-accountable-for-law-grad-oversupply>>; Emma Ryan, ‘Frustration Grows Over Unis ‘Cashing In’ on Law Grad Oversupply’, *Lawyers Weekly* (online, 19 February 2018) <<https://www.lawyersweekly.com.au/sme-law/22768-frustration-grows-over-unis-cashing-in-on-law-grad-oversupply>>.

165 For example, Olivia Rundle and Lynden Griggs, ‘Law Schools and the Burden of Bureaucracy: Release the Yoke (A Plea from the Coalface). Part 1: Over-regulation in Australia’ (2019) 93 *Australian Law Journal* 389, 392-3; Simon Rice, ‘Why Prescriptive Legal Education Demands Critical Perspectives’ in Kevin Lindgren, François Kunc and Michael Coper, *The Future of Australian Legal Education* (Thomson Reuters, 2018) 217; Margaret Thornton, ‘Dreaming of Diversity in Legal Education’ in Ron Levy et al (eds), *New Directions for Law in Australia: Essays in Contemporary Law Reform* (ANU Press, 2017) 549 (‘Dreaming of Diversity’).

166 No comprehensive national studies on law graduate career destinations have been conducted since work in the late 1990s and early 2000s. See for example, Christopher Roper, *Career Intentions of Australian Law Students* (Report, Centre for Legal Education, April 1995); Maria Karras and Christopher Roper, *The Career Destinations of Australian Law Graduates: First Report of a Five-year Study* (University of Newcastle, 2000); Sumitra Vignaendra, *Australian Law Graduates Career Destinations* (Report, Commonwealth, 1998).

167 Thornton, ‘Dreaming of Diversity’ (n 165) 554 citing a 2010 survey by Graduate Careers Australia that revealed that only 43.7% of graduates started work in law firms.

168 Angela Melville, ‘Is it the Worst Time in Living History to be a Law Graduate; Or is it? Does Australia Have Too Many Law Graduates?’ (2017) 51(2) *The Law Teacher* 203 citing Graduate Destinations Survey, *Gradstats Reports 1999-2014* (Report, 2014).

169 Ibid 221.

whether law graduates who do not enter the legal profession on graduation do so by choice or due to limited employment opportunities.

The NSW Law Society's *Future Prospects of Law Graduates* Report in 2016 called for 'empirical rigour in scoping what was happening to law students after they graduated', identifying the need for better data collection on graduate numbers and employment trends and arguing for closer links between the profession and universities so that relevant information about job prospects could be provided to graduates.¹⁷⁰ The NSW Law Society Report noted that graduate employment and summer clerkship programs were now hosted on the Law Society's *LegalVitae* portal, which enabled data collection for participating employers and students/graduates. The Society Report found that, in 2016: 11,688 applications were received from students for the Summer Clerkship Program, with a total of 825 offers made and a 22% acceptance rate from first-round offers; while 2,732 applications were received for the graduate employment program, with a total of 55 offers made and a 35% acceptance rate from first-round interviews. CALD has published two factsheets to address claims of graduate over-supply, providing evidence that the numbers of law graduates are lower than those often cited in the media.¹⁷¹ CALD's most recent factsheet on graduate numbers and outcomes records that 75% of law school graduates available for employment were employed within four months of graduation in 2017, a strong performance compared to many disciplines and the national average, though not all law graduates were necessarily employed in the legal profession.¹⁷²

Similarly to CALD's reporting of 2017 statistics, when regard is had to the most recent available national data, it is clear that law graduate outcomes continue to hold up well compared to other fields of education, though the gap between male and female salaries is one of the highest across all disciplines. The latest Australian Graduate Outcomes Survey data published in October 2021, which records short-term graduate employment at approximately four to six months after finishing study, show that for law and paralegal studies:

- Rates of undergraduate full-time employment were above those for all disciplines: for 2020 at 75.7% (all disciplines 68.7%), for 2021 (including COVID-19 impact) at 72.5% (all disciplines 68.9%).
- Rates for undergraduate overall employment were equivalent to those for all disciplines: for 2020 at 85.7% (all 85.1%), for 2021 84.3% (all 84.8%).
- Law and paralegal studies have one of the highest salary gaps between male and female graduates for undergraduate studies at \$4900.
- Rates of postgraduate law (including the JD) full-time employment were above those for all disciplines in 2020 but below those for 2021: for 2020 at 87% (all disciplines 85.6%), for 2021 (including COVID-19 impact) at 83% (all 84.9%). The gender wage gap at the postgraduate study level had virtually disappeared.

¹⁷⁰ NSW Law Society, *Future Prospects of Law Graduates* (Report, 2016) i, 1 <<https://www.lawsociety.com.au/sites/default/files/2018-04/Future%20prospects%20of%20Law%20Graduates.pdf>>.

¹⁷¹ Most recently, Council of Australian Law Deans, *2018 Data Regarding Law School Graduate Numbers and Outcomes* (Factsheet, 2019) <https://cald.asn.au/wp-content/uploads/2019/07/Updated-Factsheet-Law_Students_in_Australia-20-04-2019.pdf>.

¹⁷² Ibid.

- Undergraduate graduate satisfaction is higher than for all disciplines: for 2020 at 84% (all 80.7%), for 2021 at 80% (all 77.9%).
- Postgraduate graduate satisfaction is slightly less than for all disciplines: for 2020 at 78% (all 81.7%), in 2021 at 78% (all 79.8%).¹⁷³

The latest Graduate Outcomes-Long Survey ('GOS-Long') data was published in September 2021. The GOS-Long Survey records graduate outcomes for the short-term (approximately four–six months post-completion) and the medium-term (approximately three years post-completion). The latest 2021 data show that, when compared to all disciplines:

- Undergraduate law graduate full-time employment outcomes are higher than for all disciplines: short-term at 77.6% (all 74.3%); medium-term 93.5% (all 88.9%).
- Postgraduate law graduate full-time employment outcomes (including the JD) are slightly lower than for all disciplines: short-term at 87.2% (all 86.6%); medium-term 92.9% (all 93.3%).¹⁷⁴

As regards employment opportunities, the National Skills Commission's new dashboard – *Nowcast of Employment by Region and Occupation* – provides experimental data on the current employment by occupation in each region and nationally using an emerging technique known as 'nowcasting'. In October 2021, those data show healthy growth in lawyer employment:

- The National Employment of Solicitors as at August 2021 number 97,924, which is a positive 25% one-year change and a positive 29% five-year change.
- The National Employment of Barristers as at August 2021 number 10,588, which is a negative 1% one-year change and a positive 42% five-year change.¹⁷⁵

Without better data, it is difficult to resolve claims around law graduate numbers in any definitive way. Melville argues that the complaint of an 'oversupply of lawyers' is actually a reference to too many law graduates looking for lucrative employment in large corporate law firms.¹⁷⁶ In this regard, there is certainly evidence to suggest that Australia continues to have an access-to-justice gap around legal service provision for low socio-economic and disadvantaged populations and for Australians living in rural and remote areas.¹⁷⁷ The Productivity Commission has said there was 'strong, qualitative evidence to indicate that

173 Quality Indicators for Learning and Teaching, *2021 Graduate Outcomes Survey* (Report, October 2021) <[https://www.qilt.edu.au/surveys/graduate-outcomes-survey-\(gos\)#anchor-2](https://www.qilt.edu.au/surveys/graduate-outcomes-survey-(gos)#anchor-2)>.

174 Quality Indicators for Learning and Teaching, *2021 Graduate Outcomes Survey – Longitudinal* (Report, September 2021) <[https://www.qilt.edu.au/surveys/graduate-outcomes-survey---longitudinal-\(gos-l\)](https://www.qilt.edu.au/surveys/graduate-outcomes-survey---longitudinal-(gos-l))>.

175 National Skills Commission, 'Nowcast of Employment by Region and Occupation (NERO)' (Web Page) <<https://www.nationalskillscommission.gov.au/our-work/nero/nero-dashboard>>. See also Urbis, *2020 National Profile of Solicitors* (Report, 2020) <<https://www.lawsociety.com.au/sites/default/files/2021-07/2020%20National%20Profile%20of%20Solicitors%20-%20Final%20-%201%20July%202021.pdf>>.

176 Melville (n 168) 218-9.

177 See Law Council of Australia, *Justice Project* (Final Report, August 2018) <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/Justice%20Project%20_%20Final%20Report%20in%20full.pdf>. See also Law Council of Australia, *The Lawyer Project Report* (Report, September 2021) <<https://www.lawcouncil.asn.au/policy-agenda/access-to-justice/the-lawyer-project-report>>; Australian Pro Bono Centre, *14th Annual Performance Report of the National Pro Bono Target* (Report, September 2021) <<https://www.probonocentre.org.au/provide-pro-bono/target/>>.

there is unmet legal need in several different areas of law and amongst different groups of society',¹⁷⁸ but also observed that attempting to define, quantify and analyse unmet legal need in a consistent manner was difficult. It identified a number of practice areas that were under-serviced, in which limited licences were thought to be worthy of exploration, and also suggested that, in certain instances, it might be possible to increase lawyer assistance and accessibility by unbundling legal services' provision.¹⁷⁹

In the context of a dynamic labour market and the changing world of future work, as for all students in all disciplines, legal education at the *Academic Requirements* stage in particular should assure career development learning is integrated into course design to enable students and graduates to acquire the capabilities needed for lifelong career self-management. Such an approach also sets graduates up with the reflective capability more recent professional analyses urge is required for continuing professional competence. Bridgstock et al state that:

[c]areer development learning ... strengthens learners' capacity to navigate careers and the world of work, including how to obtain work and how to advance in careers. Career development learning emphasises the development of meta-level capabilities, as the focus is on decision-making and planning. It is involved with the development of processual capabilities, in terms of implementing the decisions that shape one's career ...¹⁸⁰

In terms of continuing student demand for law degrees, the impact of the recent rise in student contributions under the federal government's 2020 *Job Ready Graduates Package*¹⁸¹ still remains to be seen. The annual full-time student contribution for an undergraduate law degree rose from \$11,355 to \$14,500 from 1st January 2021, pricing a four-year degree for a student now at \$58,000. Early evidence suggests that the fee increase has not affected student demand, but the incentives and forces at play, both institutional and individual, and the available data, are difficult to tease apart at this relatively early stage (including for the reason that law is grouped with humanities, languages, social science, social work and psychology under the 'Society and culture' reporting category).

2.5.4.1 A generalist degree

Questions raised as to the number of students studying law and their graduate outcomes also lead to a discussion about the law degree being described more recently as a 'generalist' qualification, in spite of its necessarily strong vocational focus due to professional accreditation requirements (see generally [Section 1](#)). In its *Access to Justice Inquiry* report,

178 Productivity Commission, *Access to Justice Report* (n 6) 98. See also [Section 3.2.1](#).

179 Ibid.

180 Ruth Bridgstock, Michelle Grant-Iramu and Alan McAlpine, 'Integrating Career Development Learning into the Curriculum: Collaboration with the Careers Service for Employability' (2019) 10(1) *Journal of Teaching and Learning for Graduate Employability* 56, 57 <<https://doi.org/10.21153/jtlge2019vol10no1art785>>. See also Kift, 'A Virtuous Journey' (n 33); Kift, 'Employability and Higher Education' (n 33); Kift, 'Holistic Curriculum Design' (n 33).

181 The *Higher Education Support Amendment (Job-Ready Graduates and Supporting Regional and Remote Students) Act 2020* (Cth).

the Productivity Commission acknowledged that ‘not all graduates seek to work in the legal sector’¹⁸² and quoted from the Law Society of SA’s submission that ‘...a law degree has become a generalist degree, the ‘new arts degree’, and that not every law student aspires to practise law’.¹⁸³ The Productivity Commission also cited a similar observation from the (then) President of the Law Institute of Victoria, Geoff Bowyer, who said that:

... [t]he law degree is changing from being a career-specific to a broad degree ... Law degrees are seen in corporate and government as a good base for making good administrative people. Arts used to be seen as that generalist field. In a society where regulation is increasing, being able to [understand the law] is a skill.¹⁸⁴

Law degrees are marketed by many universities as being of broad application and employability value, not only teaching students the knowledge, skills and values required for professional practice but also equipping them with valuable 21st-century skills that are foundational for other graduate destinations. For example:

- The Melbourne University [website](#) for its JD program states that the ‘Melbourne JD equips you with the skills and knowledge to take a leading role in a range of careers including legal practice, business, government and community organisations.’
- The Australian National University [website](#) for the LLB(Hons) states that the ‘skills you gain through your degree — in research, analysis, argument, collaboration and communication — are in strong demand from employers, and are especially valuable for many different careers ... While around half of ANU Law graduates choose to practise law, many others use their LLB Hons degree as a foundation for careers in politics, journalism, public policy, global diplomacy, government, the arts, finance and business.’
- The Griffith University [website](#) for its law courses states that ‘[s]tudying law at Griffith will open up a range of careers within and beyond the legal sector’, listing careers such as solicitor, barrister, in courts and tribunals, government, consulting, public or professional services, banking and financial services and international law, and goes on to say that ‘[a]n increasing number of graduates use their degree to enter careers in sectors as diverse as politics, sports, diplomacy, health, the media and environmental protection.’
- The Bond University [website](#) for its law courses states that graduates ‘pursue legal careers in the public or private sector, as solicitors, barristers, government lawyers and in-house counsel’ and that ‘[l]egal qualifications are also an excellent foundation for high-level careers in a diverse range of related fields including finance, accounting, management consulting, human resources, politics, investment banking, advocacy, the police force and the criminal justice system.’
- The Flinders University [website](#) for its law courses states that graduates ‘have found fulfilling careers as lawyers, barristers, policy officers and analysts in a range of areas

¹⁸² Productivity Commission, *Access to Justice Report* (n 6) 246.

¹⁸³ *Ibid.*

¹⁸⁴ *Ibid.*

such as media, property, human rights, criminal, environmental, family and corporate. A law degree also opens the door to careers outside of the law including banking and finance, environmental protection and development, politics, marketing and communications and business management and leadership.’

There is an argument that law schools are able to exercise choice about the foci of their law degrees, and the general trend of reducing the number of subjects required in the core curriculum to satisfy the Priestley requirements may be some evidence of that. The reality seems to be, however, that there is little curricular ‘space’ available, for example, to explore public interest, legal theory, social justice, interdisciplinarity or other emerging areas, including technological competence, in any great detail due to Priestley’s dominance, its largely commercial orientation and a tendency to offer advanced elective subjects in Priestley-related areas.¹⁸⁵ Galloway et al have said that, while it is possible to ‘orient the curriculum in several directions using the core as a doctrinal starting point ... these innovations have occurred despite regulation, not because of it, and they are bounded by doctrinal imperatives’.¹⁸⁶ Kift similarly argues that pre-admission legal education has pursued an evidence-based approach of virtuous compliance and conscientious innovation to assure the contemporary relevance of its contribution to the LE&T continuum, in the absence of professional accreditation drivers.¹⁸⁷ In 2004, Keyes and Johnstone highlighted that one of the challenges for Australian law schools was ‘to rethink their relationship with the legal profession, to ensure that law schools assert their autonomy in matters of curriculum, teaching and learning and research’.¹⁸⁸ This challenge remains today given Priestley 11’s continued dominion, cementing the central purpose of legal education as training for private legal practice,¹⁸⁹ but without any reciprocal engagement from accrediting bodies and/or the profession to work constructively with the academy to identify where on the education continuum various elements of contemporary knowledge, skills and values might be best acquired. ‘Lawtech’ is a good example: not contemplated within the pre-admission requirements but demanded by inquiries such as the FLIP Commission. ‘While law schools interpret the lawtech learning outcomes in their own ways, there is little guidance either from the accrediting bodies or the profession as to what needs to be learned and why.’¹⁹⁰

On the other hand, it has been questioned whether the law degree conceived of as a ‘generalist’ qualification is adequate preparation for students who do not wish to enter the legal profession. By way of an example, in the context of teaching the curriculum flagship of legal ethics, Nicolae argues that the pedagogy of law degrees does not effectively satisfy the needs and demands of either those destined for legal practice or those who are not.¹⁹¹

185 Kate Galloway et al, ‘The Legal Academy’s Engagements with Lawtech: Technology Narratives and Archetypes as Drivers of Change’ (2019) 1(1) *Law, Technology and Humans* 27; Margaret Thornton, ‘The Challenge for Law Schools of Satisfying Multiple Masters’ (2020) 62(2) *Australian Universities’ Review* 5.

186 Kate Galloway et al (n 185) 30.

187 Kift, ‘A Virtuous Journey’ (n 33).

188 Mary Keyes and Richard Johnstone, ‘Changing Legal Education: Rhetoric, Reality, and Prospects for the Future’ (2004) 26(4) *Sydney Law Review* 537, 538.

189 Ibid 557.

190 Kate Galloway et al (n 185) 30.

191 Nicolae (n 70).

The recent AQF Review identified that ‘ethical decision making’ is a foundational ‘general capability’,¹⁹² which suggests that (legal) ethics taught and learnt as a cross-cutting domain of knowledge, skills and values, should be of useful and transferable application beyond the law. Though there have been more recent enhancements, the practice for too many years has been to teach ethics and professional responsibility by focusing on the professional conduct rules rather than on the broader concepts of ethics, integrity, justice and morality. Such an approach serves neither the law nor the generalist student well; Nicolae observes that it is particularly unhelpful for law graduates destined for non-legal careers, who also do not benefit from the ethics-in-action PLT focus that seeks to inculcate ethical habits in legal practice.¹⁹³

Our law schools are responsible for providing the requisite skills and knowledge so that their graduates can successfully obtain and maintain a useful position within the practising profession, if that is their ambition.

(Source: John McKenzie, ‘Legal Ethics – What Are They Today?’ (Discussion Paper, Office of the Legal Services Commissioner, 16 February 2017) 3)

Finally, it should be observed that the student is not a passive consumer of legal education in this context: students exercise agentic choice for individualised notions of successful graduate outcomes. As McKenzie has said, ‘[o]ur law schools are responsible for providing the requisite skills and knowledge so that their graduates can successfully obtain and maintain a useful position within the practising profession, *if that is their ambition*’.¹⁹⁴ Supporting student agency in this regard further underscores the necessity for career exploration and self-management skills to be embedded in core law curriculum to support career decision making, identity formation and the adoption of adaptive career behaviours to ensure that the lifelong ‘learner-earner’ has the capability to navigate the demands of up- and re-skilling for desired employment outcomes and job satisfaction.

¹⁹² Peter Noonan et al, *Review of the Australian Qualifications Framework* (Final Report, 2019) <<https://www.dese.gov.au/reviews-and-consultations/australian-qualifications-framework-review>>.

¹⁹³ Nicolae (n 70) 241.

¹⁹⁴ See John McKenzie, ‘Legal Ethics – What Are They Today?’ (Discussion Paper, Office of the Legal Services Commissioner, 16 February 2017) 3 (emphasis added).

2.6 The changing context for and professionalism of Australian legal education: Key foci

Writing in the context of US legal education, Horn and Pistone claimed in 2016 that ‘law schools are in crisis’,¹⁹⁵ citing a decline in applications and the contraction of graduate employment outcomes, the latter attributed to technological disruption of the legal services’ business model. Horn and Pistone challenged US law schools’ long-standing value proposition, exhorting a shift from a ‘learn-to-think to a learn-to-think-and-to-practice’ model,¹⁹⁶ and calling out the signature pedagogies that had for so long been the backbone of US legal education. Specifically, issue was taken with the common use of one summative (to be compared with formative) assessment by way of final exam; the lack of constant feedback to support learning; the slow adoption of a learning outcomes approach; failure to engage with new methods of assessment (*for* and *of* learning); the limited utilisation of blended/online learning and modularisation; and the minimal amount of practical training.

In a similar vein, writing in Canada for the Law Society of Alberta in 2020, Furlong said:

It is trite to observe that the state of legal education is deeply dissatisfying to the legal profession in most jurisdictions worldwide. The disconnect between law school curricula and lawyers’ practical knowledge needs, the longstanding misalignment of professional development priorities between the academy and the bar, the ten-fold increase in law school tuition over the past two decades, the consequent heavy burden of post-graduate law student debt, and the increasing number of law school graduates who cannot find work as lawyers, are just some of the problems plaguing legal education in Canada and elsewhere.¹⁹⁷

In 2020 in the UK context, Grimes has argued for the development of a “‘Teaching for Learning’ Framework’ that articulates course learning outcomes, assures their constructive alignment across the individual subjects of the degree via the mapping of learning, teaching and assessment approaches, and provides, in the process, opportunities in the curriculum for students to apply knowledge, skills and values. Grimes states:

This demand is not mine alone. It features in almost every review we have had of legal education over the past 50 years and is perhaps best expressed in the MacCrate report. Coupled with aligned assessment, detailed and constructive feedback and consistency in approach ... a framework is starting to form. Add systems for monitoring the quality of both teaching and assessment (as well as any other relevant aspects of the academy’s work such as research and publications) and the framework is complete ...¹⁹⁸

195 Michael B Horn and Michele R Pistone, *Disrupting Law School: How Disruptive Innovation Will Revolutionize the Legal World* (Report, 2016) 2 <<http://www.christenseninstitute.org/wp-content/uploads/2016/03/Disrupting-law-school.pdf>>.

196 Ibid 15.

197 *Furlong Report* (n 42) 13-14 (internal footnotes omitted).

198 See Richard Grimes, ‘Making and Managing Change in Legal Education: Yesterday, Today and Tomorrow’ (2020) 7(2) *Asian Journal of Legal Education* 178, 183.

While it is no particular cause for current or future complacency, and accepting that much iterative improvement work will always remain to be done, especially in assessment practice, in many respects, Australian LE&T has already embraced the pedagogical imperatives internationally exhorted. It has done so via a sustained enhancement focus over recent decades, which will be discussed further below (*Section 2.7*). For example, and as regards the ‘learn-to-practice’ dimension specifically, since the late 1990s,¹⁹⁹ Australian law schools have engaged in intentional, pre-PLT, curriculum design to embed and develop ‘graduate attributes’,²⁰⁰ and employability skills as a ‘subset’ of them,²⁰¹ in integrated and incremental curricular approaches that have evolved in maturity over the decades since. Since 2012, the HESF, against which TEQSA regulates nationally, has mandated a learning outcomes approach for assurance of graduate learning in all disciplines. The regulatory requirements of the AQF validate the early graduate attributes/employability skills focus and now oblige the development of those skills across law degrees (and all degrees) in quality-assured ways to requisite qualification level standards. The TLOs and the CALD *Australian Law School Standards* embrace and reinforce these requirements (for the knowledge acquisition of prescribed *Academic Requirements*, but also for ethics and professional responsibility, thinking skills, legal research skills, communication and collaboration skills and self-management capabilities).

As discussed in *Section 1.4*, the Australian law school graduate who wishes to practise is further required to do a PLT course that: delivers the essential learning outcomes of an AQF level 8 qualification; and is regulated against the LACC *PLT Competency Standards*, LACC’s *Uniform Standards for PLT Courses and Providers* and the LACC *Standards for PLT Workplace Experience*. For the aspiring practitioner, the professionally accredited PLT course explicitly builds on the law degree’s initial acquisition of knowledge, skills and values to an accumulated and endorsed standard of articulated ‘entry-level’ competence, providing practice-based context to law school foundational training as set out in the *PLT Competency Standards*. It is in this way, working within the professional requirements as now bolstered by HE’s regulatory regime, that pre-admission LE&T in Australia has delivered graduates with the knowledge, skills and values that the profession, through its accrediting authorities, has said it requires of them, and in so doing, attending also to many of the critiques and calls for pedagogical reform that international legal educators and commentators have made.

This section will now consider four specific and more recent enhancements to pre-admission LE&T currently being progressed in Australian law schools that, similar to the early move to embed graduate attributes in the late 1990s, are not mandated by the existing regulatory

199 Sally Kift, ‘Lawyering Skills: Finding Their Place in Legal Education’ (1997) 8 *Legal Education Review* 43; Sharon Christensen and Sally Kift, ‘Graduate Attributes and Legal Skills’ (2000) 11 *Legal Education Review* 20; Sally Kift, ‘21st Century Climate for Change: Curriculum Design for Quality Learning Engagement in Law’ (2008) 18 *Legal Education Review* 1; Beverley Oliver, ‘Graduate Attributes as a Focus for Institution-wide Curriculum Renewal: Innovations and Challenges’ (2013) 32 *Higher Education Research & Development* 450-63; Beverley Oliver and Trina Jorre de St Jorre, ‘Graduate Attributes for 2020 and Beyond: Recommendations for Australian Higher Education Providers’ (2018) 37(4) *Higher Education Research & Development* 821-836.

200 See, for example, J Bowden et al, *Generic Capabilities of ATN University Graduates* (Department of Education, Training and Youth Affairs (Cth), 2000): Graduate attributes are the ‘qualities, skills and understandings a university community agrees its students should develop during their time with the institution. These attributes include but go beyond the disciplinary expertise or technical knowledge that has traditionally formed the core of most university courses. They are qualities that also prepare graduates as agents of social good in an unknown future’.

201 Precision Consultancy, *Graduate Employability Skills* (Report, August 2007) 2 <<http://apo.org.au/node/1505>>.

requirements but have been embraced because they are good practice, intrinsically important and considered of value to contemporary Australian legal practice. These are: Indigenous cultural competency and the profession's commitment to First Nations justice; technological change; clinical legal education and training; and attention to mental health and well-being. This section will then conclude by turning to address evidence of the quality of learning, teaching and assessment approaches in the Australian legal academy more broadly.

2.6.1 Indigenous cultural competency and professional commitment to First Nations justice

As discussed in [Section 2.2.2](#), in 2021, the majority of Australians support the call by Australia's First Nations peoples to enshrine a First Nations Voice to Parliament in the Australian Constitution, as set out in the Uluru Statement from the Heart, and agree also with the establishment of a Makarrata Commission to supervise the processes of agreement-making and truth-telling.²⁰² Acknowledging that 'our "justice system" has often done a great disservice to the original inhabitants of this land', as the President of the LCA has recently stated,²⁰³ it is only right that the law, legal educators and the legal profession should assume a particular responsibility to work in partnership with First Nations peoples for 'deep and abiding structural change ... in order to redress the historical exclusion of, and continuing injustices to First Peoples and their laws, knowledges and sovereignties occasioned by colonisation in the country now known as Australia'.²⁰⁴

202 Reconciliation Australia, *2020 Australian Reconciliation Barometer* (Report, 2020) 7 <<https://www.reconciliation.org.au/publication/australian-reconciliation-barometer-2020/>>, '81% of the general community (77% in 2018) [and] 88% of Aboriginal and Torres Strait Islander people (86% in 2018) believe it is important to protect an Indigenous Body within the Constitution, so it can't be removed by any government.' Reconciliation Australia, 13: '89% of the general community and 93% of Aboriginal and Torres Strait Islander people believe it is important to undertake formal truth-telling processes in relation to Australia's shared history'. See also Jacob Deem, A J Brown and Susan Bird, 'Most Australians Support First Nations Voice to Parliament: Survey' *The Conversation* (online, 9 April 2021) <<https://theconversation.com/most-australians-support-first-nations-voice-to-parliament-survey-157964>>. *Uluru Statement from the Heart* (n 38).

203 Jacoba Brasch, 'The Intersection between Indigenous Cultures and Australian Legal Custom: Embracing Different Ways of Doing Justice' (Speech, Sunshine Coast Bar Association's Professional Development Day, 28 August 2021) 2 <<https://www.lawcouncil.asn.au/media/speeches/the-intersection-between-indigenous-cultures-and-australian-legal-custom-embracing-different-ways-of-doing-justice>>. See also Law Council of Australia, 'Indigenous Legal Issues Committee' (Web Page) <<https://www.lawcouncil.asn.au/about-us/advisory-committees/indigenous-legal-issues-committee>> and its significant recent advocacy work on 'Indigenous Legal Issues' captured at <<https://www.lawcouncil.asn.au/tags/indigenous-legal-issues>>.

204 Council of Australian Law Deans, 'Working Party on First Peoples Partnerships' (Terms of Reference, 2020) 1 <<https://cald.asn.au/wp-content/uploads/2020/12/Terms-of-Reference-Working-Party-on-First-Peoples-Partnership-3-Dec-2020.pdf>>. See also, Expert Panel on Constitutional Recognition of Indigenous Australians, *Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution: Report of the Expert Panel* (Report, January 2012) xi <<https://ulurustatement.org/resources>>. The Expert Panel on Constitutional Recognition of Indigenous Australians 'examined the history of the Australian Constitution and law and policy relating to Aboriginal and Torres Strait Islander peoples since Federation in order to fully address its terms of reference'. The Panel catalogued many of the historical injustices to First Nations peoples in its report, which included: dispossession of un-ceded lands, racial discrimination and entrenched disadvantage, separation of children from their families, stolen wages, denial of human rights, overrepresentation in incarceration rates and deaths in custody, lack of Constitutional recognition and failure to recognise and protect Indigenous law and customs.

“The human rights of Aboriginal and Torres Strait Islander peoples continue to be undermined in this country through socioeconomic disadvantage, poorer health and education outcomes, and alarming rates of incarceration and child removals, as well as the destruction of their cultural heritage,” [Law Council of Australia President] Dr Brasch said.

“The discrimination and intergenerational trauma that Aboriginal and Torres Strait Islander peoples face on a day-to-day basis cannot be alleviated unless and until their rightful place in this country is recognised and the legacy of colonialism confronted. The legal and justice system has played an undeniable part in this history of colonisation, discrimination and trauma.”

(Source: Law Council of Australia, ‘Time to enshrine a First Nations Voice to Parliament’ (Web Page) 10 December 2021)

When it comes to educational attainment, the disparity in HE access, participation and completion rates between First Nations and non-First Nations students across all disciplines is stark.²⁰⁵ In 2020, the Australian Government announced the *National Agreement on Closing the Gap*, an agreement between the Coalition of Aboriginal and Torres Strait Islander Peak Organisations and all Australian Governments, which aims to increase the proportion of First Nations peoples aged 25–34 years who have completed a tertiary qualification (Certificate III and above) to 70% by 2031.²⁰⁶ For legal education, accurate and comprehensive data collection has been problematic. Although there has been a steady growth in the number of First Nations law students, data show that participation and completion rates remain below population parity and that attrition rates remain high. Burns reported that, out of the 1230 First Nations students who commenced LLB programs between 2003 and 2012, only one-third completed their degree.²⁰⁷ In 2018, Hobbs and Williams reported on a survey of Australian law schools that investigated First Nations enrolments and graduations between 2001 and 2017 and found that more First Nations students are enrolling in and completing law degrees.

Only 21 Indigenous Australians had graduated with an LLB degree prior to 1990. Between 1991 and 2000 this number rose to 118. Since 2001, at least 605 Indigenous Australians have completed an LLB or JD. Graduation numbers still lag behind population parity, but this increase is considerable. Overall, at least 740 Indigenous Australians have completed an LLB or JD from an Australian law school. This figure will rapidly increase given that 702 Indigenous law students are currently enrolled in Australia.²⁰⁸

205 Fiona Shalley et al, *Understanding Completion Rates of Indigenous Higher Education Students from Two Regional Universities: A Cohort Analysis* (Report, 2019) <<https://www.ncsehe.edu.au/publications/completion-indigenous-higher-education-regional-universities/>>.

206 Commonwealth, *National Agreement on Closing the Gap* (Agreement, July 2020) 22 <<https://www.closingthegap.gov.au/sites/default/files/files/national-agreement-ctg.pdf>>. The *National Agreement* also commits a small amount (\$7.6 million over three years) for a ‘Justice Policy Partnership’ aimed at identifying ways in which to achieve justice targets.

207 Marcelle Burns, ‘Are We There Yet: Indigenous Cultural Competency in Legal Education’ (2018) 28(1) *Legal Education Review* 1, 2 citing Australian Government, *Completion Rates of Aboriginal and Torres Strait Islander Students in Law 2003-2012*.

208 Harry Hobbs and George Williams, ‘The Participation of Indigenous Australians in Legal Education, 2001-18’ (2019) 42(4) *UNSW Law Journal* 1294, 1326. Hobbs and Williams note that, given the absence of data from five law schools, the actual number of First Nations students undertaking an LLB or JD in Australia is more likely to be over 800.

Data also show underrepresentation of First Nations peoples in the legal profession and the legal academy. Since 2014, the percentage of First Nations solicitors has not changed significantly and remains at 0.8%.²⁰⁹ It has been recorded that there is a 'dearth' of First Nations legal academics, somewhat accounted for by the small number of First Nations graduates with a PhD in law (only nine completions between 2001 and 2017 and only 17 enrolled in 2018).²¹⁰

Research has highlighted the critical need to advance the embedding of Indigenous cultural competency (**ICC**) in sector curricula in general,²¹¹ and in legal education for entry-level lawyer competence specifically.²¹² Understanding ICC is critical for Australian legal professionals because evidence has shown that First Nations peoples are reluctant to rely on mainstream legal services due to perceptions of cultural inappropriateness and prior experiences of racism and discrimination.²¹³ In this context, Burns says that attaining ICC in law school can address two core issues: firstly, it can improve First Nations student outcomes; and, secondly, it can also improve legal services delivery to First Nations communities.²¹⁴ However, progress towards the inclusion of ICC in law curricula has been slow²¹⁵ and challenges to embedding Indigenous contexts remain.²¹⁶

In 2012, Behrendt et al, in the seminal *Review of Higher Education Access and Outcomes for Aboriginal and Torres Strait Islander People*, recommended that '... universities continue to develop and implement a range of strategies to improve the cultural understanding and awareness of staff, students and researchers within their institution, including the provision

209 Jerome Doraisamy, 'Increasing Indigenous Representation in Australia's Legal Profession', *Lawyers Weekly* (online, 22 July 2021) <<https://www.lawyersweekly.com.au/biglaw/32007-increasing-indigenous-representation-in-australia-s-legal-profession>>. The *FLIP Report* (n 1) 89 recorded that 'People of Aboriginal and Torres Strait Islander descent comprise approximately 3 per cent of the Australian population, yet as at October 2015, just 425 solicitors in New South Wales (or just 1.5 per cent of the profession) identified as Indigenous Australians'. See also Ngalaya Indigenous Corporation, 'First Nations Lawyers in NSW and Australia' (Web Page) <<https://www.ngalaya.org.au/about/first-nations-lawyers/>>: 'In 2020 there were 632 practicing Indigenous lawyers in Australia. That is 0.8% of the practicing profession. 376 (59%) of those were practicing in NSW, where they make up 1.1% of the profession.'

210 Hobbs and George Williams (n 208) 1325: 'the situation at the postgraduate level is concerning. Between 2001 and 2017, only nine Indigenous Australians completed a PhD in law at an Australian law school, and only 17 are currently undertaking a PhD. It has become increasingly rare for legal academics to be appointed without holding a PhD. As a result, these figures help explain the dearth of Indigenous legal academics, and also suggest that their absence will not be rectified quickly'. The authors go on to record at 1324: 'although our data is incomplete, it is clear that the number of Indigenous academics is very low. Moreover, the Indigenous staff that do exist are not spread widely across institutions. Only twelve of the 25 schools that responded to this question reported that they employed Indigenous Australians in either academic or professional roles. The dearth of Indigenous academics has negative consequences for students. Teachers can exacerbate or ease Indigenous students' sense of cultural alienation and isolation'.

211 See Commonwealth, *Review of Higher Education Access and Outcomes for Aboriginal and Torres Strait Islander People* (Final Report, July 2012); Universities Australia, *Guiding Principles for Developing Indigenous Cultural Competency in Australian Universities* (Report, October 2011) ('*Guiding Principles for Indigenous Cultural Competency*') <<https://www.universitiesaustralia.edu.au/wp-content/uploads/2019/06/Guiding-Principles-for-Developing-Indigenous-Cultural-Competency-in-Australian-Universities.pdf>>.

212 Burns (n 207) 2. Many law firms, legal organisations and professional associations also recognise the need for professional cultural competency in legal practice: see, for example: DLA Piper, *DLA Piper Reconciliation Action Plan* (Plan, July 2019–July 2022) <https://www.dlapiper.com/~/_media/files/about/dlaaus026-reconciliation-action-plan-brochure--version-2-v5.pdf?la=en&hash=16187FF2D58EB6AE390A23E6B49EEFFDA5BB4D15>; Law Society of NSW, *Indigenous Reconciliation Strategic Plan 2019–2022* (Plan, 2019–2022) <<https://www.lawsociety.com.au/about-us/Law-Society-Initiatives/indigenous-issues/reconciliation-strategic-plan>>.

213 Burns (n 207) 3.

214 *Ibid* 2.

215 *Ibid* 3.

216 Kate Galloway, 'Indigenous Contexts in the Law Curriculum: Process and Structure' (2018) 28(2) *Legal Education Review* 1.

of cultural competency training'.²¹⁷ Over 2011 and just prior to the Behrendt Report's release, Universities Australia (UA) worked collaboratively with the Indigenous Higher Education Advisory Council to develop the *Guiding Principles for Developing Indigenous Cultural Competency in Australian Universities*.²¹⁸ The *Guiding Principles* make a number of recommendations in terms of learning and teaching, including, for example:

- 'Include Indigenous knowledge and perspectives in all curricula to provide students with the knowledge, skills and understandings which form the foundations of Indigenous cultural competency.'²¹⁹
- 'Embed Indigenous cultural competency as a formal Graduate Attribute or Quality.'²²⁰
- 'Train teaching staff in Indigenous pedagogy for teaching Indigenous Studies and students effectively, including developing appropriate content and learning resources, teaching strategies and assessment methods.'²²¹

In its *Indigenous Strategy 2017–2020*, UA committed to all universities having 'processes that ensure all students will encounter and engage with Aboriginal and Torres Strait Islander cultural content as integral parts of their course of study'.²²² (UA is currently developing the next iteration of the *Strategy* for 2021–2024.) In a regular insight into Australian HE's commitment to and progress on including First Nations cultural content in university curricula, UA reports annually against the *Indigenous Strategy 2017–2020*.²²³ In its last annual report, UA recorded that only 18 out of 39 universities stated that First Nations viewpoints were being considered and incorporated when designing education at their institution.²²⁴ To ensure that internal course accreditation processes incorporate Indigenous consultation and input into curriculum development, UA recently published *Good Practice Principles for Course Accreditation and Review of Indigenous Curriculum* in November 2019.²²⁵ The *Good Practice Principles* are expected to assist universities in meeting their obligations under the HESF,²²⁶ and direct specific attention to integrating ICC, for example: by recommending the inclusion of an Indigenous graduate attribute (as did the *Guiding Principles for Developing Indigenous Cultural Competency*); and assuring the formal assessment of Indigenous knowledge set out in learning outcomes.²²⁷

217 Larissa Behrendt et al, *Review of Higher Education Access and Outcomes for Aboriginal and Torres Strait Islander People* (Final Report, July 2012) Recommendation 32 <<https://www.dese.gov.au/higher-education-publications/resources/review-higher-education-access-and-outcomes-aboriginal-and-torres-strait-islander-people>>.

218 See Universities Australia, *Guiding Principles for Indigenous Cultural Competency* (n 211).

219 Ibid 30.

220 Ibid.

221 Ibid.

222 See Universities Australia, *Indigenous Strategy 2017-2020* (March 2017) 14.

223 Universities Australia, *Indigenous Strategy Annual Report* (Report, March 2021) 6 <https://www.universitiesaustralia.edu.au/wp-content/uploads/2021/06/Indigenous-Strategy-Annual-Report_Mar21_FINAL.pdf>.

224 Ibid 56.

225 Universities Australia, *Good Practice Principles for Course Accreditation and Review of Indigenous Curriculum* (November 2019) 1 <<https://www.universitiesaustralia.edu.au/wp-content/uploads/2019/12/20191203-Principles-for-Indigenous-course-accreditation-and-curriculum.pdf>>.

226 Ibid.

227 Ibid 3.

In 2019, a national OLT Project, *Indigenous Cultural Competency for Legal Academics Program (ICCLAP)*, reported on efforts to increase the inclusion of ICC in legal education, with a view both to improving Indigenous students' outcomes and enhancing ICC in all students.²²⁸ A survey conducted for the project found that very few law schools had incorporated ICC into their course design or graduate attributes. The ICCLAP has produced resources to promote the inclusion of ICC in legal education and made nine recommendations for practical measures to ensure that the aims of the project are implemented and sustained into the future.

In the context of thinking about professional competencies for the purpose of this report, it is noted that Burns et al in the ICCLAP project adopted UA's definition of ICC²²⁹ as follows:

Student and staff knowledge and understanding of Indigenous Australian cultures, histories and contemporary realities and awareness of Indigenous protocols, combined with the proficiency to engage and work effectively in Indigenous contexts congruent to the expectations of Indigenous Australian peoples. Cultural competence includes the ability to critically reflect on one's own culture and professional paradigms in order to understand its cultural limitations and effect positive change.²³⁰

Complementing the work of the ICCLAP project, the legal education literature also contains a number of good practice examples for embedding First Nations law, knowledge, content, context and/or perspectives in curricula. As regards 'Indigenising the curriculum of law courses', Maguire and Young warn against an 'add-on' approach to the incorporation of Indigenous content²³¹ and identified three overarching categories of Indigenous content to be embedded: Indigenous issues; Indigenous perspectives; and Indigenous law.²³² Meyers recommends incorporating Indigenous issues in early degree subjects to set the tone for the rest of the degree and to provide the foundational knowledge on which later-year subjects can build.²³³ Castan suggests that constitutional law teachers can provide opportunities for students to discuss the marginalisation of Indigenous Australians at key points in Australian history.²³⁴ Weir reports on incorporating Indigenous legal issues into the law curriculum by introducing a simulated negotiation exercise on a native title dispute, involving the Traditional Owners of the land, the state government, pastoralists, and a mining company.²³⁵ Stephenson et al's method of teaching students comparative Indigenous issues across four jurisdictions uses videoconferencing to expose students to Indigenous rights issues in Australia, New Zealand, the United States and Canada, broadening student understanding of comparative

228 Marcelle Burns et al, *Indigenous Cultural Competency for Legal Academics Program* (Report, 2019) <https://ltr.edu.au/resources/ID14-3906_Burns_FinalReport_2019.pdf>. See also the project website at <<http://www.icclap.edu.au/>>.

229 Universities Australia, *Guiding Principles for Indigenous Cultural Competency* (n 211) 3.

230 Burns et al (n 228) 35.

231 Amy Maguire and Tamara Young, 'Indigenisation of Curricula: Current Teaching Practices in Law' (2015) 25(1) *Legal Education Review* 95, 99.

232 Ibid 98.

233 Gary Meyers, 'Two Examples of Incorporating Indigenous Issues in Law School Curricula: Foundation Year Courses and Environmental/Natural Resource Law' (2006) 7(9) *Indigenous Law Bulletin* 6.

234 Melissa Castan, 'The Recognition of Indigenous Australians in the Teaching of Federal Constitutional Law' (2014) 7(2) *Journal of the Australasian Law Teachers Association* 1, 3.

235 Michael Weir, 'The Wytiga Negotiation: Native Title and Skills Training' (1996) 7 *Legal Education Review* 253, 253.

law in those jurisdictions and also facilitating their understanding of international law.²³⁶ Teaching in New Zealand, Jones suggests that embedding Indigenous perspectives allows students to critically reflect on law in action and to analyse existing laws and legal systems.²³⁷

Maguire and Young respectfully record that Indigenous law can vary significantly between different First Nations and that non-First Nations teachers are not qualified nor authorised to explain the nature and content of particular Indigenous law.²³⁸ They also urge that Indigenousising the law curriculum should be handled sensitively and care taken not to put First Nations students in the position of feeling that they need to speak as experts on behalf of all Indigenous peoples.²³⁹ In particular, teachers need to be mindful of First Nations students in situations where there is debate or discussion on Indigenous content with non-Indigenous students, as this can lead to further feelings of isolation and discouragement.²⁴⁰

The Priestly 11 *Academic Requirements* make no reference to Indigenous, First Nations or Aboriginal and/or Torres Strait Islander law, knowledge, content, context and/or perspectives. The 2019 redrafting of the Priestley exercise proposed one relevant reference in 'Property Law':

Understanding –

...

(b) the principles of [I]ndigenous Australian law that form the basis of Aboriginal and Torres Strait Islander claims to land;²⁴¹

The *PLT Competency Standards* make one mention of 'Indigenous' in Standard 5.10 'Lawyer's Skills' under 'Cross-cultural awareness': the 'Explanatory notes' for the 'Performance criteria' for Element 2 refer to 'difficulties of communication attributable to cultural differences' and state that this includes 'difficulties of communication encountered by Indigenous people'.²⁴²

The law TLOs commence the introductory discussion of the 'Nature and extent of Law and Legal Education' by stating that 'As a discipline, law is informed by many perspectives (including Indigenous perspectives) and is shaped by the broader contexts within which legal issues arise (for example, cultural, gender-related, ethical, moral, religious, political, social, historical, philosophical, and economic contexts)'.²⁴³ The Guidance Notes to TLO 1 also reference 'Indigenous perspectives' as one of the 'broader contexts within which legal issues arise'.²⁴⁴ Watson and Burns argue that this framing has the effect of preserving the dominance of the mainstream legal system because Indigenous perspectives are not expressed as a

236 Margaret Stephenson et al, 'International and Comparative Indigenous Rights via Videoconferencing' (2006) 19 *Legal Education Review* 237.

237 Carwyn Jones, 'Indigenous Legal Issues, Indigenous Perspectives and Indigenous Law in the New Zealand Law Curriculum' (2009) 19 *Legal Education Review* 257, 263.

238 Maguire and Young (n 231) 105.

239 Ibid 108.

240 Ibid 112-3.

241 Law Admissions Consultative Committee, 'Redrafting the Academic Requirements for Admission' (Discussion Paper, 2019) 9 <<https://www.legalservicescouncil.org.au/Documents/redrafting-the-academic-requirements-for-admission.pdf>>

242 Law Admissions Consultative Committee, *PLT Competency Standards* (n 69) 20.

243 Kift, Israel and Field, *LLB TLOs* (n 71) 8.

244 Ibid 12-13.

knowledge area.²⁴⁵ It is noted that, at the time the TLOs were negotiated with the broader disciplinary community in 2010, only the NT practitioner group²⁴⁶ and one legal clinic explicitly supported the inclusion of a specific TLO reference to Aboriginal and/or Torres Strait Islander law, knowledge, content, context and/or perspectives or to ICC. It was hoped at the time that the flexibility built into the drafting for the threshold level would allow more aspirational law schools to take the lead on ICC and other curricular initiatives. Eight years later, Burns takes this up, saying that, while the TLOs have been criticised for this ‘silence’

... the standards are broadly framed and therefore do not necessarily limit the inclusion of Indigenous knowledges and ICC. For example, TLO 1: Knowledge includes knowledge of the ‘broader context in which legal issues arise’, which the explanatory notes to the standards state may be extended to include ‘Indigenous perspectives’. There is also potential to include Indigenous knowledges and ICC in TLOs on Ethics and Professional Responsibility; Thinking Skills (including critical analysis); Research Skills; Communication and Collaboration (including the ability to effectively communication with legal and nonlegal audiences, and for appropriate communication to address the needs of the intended audience); Self-Management (which includes the ability to ‘reflect on and assess their own capabilities and performance’).²⁴⁷

Most recently, the revisions to the CALD *Australian Law School Standards* in 2020 led to the inclusion of an explicit additional area of curriculum content in Standard 2.3.3(a):

2.3.3 In particular, the curriculum seeks to develop:

(a) knowledge and understanding of

...

- Aboriginal and Torres Strait Islander perspectives on and intersections with the law;...²⁴⁸

Informing this Council of Australian Law Deans (CALD) Working Party on First Peoples Partnership is the organising principle that deep and abiding structural change must take place in Australian legal education with respect to the First Peoples. This change is necessary in order to redress the historical exclusion of, and continuing injustices to First Peoples and their laws, knowledges and sovereignties occasioned by colonisation in the country now known as Australia.

(Source: Council of Australian Law Deans, ‘Working Party on First Peoples Partnerships’ (Terms of Reference, 2020) 1)

²⁴⁵ See Galloway (n 216) 10 citing Irene Watson and Marcelle Burns, ‘Indigenous Knowledges: A Strategy for First Nations Peoples Engagement in Higher Education’ in Sally Varnham, Patty Kamvounias and Joan Squelch (eds), *Higher Education and the Law* (Federation Press, 2015) 41, 44.

²⁴⁶ At that time, the NT had already articulated ‘Indigenous Protocols for Lawyers’: see The Law Society of the Northern Territory, *Indigenous Protocols for Lawyers in the Northern Territory* (Protocol, 2004) <<https://lawsocietynt.asn.au/images/stories/documents/Indigenous-Protocols-for-Lawyers.pdf>>.

²⁴⁷ See Burns (n 207) 10.

²⁴⁸ Council of Australian Law Deans (CALD), *Australian Law School Standards with Guidance Notes* (Standards, 30 July 2020) (‘CALD Standards with Guidance Notes’) 17-18 <<https://cald.asn.au/wp-content/uploads/2020/07/Australian-Law-School-Standards-v1.3-30-Jul-2020.pdf>>.

The Explanatory Notes to the CALD *Standards* state that this means that curriculum design should foster ICC and that the Standard requires evidence to be shown of this. Reference is made in the Notes to the influence in the development of this addition to the Standard of both the 2012 Behrendt Report and the 2019 ICCLAP Report. Taken together with CALD's 2020 Statement on 'Australian Law's Systemic Discrimination and Structural Bias Against First Nations Peoples'²⁴⁹ and its 2020 formation of the CALD 'Working Party on First Peoples Partnerships',²⁵⁰ this recent amendment to the *Australian Law School Standards* has demonstrated CALD's commitment to working 'effectively, respectfully and in equitable partnership with First Nations peoples, congruent with their expectations and in accord with their free, prior and informed consent, for deep and abiding *structural* change in the Australian justice system'.²⁵¹ It would seem a logical next step that this assurance of ICC development be added to the pre-admission stage of LE&T as a competence to be acquired across the academic and practical training stages of lawyer formation. Entry-level ICC could then go on to be further developed for continuing competence post-admission, perhaps as the Law Society of Alberta has done with its 2020 introduction of a mandatory educational requirement for 'Indigenous Cultural Competency Education' (see [Section 4.5.2.3](#) below).

2.6.2 Legal education and training's responses to technological change

This section will canvass the LE&T curricular responses to disruption caused by technological change. Consideration of the impact of technology will be revisited in [Section 4.6.4](#) in the context of the regulatory imperative for entry-level and continuing professional technological competence, where options for competence statements are explored. While it is obviously important that the best of technological affordances be harnessed to enhance legal education design, delivery and the curation of authentic learning experiences, the vast literature on this legal education imperative is beyond the scope of this report to interrogate in any detail. Over the COVID-19 pivot to emergency remote teaching,²⁵² many initiatives have been embraced in online learning, teaching and assessment practices, some successfully and some less so, on which universities are now reflecting for ongoing improvement purposes.²⁵³ In LE&T specifically, there are numerous examples of transformative online learning environments both before and during the pandemic, particularly so for simulated practice.²⁵⁴

249 CALD, 'Australian Law's Systemic Discrimination and Structural Bias Against First Nations Peoples' (Statement, 3 December 2020) <<https://cald.asn.au/first-nations-peoples/>>.

250 CALD, 'Working Party on First Peoples Partnerships' (n 204).

251 Ibid.

252 Charles Hodges et al, 'The Difference Between Emergency Remote Teaching and Online Learning', *EDUCASE Review* (online, 27 March 2020) <<https://er.educause.edu/articles/2020/3/the-difference-between-emergency-remote-teaching-and-online-learning>>.

253 For example, see Kelly Matthews, Gwendolyn Lawrie and Nantana Taptamat, *Teaching Changes Due to COVID-19: UQ Survey Results and Case Studies* (Occasional Paper, Institute for Teaching and Learning Innovation, 1 May 2021) <<https://espace.library.uq.edu.au/view/UQ:294f1e7>>.

254 For example, Paul Maharg, 'Same as it Ever Was? Technocracy, Democracy and the Design of Discipline-Specific Digital Environments' in Catrina Denvir (ed), *Modernising Legal Education* (Cambridge University Press, 2020) 147; Aneka Ferguson and Elizabeth Lee, 'Desperately Seeking ... Relevant Assessment? A Case Study on the Potential for Using Online Simulated Group Based Learning to Create Sustainable Assessment Practices' (2012) 22(1) *Legal Education Review*. For innovative assessment practices in law over COVID-19, see Patrick Baughan, *Assessment and Feedback in Law: Case Studies from the Sector* (Report, December 2021) <<https://www.advance-he.ac.uk/news-and-views/assessment-and-feedback-law-case-studies-sector>>.

Although Susskind's view is that automation will continue to pervade more areas of legal practice and replace the need for lawyers in certain aspects as a consequence,²⁵⁵ it has also been suggested that there will be a concomitant and increasing need for lawyers with the ability to advise clients who are navigating transactions and making decisions involving technology.²⁵⁶ Susskind himself has more recently suggested that lawyer oversight of lawtech applications will always be required, as even routine tasks can give rise to complex legal questions.²⁵⁷ Thus, recurring themes in discussions of technological competence include reference to underpinning capabilities — 'a high premium on ethical standards, moral judgment and criticality' — to assure professional vigilance for timely responses to ethically ambiguous (and even illegal) applications of technology that impact citizens, and also for lawtech adoption in and for legal service provision.²⁵⁸ For example, Appleby et al emphasise the need to ensure future lawyers are capable of research and critical thinking and have strong analytical skills to build capability for mature and contextualised human judgment as machine-operated processes increase.²⁵⁹

In this vein, Bennett Moses argues that future legal professionals should remain appropriately sceptical about the advantages of new technologies,²⁶⁰ and suggests that particular scrutiny should be directed at the use of Artificial Intelligence (AI), which relies on datasets to generate predictions that can potentially produce results at odds with the purpose of the law. For example, she suggests that AI use in sentencing could perpetuate biases from pre-existing decisions, particularly based on correlative factors such as race or gender.²⁶¹ Similarly, Webb suggests that the need for ethical risk management expands with the increased adoption of legal services technology because legal analytics may embed, and effectively hide, biases drawn from existing patterns of human decision-making.²⁶² The Law Society of Western Australia goes further in its report on the *Future of the Legal Profession* and questions whether regulation should embrace an ethical obligation of lawyers not to blindly

255 For example, Richard Susskind, *The End of Lawyers?: Rethinking the Nature of Legal Services* (Oxford University Press, 2008); Richard Susskind, *Tomorrow's Lawyers: An Introduction to Your Future* (Oxford University Press, 2013); Richard Susskind and Daniel Susskind, *The Future of the Professions: How Technology Will Transform the Work of Human Experts* (Oxford University Press, 2015); Richard Susskind and Daniel Susskind, *The Future of the Professions: How Technology Will Transform the Work of Human Experts* (Oxford University Press, Updated ed, 2017).

256 Lyria Bennett Moses, 'The Need for Lawyers' in Kevin Lindgren, François Kunc and Michael Coper, *The Future of Australian Legal Education* (Thomson Reuters, 2018) 355, 363-4.

257 Neil Rose, 'Susskind: "Harder than Expected" to Reduce Legal Work to Lawyer-free Process', *Legal Futures* (Blog Post, 28 June 2021) <<https://www.legalfutures.co.uk/latest-news/susskind-harder-than-expected-to-reduce-legal-work-to-lawyer-free-process>>.

258 Kift, 'A Virtuous Journey' (n 33) 166-167; McKenzie (n 194) 5. For example, the Australian federal government implemented an automated debt assessment and recovery system in mid-2016, that became known as 'robo-debt', and levied many unlawful debts due to a number of errors and misjudgements in the system. See Terry Carney, 'Robo-debt Illegality: The Seven Veils of Failed Guarantees of the Rule of Law?' (2019) 44(1) *Alternative Law Journal* 4, 8-9: 'Machine learning decision-making systems are surely the way of the future. Properly designed and monitored, they offer a trifecta of greater accessibility, greater accuracy and responsiveness, and greater efficiency of administration. Poorly designed they risk abuse of procedural fairness, the rule of law, and accountability raising questions about how best to promote best practice, how to define fairness, and how to avoid unwarranted discrimination in their administration' (references omitted). In June 2021, the Federal Court approved the settlement of the robo-debt class action: Gordon Legal, 'Robodebt Frequently Asked Questions' (Web Page) <<https://gordonlegal.com.au/robodebt-class-action/robodebt-faqs/>>.

259 Gabrielle Appleby, Sean Brennan and Andrew Lynch, 'Keep Calm and Carry on: Why the Increasing Automation of Legal Services Should Deepen and Not Diminish Legal Education' in Kevin Lindgren, François Kunc and Michael Coper, *The Future of Australian Legal Education* (Thomson Reuters, 2018) 389, 399.

260 Bennett Moses (n 256) 372.

261 Lyria Bennett Moses, 'Artificial Intelligence in the Courts, Legal Academia and Legal Practice' (2017) 91 *Australian Law Journal* 561. See also Carney (n 258).

262 Julian Webb, 'Information Technology and the Future of Legal Education: A Provocation' (2019) 7(1) *Griffith Journal of Law and Human Dignity* 72.

accept the answers from AI across each of the regulatory stages of: admission requirements; professional conduct rules; and/or as part of a mandatory CPD framework.²⁶³ Galloway et al suggest that, while technology could help close the access-to-justice gap, it may also benefit the already privileged and cause further harms to vulnerable groups.²⁶⁴

While it might be tempting to simply ‘add a lawtech subject’ to deal with pre-admission technological competence, Goldsworthy argues that the Priestley 11 knowledge areas should be reconsidered in light of technological advancements and calls for lawyers to have a better understanding of how society, the economy, environment and governance practices are mediated by technology.²⁶⁵ Galloway also warns against siloed, one-off quick fixes because ongoing change will likely affect all substantive law areas.²⁶⁶ Instead, Galloway recommends a ‘whole-of-curriculum’ approach, so that legal education can develop digital literacies in law students. By embedding digital literacy skills in the law curriculum, law students will gain an understanding of law and legal processes in social contexts (which includes digital contexts), which is of benefit to law graduates irrespective of whether they are intending to enter the legal profession or not.²⁶⁷

In this context, and in response to the NSW Law Society’s *FLIP Report*, the University of NSW (**UNSW**) conducted a ‘mini-curriculum review’ on technology in the curriculum that offers one model for a whole-of-curriculum approach as Galloway has suggested,²⁶⁸ though a useful addition could also be to embed desirable, underlying digital literacy skills broadly conceived.²⁶⁹ As reported by Legg, the position adopted for the UNSW mini-review was that ‘[l]egal education should include opportunities to reflect on the ethical, legal and social implications of increasingly prevalent technologies.’²⁷⁰ The *UNSW Review Report* usefully canvasses the capabilities considered necessary for lawyer technological competence, as follows, and suggests that lawyers:

- Should understand technology sufficiently to be able to identify when it should be employed in any given situation as the most efficient option
- Do not need to have the skills themselves to create technological solutions, but rather need to be able to use the technological affordances available to them
- Need to be able to:
 - Comprehend the outputs of technology for its effective, efficient and critical use
 - Challenge and critique technology outputs; for example, looking for biases or reliance on incomplete data

263 Law Society of Western Australia, *Future Legal Profession* (n 18) 8.

264 Galloway et al (n 185) 38.

265 Goldsworthy (n 23) 263.

266 Kate Galloway, ‘A Rationale and Framework for Digital Literacies in Legal Education’ (2017) 27 *Legal Education Review* 117, 130.

267 Ibid.

268 Michael Legg, ‘UNSW Law Mini-Curriculum Review Report on Technology and the School Curriculum’ [2017] *University of New South Wales Law Research Series* 90 <<http://classic.austlii.edu.au/au/journals/UNSWLRS/2017/90.pdf>>.

269 For example, Department of Education, Skills and Employment (Cth), *Digital Literacy Skills* (n 34); Jisc (n 34). See also *Section 4.6.4*.

270 Legg (n 268) 8.

- Communicate with other professionals and understand cross-disciplinary expert advice (for example, data scientists) to assure their capability to comprehend and critique technological outputs
- Should be aware of the risks that accompany technology and the need for appropriate cyber security.²⁷¹

The *UNSW Review Report* commits to an ongoing enhancement approach and makes a number of specific recommendations for curriculum reform, including that:

- A new ‘cross-cutting [curriculum] theme’ be adopted (in addition to eight existing others) — ‘technological innovation and its impact on legal practice, law and society’ — to encourage all academic staff to consider how technology affects the content of their existing courses
- The law school offer a suite of technology electives, some new (for example: ‘Startup Law’; ‘Legal Practice, Ethics and Technology’; ‘Introduction to Coding/Introduction to Computer Programming’) and some existing (for example: Law Apps course ‘Designing Technology Solutions for Access to Justice’; ‘Financial Law and Regulation in the Age of FinTech’)
- Opportunities be offered for the development of new technology-related skills, including: Emotional Intelligence; Legal Project Management; Legal Analytics
- The law school work with students to continue to provide extra-curricular activities that develop skills and experience with technology and related areas (for example, the law hackathon).²⁷²

This conceptualisation is also useful because it provides a way through the fraught curriculum agitation about whether technological competence should include the lawyer’s ability to code.²⁷³ As Smith and Spencer argue, and as Legg posits above, lawyers work *with* the technologies rather than *create* them; though should an individual lawyer wish to become an ‘Accredited Legal Technologist’, as in Scotland for example, LE&T pathways to that specialisation should be available.²⁷⁴ These considerations remind us that, as ‘more knowledge and abilities become codified they can be mastered by machines, leaving [professional] workers to focus on more uniquely human skills [which are the hardest for machines to replicate]’; for example, skills and ‘[c]haracteristics [that] relate to the way we execute tasks, ... includ[ing] creativity, integrity, leadership, persistence, empathy, and attention to detail.’²⁷⁵

²⁷¹ Ibid 5-6.

²⁷² Ibid 10-17.

²⁷³ See, for example, Alexander Smith and Nigel Spencer, ‘Do Lawyers Need to Learn to Code: A Practitioner Perspective on the ‘Polytechnic’ Future of Legal Education’ in Catrina Denvir (ed), *Modernising Legal Education* (Cambridge University Press, 2020) 18; *FLIP Report* (n 1) 78; Zhiqiong June Wang, ‘Between Constancy and Change: Legal Practice and Legal Education in the Age of Technology’ (2019) 36(1) *Law in Context: A Socio-legal Journal* 64; Law Society of Scotland, ‘Legal Tech Meets Legal Education’ (online, 9 October 2019) <<https://www.lawscot.org.uk/news-and-events/law-society-news/legal-tech-meets-legal-education/>>.

²⁷⁴ Law Society of Scotland, ‘Accredited Legal Technologist’ (Web Page) <<https://www.lawscot.org.uk/members/career-growth/specialisms/areas-of-specialism/accredited-legal-technologist/>>. Legg (n 268) 6, similarly identified a third, technology-related graduate destination pathway for law students, in addition to the practice and non-law-careers pathways traditionally considered: ‘law-related occupation[s]...may include: entrepreneurs leading legal disruption, knowledge management counsel, legal solutions architects, legal data scientists, legal project managers, and commoditized legal service assistants.’

²⁷⁵ *AlphaBeta Report* (n 36) 8. See also, Gustein and Sviokla (n 36); Kift, ‘A Virtuous Journey’ (n 33) 166-167, referring to skills such as: emotional intelligence, interpersonal skills, human logic, creativity, inter-disciplinarity (and its enabler of collaboration skills), adaptability, resilience, design thinking, strategy, leadership, self-regulation and empathy); Goldsworthy (n 23) 251.

In this context, Goldsworthy argues that legal education should be updated to focus on producing graduates who can undertake work that only *human* lawyers can do, understanding that there are [presently] clear limitations to technological mastery where there is an ‘irreducible value of human beings’.²⁷⁶ In the context of legal ethics, McKenzie also suggests that other human abilities to be developed are the exercise of professional judgment in more complex legal matters, and the fostering of trust between clients and lawyers.²⁷⁷

For the purpose of a lawyer competence statement, it would seem clear that inclusion of some form of technological competence requirement across the regulatory continuum, from pre- to post-admission and for continuing competence, is now required (see [Section 4.6.4](#)).

2.6.3 Clinical Legal Education and experiential learning

Opportunities for law students to engage in clinical legal education (**CLE**) have grown significantly in Australian law degree offerings in recent times, in line with the more general move across all HE providers and disciplines to offer work integrated learning (**WIL**) experiences.²⁷⁸ A comprehensive review of Australian law schools in 2013 revealed that most had implemented CLE programs.²⁷⁹ Giddings and Weinberg have suggested that CLE and WIL can be used to fill the experiential gap for graduates who lack work experience opportunities in the legal profession.

CLE involves law students undertaking the professional responsibilities of a lawyer with supervision. It can entail a variety of tasks, such as: legal research; preparing or reviewing legal documents (for example, contracts); client interviews; court appearances; and drafting legal advice. Thus, Giddings and Weinberg argue that increased CLE opportunities can produce entry-level lawyers with a broader set of skills because they have gained real-life, in-person experience with clients and issues.²⁸⁰ A particular benefit of clinical pedagogy is its emphasis on self-assessment and self-efficacy, enabled by supervisory feedback, to ensure students reflect on and learn from their experiences.²⁸¹ In this way, clinical education introduces students to the tenets of ‘reflective practice’ – a core professional competency and one that is instrumental to the formation of a positive professional identity – ‘supporting students to become both “justice ready” and “practice ready”’.²⁸² The developing literature on continuing

276 Goldsworthy (n 23) 251.

277 McKenzie (n 194) 4.

278 For example, the *National Strategy on Work Integrated Learning in University Education* (Strategy, 2015) <<https://acen.edu.au/resources/national-wil-strategy-2/>> 1, which defines WIL as an ‘umbrella term for a range of approaches and strategies that integrate theory with the practice of work within a purposefully designed curriculum’. See also the WIL resources and examples at the Australian Collaborative Education Network Limited, ‘Resources’ (Web Page) <<https://acen.edu.au/resources-2019/>>.

279 See Adrian Evans et al, *Best Practices: Australian Clinical Legal Education* (Final Report, Office for Learning & Teaching, 2013) (‘*Best Practices CLE*’).

280 See Jeff Giddings and Jacqueline Weinberg, ‘Experiential Legal Education: Stepping Back to see the Future’ in Catrina Denvir (Ed), *Modernising Legal Education* (Cambridge University Press, 2020) 38.

281 Evans et al, *Best Practices CLE* (n 279) 4.

282 Michele M Leering, ‘Integrated Reflective Practice: A Critical Imperative for Enhancing Legal Education and Professionalism’ (2017) 95(1) *Canadian Bar Review* 47, 47 <<https://canlii.ca/t/735>>. See generally: Donald Schön, *The Reflective Practitioner* (Basic Books, 1983); Donald Schön, *Educating the Reflective Practitioner: Toward a New Design for Teaching and Learning in the Professions* (Jossey-Bass, 1987); Donald Schön, *The Reflective Practitioner: How Professionals Think in Action* (Routledge, 1992).

competence demonstrates how reflective practice is increasingly being embedded into modern CPD schemes for professional lifelong learning, with requirements for practitioners who are unfamiliar with the metacognitive process to be guided in their development of reflective capability so that they are able to form their own learning development plans and self-assess their CPD needs.²⁸³

Evans et al outline the potential benefits of CLE in their report, *Best Practices: Australian Clinical Legal Education* as follows, noting that the development of a reflective practice capability is among them. It is suggested that CLE will:

- help students reflect on and analyse their experiences;
- develop student awareness of the law in the context of society;
- engage students in deep and active learning, with timely, rich feedback;
- develop student emotional skills, values, responsibility, resilience, confidence, self-esteem, self-awareness and humility;
- move a student towards responsible professional identity;
- sensitise students to the importance of all relationships – including with clients, students, professionals;
- benefit from student-centred learning, which comes out of flexible and adaptable approaches; and
- educate students to become effective, ethical practitioners.²⁸⁴

Writing in the UK context, Grimes argues that it is of little importance educationally whether CLE involves providing general advice or whether it is specialised in a particular area of law.²⁸⁵ Instead, Grimes suggests the focus should be on the broader aims and objectives of the CLE program and defining who is responsible for the clinic in practical and legal terms.²⁸⁶ By doing so, Grimes argues, the potential educational benefits to law students can be better assessed, which he demonstrates in diagrammatic form as set out in **Figure 2**.²⁸⁷ For students, Grimes says the CLE programs that fall into quadrant 1 (the law-school-run clinic, supervised by law teachers) and quadrant 3 (externally run but focused on student education) will be most beneficial. However, he notes that CLE positioned in quadrant 3 'is unlikely to feature much, if at all' because an external service provider's mission will be focused on client needs, rather than on the learning needs of students.²⁸⁸

283 *Getting the Point?* (n 42); Hook Tangaza, *International Approaches to Ongoing Competence: A report for the LSB* (Report, March 2021) <<https://legalservicesboard.org.uk/wp-content/uploads/2021/05/International-approaches-to-Ongoing-Competence.pdf>>.

284 Evans et al, *Best Practices CLE* (n 279) 5; see also Adrian Evans et al, *Australian Clinical Legal Education Designing and Operating a Best Practice Clinical Program in an Australian Law School* (ANU Press, 2017) ('*Australian CLE Designing and Operating*') <<https://press-files.anu.edu.au/downloads/press/n2366/pdf/book.pdf>>.

285 Richard Grimes, 'Experiential Learning and Legal Education – The Role of the Clinic in UK Law Schools' in Emma Jones and Fiona Cownie (eds), *Key Directions in Legal Education: National and International Perspectives* (Routledge, 2020) 93, 101.

286 *Ibid.*

287 *Ibid.* 103.

288 *Ibid.* 103-4.

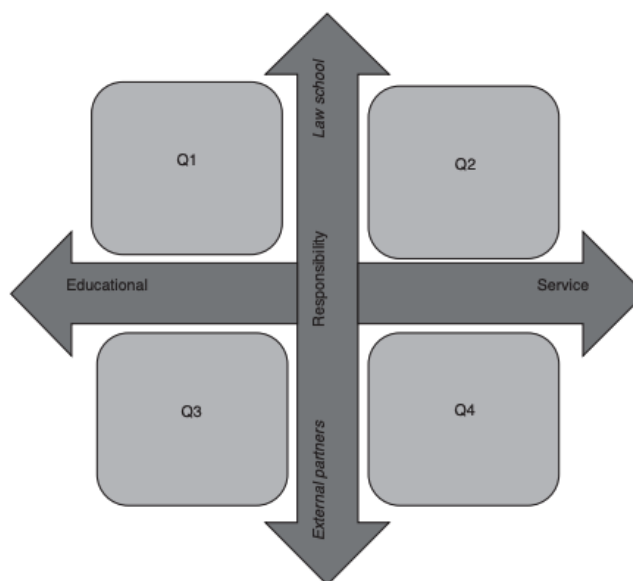


Figure 2. The education/service relationship in law school and non-law school clinics (Grimes, 2020)²⁸⁹

In the UK context, it has been suggested that a potential disadvantage of CLE programs that involve placements at external clinics is that the law school loses control over the consistency of their students' experience.²⁹⁰ Regardless, and irrespective of which CLE model is adopted, Grimes says it is the law school's responsibility to clearly indicate to students the priorities of the clinic (whether more educational or service-focused).²⁹¹

At the broader regulatory level in Australia, the HESF does not differentiate between CLE models as regards provider responsibility; HESF Standard 5.4 requires that 'work-integrated learning, placements, other community-based learning and collaborative research training arrangements are quality assured, including assurance of the quality of supervision of student experiences' (Standard 5.4.1). This obligation extends to circumstances where CLE is delivered by another party(ies) as part of a course of study, in which case the HE provider 'remains accountable for the course of study and verifies continuing compliance of the course of study with the standards in the Higher Education Standards Framework that relate to the specific arrangement' (Standard 5.4.2).²⁹² This places a heavy onus on achieving quality and consistency in the student experience of their CLE learning, which is often best managed through effective supervision. The critical importance of quality supervision is recognised in Evans et al's *Best Practice for Clinical Legal Education* report²⁹³ and was the subject of an Office for Learning and Teaching (OLT) National Teaching Fellowship undertaken by Giddings, which reported in 2015.²⁹⁴ The Giddings project also identified the reciprocal professional

289 Ibid 103.

290 Ibid 104.

291 Ibid 106.

292 See also TEQSA, *Guidance Note: Work Integrated Learning* (Guidance Note, Version 1.2, 11 October 2017) <<https://www.teqsa.gov.au/latest-news/publications/guidance-note-work-integrated-learning>>.

293 Evans et al, *Best Practices CLE* (n 279) 55-7.

294 Jeff Giddings, *Reciprocal Professional Development: Enhancing Law Student Supervision in Practice-based Contexts* (Final Report, Office for Learning and Teaching, 2015) <https://ltr.edu.au/resources/Giddings%2C%20J_NTF_Report_2015.pdf>.

development benefits that supervisors gain from their role as supervisor.²⁹⁵ In the PLT context, in addition to the HESF requirements, work experience placements are also regulated under the LACC *Uniform Standards for PLT Courses and Providers* and the LACC *Standards for PLT Workplace Experience*.

It has been argued that integrating more CLE or experiential learning into pre-admission requirements, especially pre-PLT, would address some of the critique directed at law school preparation. According to Giddings and Weinberg, one of the real issues is the ‘experience gap’ that occurs when legal employers expect entry-level lawyers to have a broader set of skills and understandings at entry-level, without the profession taking responsibility for structuring opportunities and/or training to provide that experience.²⁹⁶ Although the LACC *Uniform Standards for PLT Courses and Providers* require students to complete work experience in accordance with the LACC *Standards for PLT Workplace Experience* before they can be admitted to practice,²⁹⁷ it has been observed that the PLT placements provide students with quite varied experiences.²⁹⁸ As mentioned in **Section 1.4** the implementation status of the *Workplace Experience Standards* is also unclear.²⁹⁹ If CLE were to be integrated as a mandatory form of experiential learning in the law degree, in a similar way to that mandated by the ABA *Standards* — ‘Law schools shall offer ... one or more experiential course(s) ... An experiential course must be a simulation course, a law clinic, or a field placement ...’,³⁰⁰ — all students would be assured of an early opportunity to develop, for example, their communication skills (written and oral), interpersonal and collaboration skills, and self-management and professionalism skills in a practice setting.³⁰¹ This is obviously not a resource-neutral option for law schools and would have to be carefully considered, while it is also noted that the US does not require the equivalent of a mandatory PLT stage to contribute to entry-level competence. It is presumably for these reasons that the CALD *Standards for Australian Law Schools*, therefore, include an aspirational statement that a law school ‘endeavours to provide, so far as is practicable, experiential learning opportunities for its students, including, but not limited to, clinical programs, internships, workplace experience, and pro bono community service.’³⁰²

295 Ibid 4.

296 Giddings and Weinberg (n 280) 41.

297 Law Admissions Consultative Committee, *Standards for PLT Workplace Experience* (Standards, 2016) <<https://www.legalservicescouncil.org.au/Documents/standards-for-PLT-workplace-experience.pdf>>.

298 Giddings and Weinberg (n 280) 41.

299 Michael McNamara, *Supervision in the Legal Profession* (Palgrave Macmillan, 2020) 26.

300 American Bar Association, *Standards 2021-2022 Standards and Rules of Procedure for Approval of Law Schools* (Standards, 2021-22) Standards 303-304

<https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2021-2022/2021-2022-aba-standards-and-rules-of-procedure-chapter-3.pdf>. The ABA Standards were amended to include the experiential course requirements as a consequence of the American Bar Association, *Legal Education and Admissions to the Bar, Legal Education and Professional Development – An Educational Continuum* (Report, 1992) (‘MacCrate Report’) 234-5.

301 See Giddings and Weinberg (n 280) 43-4.

302 CALD *Standards with Guidance Notes* (n 248) 4, Standard 2.2.4.

In McNamara's 2020 review of supervision in the legal profession, he draws attention to the fact that the regulatory arrangements for students who engage in real client work in CLE activities (and PLT activities) are unclear, especially in the absence of student practice rules in any Australian jurisdiction.³⁰³ These regulatory reservations should be resolved. Once attended to, and if resourcing constraints in cash-strapped law schools could be overcome, Australian legal education is generally well placed to deliver quality CLE opportunities and outcomes for all students, if that were thought to be desirable and particularly taking into account also the diversity of law students' graduate destinations as discussed in [Section 2.5.4](#). There has been a number of reports and research interrogations produced in recent times that have focused on enhancing the clinical practice experience, especially as regards determining optimal clinical models and to assure the quality and consistency of the supervisory experience.³⁰⁴ These various research-informed and evidence-based models for good supervisory practice could have ready application in the post-admission supervised practice context as considered necessary (and see [Section 1.7.1](#)).

2.6.4 Mental health and well-being

Universities UK have defined 'mental health' as 'a spectrum of experience, from good mental health to mental illness and distress' and 'wellbeing' to include the 'wider physical, social and economic experience'.³⁰⁵ Internationally, the mental health and well-being of all university students is a serious issue for the HE sector and has been the focus of considerable attention for some time. For example, in Australia, Orygen found in 2017 that at least one in four university students experiences mental ill-health in any one year and that '[s]tudents with an experience of mental ill-health have been shown to be more likely to consider exiting, or exit, their course early. This can have a detrimental impact on both their future mental health as well as their education and employment pathways'.³⁰⁶

The mental health and well-being of HE staff is also of significant concern.³⁰⁷ The pandemic has exacerbated the underlying issues around psychological health and well-being for both students and staff and led to a heightened prevalence of mental health symptomatology.³⁰⁸

303 McNamara (n 299) 25. See also Judith Dickson and Susan Campbell, 'Professional Responsibility in Practice: Advocacy in the Law School Curriculum' (2004) 14(2) *Legal Education Review* 5.

304 See for example, Evans et al, *Best Practices CLE* (n 279); Giddings (n 294); Evans et al, *Australian CLE Designing and Operating* (n 284).

305 Universities UK, *Stepchange: Mentally Healthy Universities* (Framework, May 2020) 8 <<https://www.universitiesuk.ac.uk/what-we-do/policy-and-research/publications/stepchange-mentally-healthy-universities>>. See also Orygen, *Australian University Mental Health Framework* (Framework, 2020) ('*Australian Uni Mental Health Framework*') 9 <<https://www.orygen.org.au/Policy/University-Mental-Health-Framework/Framework/>>.

306 Orygen, *Under the Radar: The Mental Health of Australian University Students* (Report, 2017) 6 <<https://www.orygen.org.au/Policy/Policy-Reports/Under-the-radar/>>.

307 For example, in Australia: Tony Machin, 'Enhancing Wellbeing for Academics' (2020) 42(1) *InPsych* (online) <<https://psychology.org.au/formembers/publications/inpsych/2020/february-march-issue-1/enhancing-wellbeing-for-academics>>. For example, in the UK: Liz Morrish, *Pressure Vessels: The Epidemic of Poor Mental Health Among Higher Education Staff* (HEPI Occasional Paper 20, Higher Education Policy Institute, 23 May 2019) <<https://www.hepi.ac.uk/2019/05/23/pressure-vessels-the-epidemic-of-poor-mental-health-among-higher-education-staff/>>; Liz Morrish and Nicky Priaux, *Pressure Vessels II: An Update on Mental Health Among Higher Education Staff in the UK* (HEPI Policy Note 23, Higher Education Policy Institute, 30 April 2020) <<https://www.hepi.ac.uk/2020/04/30/pressure-vessels-ii-an-update-on-mental-health-among-higher-education-staff-in-the-uk/>>.

308 Nicholas Grubic, Shaylea Badovinac and Amer M Johri, 'Student Mental Health in the Midst of the COVID-19 Pandemic: A Call for Further Research and Immediate Solutions' (2020) 66(5) *International Journal of Social Psychiatry* 517 <<https://doi.org/10.1177/0020764020925108>>.

As would be expected, the effect has not been felt evenly and some groups of students in particular have fared worse than others (for example, international students, females and those from lower socio-economic status backgrounds).³⁰⁹

In Australia, the HESF specifically requires that adequate support for student mental health and well-being is provided ('Wellbeing and Safety', Standard 2.3.31) and that the HE provider's governing body must 'develop and maintain an institutional environment in which ... the wellbeing of students and staff is fostered' ('Corporate Governance', Standard 6.1.4). In 2017, the Higher Education Standards Panel (**HESP**) recommended that 'every institution should have an institution-wide mental health strategy and implementation plan'.³¹⁰ With funding support provided by the Australian government, Orygen was subsequently commissioned to consult upon and develop evidence-based guidance for universities in this regard. In late 2020, Orygen released the *Australian University Mental Health Framework*, supported by a range of materials including case studies highlighting examples of current good practice.³¹¹

For both legal education and the legal profession, mental health and well-being issues are very pronounced. In legal education, the psychological health of law students has been a critical issue for many years, and law schools have been actively working to address the sources and circumstances of law student distress. Reviewing decades of research internationally in 2020, Duncan et al conclude that there is now:

... a solid base of empirical evidence that establishes that the psychological wellbeing levels of law students are the same or higher than the general population when they begin their university study, but about a third of students are experiencing psychological distress by the end of their first year of legal education.³¹²

In Australia, although psychological distress in law schools had been recognised as being a longstanding issue, it was not until the Brain and Mind Research Institute (**BMRI**) released its seminal *Courting the Blues* report in 2009 that it was empirically established that Australian law students, like their US peers, suffer disproportionately high levels of psychological distress. According to the BMRI Report, the results for both law students and legal practitioners surveyed showed 'a much higher level than expected of reported psychological distress and risk of depression on all the measures used'. For law students, the Report found that 35% of law students experience high levels of psychological distress, these levels being 17% higher than those experienced by medical students, and more than 20% higher than

309 Rachael Dodd et al, 'Psychological Wellbeing and Academic Experience of University Students in Australia during COVID-19' (2021) 18(3) *International Journal of Environmental Research and Public Health* 866 <<https://doi.org/10.3390/ijerph18030866>>; Susan Harris Rimmer, Kate McGuire and Neeraj Gill, 'Stressed Out, Dropping Out: COVID Has Taken its Toll on Uni Students', *The Conversation* (online, 17 December 2020) <<https://theconversation.com/stressed-out-dropping-out-covid-has-taken-its-toll-on-uni-students-152004>>.

310 Higher Education Standards Panel, *Improving Retention, Completion and Success in Higher Education* (Final Report, 2017) 9, Recommendation 8 <<https://www.dese.gov.au/higher-education-statistics/resources/higher-education-standards-panel-final-report-improving-retention-completion-and-success-higher>>.

311 *Australian Uni Mental Health Framework* (n 305).

312 Nigel Duncan, Rachael Field and Caroline Strevens, 'Ethical Imperatives for Legal Educators to Promote Law Student Wellbeing' (2020) 23(1-2) *Legal Ethics* 65, 68.

those experienced by the general population.³¹³ For legal practitioners, the BMRI Report indicated that one in three solicitors experience high to very high levels of psychological distress, although barristers' levels were lower at one in five.³¹⁴ The Legal Services Commissioner for Queensland at the time suggested that emotional distress featured in 30% of the disciplinary matters dealt with by the Commission.³¹⁵ The psychological distress levels for legal practitioners continue to remain high,³¹⁶ and legal academics have now been shown to be suffering also.³¹⁷ Recent research measuring judicial stress and well-being, analysing survey responses from 152 judges and magistrates across five Australian courts, found that judges and magistrates also report elevated psychological distress, problematic alcohol use and symptoms of burnout and secondary trauma. However, the authors of that study concluded that, while the judicial system is under considerable stress, 'judicial officers' rates of depressive and anxious symptoms are relatively low ... reveal[ing] a judicial system not yet in mental health crisis'.³¹⁸

The 2009 BMRI Report urged that work on initiatives to assist law students and practitioners with psychological distress was a 'problem for communities, a series of overlapping communities ... [including] Law schools; Institutions engaged in Articles [and] Practical Legal Training; Major law firms; Smaller law firms; Solo legal practitioners; Professional associations; Legal peak bodies'.³¹⁹ A range of strategies and approaches were suggested for action, particularly around education and information dissemination and the provision of support and training (for example, to manage stress and support individuals in normal work and education, to support people under stress and to provide access to effective treatments).

Since the BMRI report, an impressive body of further research has shown that, while the issue of high levels of psychological distress in law students is not abating, there has been a strong response from the academy, under what some see as an ethical imperative for legal educators to promote student well-being and contribute to a more positive and sustainable

313 *Courting the Blues* (n 40) 37.

314 *Ibid* 12.

315 John Britton, 'Lawyers, Emotional Distress and Regulation' (Conference Paper, Bar Association of Queensland Annual Conference, 2009) <https://www.lsc.qld.gov.au/__data/assets/pdf_file/0006/106197/lawyers-emotional-distress-and-regulation.pdf>.

316 For example, Victorian Legal Services Board + Commissioner, *VLSB+C Lawyer Wellbeing Project* (Report, 2019) ('*VLSB+C Lawyer Wellbeing Report*') <<https://www.lsb.vic.gov.au/lawyers/practising-law/lawyer-wellbeing/lawyer-wellbeing-report>>; American Bar Association, *Report from the National Task Force on Lawyer Well-Being* (Report, 2017) ('*National Task Force Report on Lawyer Well-Being*') <<https://lawyerwellbeing.net/the-report/>>. And see also the ABA dedicated website <<https://lawyerwellbeing.net/>>.

317 Colin James, Caroline Strevens, Rachael Field and Claire Wilson, 'Fit Your Own Oxygen Mask First: The Contemporary Neoliberal University and the Well-Being of Legal Academics' in Judith Marychurch and Adiva Sifris (eds) *Wellness for Law: Making Wellness Core Business* (LexisNexis, 2020) 57.

318 Carly Schrever, Carol Hulbert and Tania Sourdin, 'The Psychological Impact of Judicial Work: Australia's First Empirical Research Measuring Judicial Stress and Wellbeing' (2019) 28(3) *Journal of Judicial Administration* 141, 141.

319 *Courting the Blues* (n 40) 43.

future for the profession.³²⁰ The BMRI Report was unable to identify the precise causes of psychological distress amongst law students and the profession.³²¹ Since then, however, Larcombe and Fethers have found for law students that 'elevated levels of psychological distress ... may be associated with: "environmental" factors in law schools – course design, competitive culture, lack of autonomy support and so on; the distinct personality attributes of those attracted to study and practice law; and general stressors that particularly affect young people, including financial stress and uncertain job prospects.'³²² Field identified that the competitive nature of law school can lead to reduced feelings of camaraderie in cohorts, while the pessimistic nature of legal thinking styles – adversarial, focusing on negatives, and considering worst-case scenarios – can transfer into students' personal lives, which further promotes psychological distress.³²³ Cameron also observes that while pessimism can be a quality that makes a good lawyer, it is a major risk factor for unhappiness and depression if practitioners are unable to 'turn it off' in their personal lives.³²⁴

In Australia and internationally, a large body of scholarship has developed around the curricular, co-curricular and pedagogical strategies needed to promote resilience and the well-being of law students.³²⁵ For example, responding to studies that suggest mental distress begins in the first year,³²⁶ Field suggests curriculum strategies focused on first-year law to promote student well-being, particularly, the inclusion of (alternative) dispute resolution, because it introduces law students to non-adversarial justice and principles,³²⁷ and also teaches students emotional intelligence, thinking skills, collaboration skills and self-management skills.³²⁸ Field and Meyer argue for curriculum reform to teach 'threshold concepts' in law in aid of student well-being; for example, teaching 'legal reasoning' as a transformative threshold concept to develop 'a sense of self-identity as a lawyer'.³²⁹ Threshold

320 See Rachael Field, *Stimulating Strategic Change in Legal Education to Address High Levels of Psychological Distress in Law Students* (Final Report, ALTC Fellowship, 2014) ('*Stimulating Strategic Change*') 12-3 for a discussion of cross-sectional and longitudinal studies; Duncan, Field and Strevens (n 312) 82. See also, for example: Wendy Larcombe et al, 'Does an Improved Experience of Law School Protect Students Against Depression, Anxiety and Stress? An Empirical Study of Wellbeing and the Law School Experience of LLB and JD Students' (2013) 35 *Sydney Law Review* 407; Molly Townes O'Brien, Stephen Tang and Kath Hall, 'Changing Our Thinking: Empirical Research on Law Student Wellbeing, Thinking Styles and the Law Curriculum' (2011) 21 *Legal Education Review* 149; Catherine M Leahy et al, 'Distress Levels and Self-Reported Treatment Rates for Medicine, Law, Psychology and Mechanical Engineering Tertiary Students: Cross-sectional Study' (2010) 44 *Australian and New Zealand Journal of Psychiatry*; Anthony Lester, Lloyd England and Natalia Antolak-Saper, 'Health and Wellbeing in the First Year: The Law School Experience' (2011) 36 *Alternative Law Journal* 47; Wendy Larcombe and Katherine Fethers, 'Schooling the Blues? An Investigation of Factors Associated with Psychological Distress Among Law Students' (2013) 36 *University of New South Wales Law Journal* 390; Natalie Skead and Shane L Rogers, 'Stress, Anxiety and Depression in Law Students: How Student Behaviours Affect Student Wellbeing' (2014) 40(2) *Monash University Law Review* 564; Wendy Larcombe, Sue Finch and Rachel Sore, 'Who's Distressed? Not Only Law Students: Psychological Distress Levels in University Students Across Diverse Fields of Study' (2015) 37 *Sydney Law Review* 243; Wendy Larcombe, 'Towards an Integrated, Whole-School Approach to Promoting Law Student Wellbeing' in Rachael Field, James Duffy and Colin James (eds), *Promoting Law Student and Lawyer Wellbeing in Australia and Beyond* (Routledge, 2016) 40.

321 *Courting the Blues* (n 40) 43.

322 Larcombe and Fethers (n 320) 398.

323 See Field, *Stimulating Strategic Change* (n 320) 15.

324 See Alan Cameron, 'Good Mental Health as a Component of the Good Lawyer' in Kevin Lindgren, François Kunc and Michael Coper, *The Future of Australian Legal Education* (Thomson Reuters, 2018) 195.

325 See, for example, Field, *Stimulating Strategic Change* (n 320) 10.

326 For example, O'Brien, Tang and Hall (n 320).

327 Field, *Stimulating Strategic Change* (n 320) 18, noting also that there are opportunities to develop dispute resolution in each of the Priestley 11 subjects.

328 *Ibid* 18 citing Duffy and Field (2014).

329 Rachael Field and Jan H F Meyer, 'Threshold Concepts in Law: Intentional Curriculum Reform to Support Law Student Learning Success and Well-being' in Emma Jones and Fiona Cownie (eds), *Key Directions in Legal Education: National and International Perspectives* (Routledge, 2020) 142, 148.

concepts are positioned as a particularly useful curriculum and pedagogical strategy in this context because their teaching acknowledges student feelings of uncertainty, ambiguity and disorientation in the struggle to reach an understanding of them. This is referred to as a 'liminal' space of uncertainty, where the 'liminality as an episodic compromise of well-being ... [can] be positively harnessed' with support from teachers.³³⁰

Strevens advocates the importance of positive psychology's Self-Determination Theory (**SDT**) to understand the well-being implications for law students of their goals, values and intrinsic and extrinsic motivation.³³¹ According to SDT, people naturally tend to internalise the values and regulations of their social groups. Thus, law schools have the potential to affect student well-being and intrinsic motivation positively or negatively via the messaging, norms and expectations they convey, which can also have consequences for student achievement and ethical decision-making.³³² An important sub-theory of SDT is Basic Psychological Needs Theory, the three basic psychological needs for well-being having been identified as autonomy, competence and relatedness. As Duncan et al explain:

The general premise of establishing an SDT-informed learning environment at law school is that through the curriculum (by which we mean what is taught to law students), pedagogy (meaning how law is taught) and assessment, a learning environment is created which supports the student experience of the three basic needs, and in which their intrinsic motivation is preserved and encouraged.³³³

This framing echoes Baik et al's seminal Australian report, *Stimulating Curriculum and Teaching Innovations to Support the Mental Wellbeing of University Students*,³³⁴ which developed a holistic framework for a whole-of-university well-being approach and a set of five principles – 'well-being essentials' – for curriculum design to 'enhanc[e] student mental well-being through learning and teaching'.³³⁵ These five principles have been developed in line with SDT theory and good pedagogical practice and are as follows:

- Foster students' autonomous MOTIVATION, and sense of meaning and purpose ...
- Promote inclusion and BELONGING ...
- Promote inclusion and RELATIONSHIPS ...
- Enable AUTONOMY ...
- Scaffold COMPETENCE ...³³⁶

330 Ibid 151.

331 Caroline Strevens, 'The Wrong Message: Law Student Well-being in the Contemporary Higher Education Environment' in Emma Jones and Fiona Cownie (eds), *Key Directions in Legal Education: National and International Perspectives* (Routledge, 2020) 125, 126.

332 See Ibid 126 citing L S Krieger, 'The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity and Happiness' (2004) 11 *Clinical Law Review* 425.

333 Duncan, Field and Strevens (n 312) 82.

334 Chi Baik et al, *Stimulating Curriculum and Teaching Innovations to Support the Mental Wellbeing of University Students* (Final Report, May 2017) <https://ltr.edu.au/resources/ID14-3905_Melbourne_Baik_Final%20Report_2017.pdf>. See also the project website at <<http://unistudentwellbeing.edu.au/>>.

335 Chi Baik et al, *Enhancing Student Mental Wellbeing: A Handbook for Academic Educators* (Handbook, 2017) 13 <<https://bilt.online/wp-content/uploads/2018/11/MCSHE-Student-Wellbeing-Handbook-FINAL.pdf>>.

336 Ibid 13.

With the abrupt scaling of online delivery over the course of the pandemic, digital well-being has also become a priority. Jisc now incorporates digital well-being as an element in its digital capabilities framework³³⁷ and defines it as ‘the impact of technologies and digital services on people’s mental, physical, social and emotional health. It is a complex concept that can be viewed from a variety of perspectives and across different contexts and situations.’³³⁸ In Australia, good work has also been recently undertaken to explore the impact of technology and innovation on the mental health and well-being of the profession.³³⁹

The importance of managing and supporting psychological well-being in pre-admission legal education is reinforced in a number of other ways also. In 2010, the Law TLOs included a dedicated learning outcome to support personal and professional well-being and reflective practice — ‘TLO 6: Self-management’ — and two Good Practice Guides were produced to aid its implementation.³⁴⁰ Though not a competency, the LACC *PLT Competency Standards for Entry-Level Lawyers* make specific provision around ‘Resilience and well-being’ and impose requirements on all providers of PLT and supervised workplace training (**SWT**, which includes articles of clerkship) as follows:

4.7 Resilience and well-being

All PLT providers and SWT providers should:

- (a) make applicants aware of the importance of personal resilience in dealing with the demands of legal practice;
- (b) provide applicants with appropriate access to resources that will help them develop such resilience;
- (c) provide applicants with information about how and where to seek help in identifying mental health difficulties and in dealing with their effects;
- (d) make applicants aware of the benefits of developing and maintaining personal wellbeing in their professional and personal lives; and
- (e) provide applicants with information about how and where to find resources to help them develop and maintain such well-being.³⁴¹

The Australian Law Students Society developed a handbook in 2016 in collaboration with Beyond Blue, an Australian mental health organisation.³⁴² In 2013, CALD developed evidence-based *Good Practice Guidelines for Law Schools* to promote law student well-being. The

³³⁷ Jisc (n 34).

³³⁸ Jisc, ‘Digital Wellbeing’ (Web Page) <<https://digitalcapability.jisc.ac.uk/what-is-digital-capability/digital-wellbeing/>>. This page links to two 2019 Briefing Papers: ‘Digital Wellbeing for You, Your Colleagues and Students: Briefing Paper for Practitioners’; and ‘Good Practice Principles to Support the Digital Wellbeing of Your Students and Staff: Briefing Paper for Senior Leaders’ that includes eight good practice principles for organisations.

³³⁹ Michael Legg, Prue Vines and Janet Chan, *The Impact of Technology and Innovation on the Well-Being of the Legal Profession* (Intersentia, 2020).

³⁴⁰ Kift, Israel and Field, *LLB TLOs* (n 71) TLO 6; Judith Marychurch, *Self-Management (Threshold Learning Outcome 6) Good Practice Guide* (Guidelines, 2011) <<http://www.lawteachnetwork.org/resources.html>>; Judith McNamara, Tina Cockburn and Catherine Campbell, *Reflective Practice Good Practice Guide* (Guidelines, 2013) <<http://www.lawteachnetwork.org/resources.html>>. See also, Anna Huggins, Sally Kift and Rachael Field, ‘Implementing the Self-Management Threshold Learning Outcome for Law: Some Intentional Design Strategies from the Current Curriculum Toolbox’ (2011) 21(2) *Legal Education Review* 183.

³⁴¹ Law Admissions Consultative Committee, *PLT Competency Standards* (n 69).

³⁴² Australian Law Students Society, *Depression in Australian Law Schools: A Handbook for Law Students and Law Student Societies* (Handbook, 2016) <<https://www.anulss.com/wp-content/uploads/2016/05/Australian-Law-Students-Association-Depression-Handbook.pdf>>.

Guidelines canvass many of the strategies suggested in the BMRI Report and more besides, for example, regarding: education and awareness raising; support provision; preparing students for normal stresses; and providing students with broad careers advice.³⁴³ Guideline 4 of the CALD *Guidelines* directs specific attention to curriculum strategies and the role that learning, teaching and assessment methods play in affecting student well-being. For example, SDT-informed approaches to intentional assessment design can ‘capitalise on assessment as a significant point of contact, influence and engagement with students’,³⁴⁴ while engaged and active learning and collaborative learning activities can also contribute to student well-being.³⁴⁵

... [survey] participants described being acculturated early in their early career into a professional culture that frequently made it very difficult for the average individual to achieve wellbeing. This culture began in law school, where most participants recalled a culture of overwork and stress. A recurring theme in respondents’ reflections on their early career was that they had not been trained in the interpersonal and personal coping skills they would need to manage relationships with clients and exposure to vicarious trauma.

(Source: Victorian Legal Services Board + Commissioner, VLSB+C Lawyer Wellbeing Project (Report, 2019) 2)

Looking briefly to the profession, the Minds Count Foundation (formerly the Tristan Jepson Memorial Foundation (**TJMF**)) has developed the *TJMF Psychological Wellbeing: Best Practice Guidelines for the Legal Profession*, which are structured around 13 workplace factors to assist organisations support the psychological health of their staff.³⁴⁶ The *TJMF Best Practice Guidelines* have attracted a large number of signatories from organisations across the professional spectrum. All law societies provide support and resources to their members, most of which have also been collated on the LCA website.³⁴⁷ For example, the Law Society of NSW has the **Resilience@Law** initiative; a trilogy of videos – ‘Staying Well in the Law’ – developed in collaboration with the Black Dog Institute.

Particularly relevantly for the purposes of this report, the relationship between professional well-being, ethical practice, professionalism and competence has been further extrapolated in two recent reports, one national and one international. In 2019, the Victorian Legal Services

343 See CALD, *Promoting Law Student Well-Being Good Practice Guidelines for Law Schools* (Guidelines, March 2013) (*Promoting Law Student Well-Being*) <<https://cald.asn.au/wp-content/uploads/2017/11/Promoting-Law-Student-Well-Being-Good-Practice-Guidelines-for-Law-Schools.pdf>>.

344 Duncan, Field and Strevens (n 312) 86-87. See also: Rachael Field and Sally Kift, ‘Addressing the High Levels of Psychological Distress in Law Students through Intentional Assessment and Feedback Design in the First Year Law Curriculum’ (2010) 1(1) *The International Journal of the First Year in Higher Education* 65; Field, *Stimulating Strategic Change* (n 320) 25.

345 CALD, *Promoting Law Student Well-Being* (n 343) 5 citing Rachael Field and James Duffy, ‘Better to Light a Single Candle than to Curse the Darkness: Promoting Law Student Well-being through a First Year Law Subject’ (2012) 12(2) *QUT Law and Justice Journal* 133, 145 and James Duffy, Rachael Field and Melinda Shirley, ‘Using Student Engagement Strategies to Promote the Psychological Wellbeing of Law Students’ (2011) 36(4) *Alternative Law Journal* 250, 251.

346 Minds Count Foundation, *TJMF Psychological Wellbeing* (n 10).

347 Law Council of Australia, ‘Mental Health and Wellbeing in the Legal Profession’ (Web Page) <<https://www.lawcouncil.asn.au/policy-agenda/advancing-the-profession/mental-health-and-wellbeing-in-the-legal-profession>>.

Board + Commissioner (VLSB+C) reported on its *Wellbeing Project*, stating that '[p]oor wellbeing is a barrier to lawyers being able to do their jobs and provide access to quality legal services to Victorian consumers. This is of concern to us as the regulator of the profession'.³⁴⁸ The *VLSB+C Wellbeing Report* found that:

- Participants described being acculturated early in their career into a professional culture that frequently made it very difficult for the average individual to achieve well-being; starting in law school with stress and overwork, commonly followed by negative early career experiences of bullying, sexual harassment, overwork and lack of training and support.
- Respondents identified a range of cultural and institutional factors that made it hard to improve the well-being of legal professionals, including, for example: a widespread culture of bullying and a 'particular kind of "alpha male" culture'; poor managerial training; lack of supports to deal with vicarious trauma; and women and minority groups being subjected to sexual harassment and racism.
- Respondents were positive about the direction of change in recent years and most, though not all, conveyed optimism about a changing conversation regarding the well-being of legal professionals.
- There are many ideas and suggestions for changes that could improve well-being within the profession, including incorporating a focus on well-being into CPD requirements.³⁴⁹

The ABA's 2017 *Report from the National Task Force on Lawyer Well-Being* made the links between well-being, competence and professionalism very plain, and recommended, amongst other things, that there be a modification to the *Rules of Professional Conduct* to endorse well-being as part of a lawyer's duty of competence. The Report authors were careful to provide reassurance that any changes to the Rules in this regard would not be with a view to:

... threaten[ing] lawyers with discipline for poor health but to underscore the importance of wellbeing in client representations. It is intended to remind lawyers that their mental and physical health impacts clients and the administration of justice, to reduce stigma associated with mental health disorders, and to encourage preventive strategies and self-care.³⁵⁰

Comments are made in that report that 'lawyer well-being influences ethics and professionalism'³⁵¹ and that 'the profession must have healthy, competent lawyers'.³⁵² These are critical observations given what is known about the general levels of psychological distress in the profession and what the data tell us about the subject matter of complaints and insurance claims (discussed in [Section 3.3](#)). It is in the interests of clients, and in the interests of the long-term health of the profession — including its students, graduates, educators and practitioners across the regulatory continuum — that these sensitive issues

³⁴⁸ *VLSB+C Lawyer Wellbeing Report* (n 316).

³⁴⁹ *Ibid* 2-3.

³⁵⁰ American Bar Association, *National Task Force Report on Lawyer Well-Being* (n 316) 26.

³⁵¹ *Ibid* 8.

³⁵² *Ibid* 25.

around health and competence must be surfaced and dealt with holistically, with responses that include training, awareness raising, support and leadership for a culture shift in legal workplaces and educational institutions. It is acknowledged that these delicate discussions will now take place also in the shadow of the pandemic, which has increased mental ill-health in the community at large and undoubtedly exacerbated precarious levels of professional well-being, now attenuated further by the relentless tsunami of technological change that has been accelerated by COVID-19's forced digitisation and digitalisation.

2.7 Australian Legal Education and Training: Quality and professionalism

Australia has a decades-strong tradition of legal education scholarship and innovation that has positioned its LE&T capability well for a disrupted and uncertain future. For example, since 1989, the *Legal Education Review*³⁵³ has been a rich repository of Australian pedagogical scholarship, supplemented by both the *Legal Education Digest* since 1992,³⁵⁴ the *Journal of the Australasian Law Academics Association* since 2008³⁵⁵ and other journals both legally specific (such as the *Journal of Professional Legal Education* (1983–1998)) and general (such as the *Australian Journal of Clinical Education*). A number of Australian reviews and reports,³⁵⁶ together with dedicated legal education texts,³⁵⁷ have provided stocktakes and good practice disseminations at critical junctures, further incentivising learning and teaching excellence and enhancement. It is also the case that professional associations of dedicated legal educators offer other platforms for collaboration and sharing of good practice.³⁵⁸ In 2003, supplementing the better-known Pearce and McInnis and Marginson Reports, Johnstone and Vignaendra usefully catalogued many of these legal educational efforts for Australia, followed by a similar documenting of good practice by Davis and Owen in 2009.³⁵⁹

A particular boon for the advancement of Australian legal education was the funding provided by the national OLT and its predecessor organisations. In addition to being beneficiaries of the OLT's sector-wide capability building,³⁶⁰ law colleagues have featured heavily in the award of discipline-specific teaching fellowships, grants, and network funding. Law received dedicated funding for joint Discipline Scholars under the national academic standards project in 2010, which led also to the establishment of the (then) Law Associate Deans Network, now the

353 *Legal Education Review* <<https://ler.scholasticahq.com/>>.

354 *Legal Education Digest* <<https://www.alaa.asn.au/publications>>.

355 *Journal of the Australasian Law Academics Association* <<https://www.alaa.asn.au/jalaa>>.

356 For example, Committee of Inquiry into Legal Education in New South Wales, *Legal Education in New South Wales* (Report, 1979) ('Bowen Report'); Dennis Pearce, Enid Campbell and Don Harding, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (Report, 1987); Craig McInnis and Simon Marginson, *Australian Law Schools after the 1987 Pearce Report* (Report, 1994); Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System* (Report No 89, 2000) <<https://www.alrc.gov.au/publication/managing-justice-a-review-of-the-federal-civil-justice-system-alrc-report-89/>>; Richard Johnstone and Sumitra Vignaendra, *Learning Outcomes and Curriculum Development in Law* (Report, Australian Universities Teaching Committee, 2003) <https://cald.asn.au/wp-content/uploads/2017/11/AUTC-Threshold-Learning-Outcomes-Report_2003_Johnstone-Vignaendra1.pdf>; Gary Davis and Susanne Owen, *Learning and Teaching in the Discipline of Law: Achieving and Sustaining Excellence in a Changed and Changing Environment* (Report, 2009) <https://ltr.edu.au/resources/altc_LawReport.pdf>. See generally also, David Barker, *A History of Australian Legal Education* (Federation Press, 2017); Sally Kift, 'A Tale of Two Sectors: Dynamic Curriculum Change for a Dynamically Changing Profession' (2004) 2(2) *Journal of Commonwealth Law and Legal Education* 5.

357 For example, Marlene Le Brun and Richard Johnstone, *The Quiet (R)evolution: Improving Student Learning in Law* (Law Book Co, 1994); Sally Kift et al (eds), *Excellence & Innovation in Legal Education* (LexisNexis, Sydney 2011); Paul Maharg and Caroline Maughan (eds), *Affect and Legal Education: Emotion in Learning and Teaching the Law* (Ashgate, 2011); Margaret Thornton, *Privatising the Public University: The Case of Law* (Routledge, 2012); Barker (n 356); Caroline Strevens and Rachael Field (eds), *Educating for Well-Being in Law: Positive Professional Identities and Practice* (Routledge, 2019); Ben Golder et al (eds), *Imperatives for Legal Education Research: Then, Now and Tomorrow* (Routledge, 2019); Kevin Lindgren, François Kunc and Michael Coper, *The Future of Australian Legal Education* (Thomson Reuters, 2018); Judith Marychurch and Adiva Sifris (eds), *Wellness for Law: Making Wellness Core Business* (LexisNexis, 2020).

358 For example, Australasian Law Academics Association (ALAA) (until 1 July 2019 known as the Australasian Law Teachers Association) <<https://www.alaa.asn.au/>>; Australasian Professional Legal Education Council <<https://aplec.asn.au/>>; and the Legal Education Associate Deans (LEAD) Network (over 2010–2013 known as the Law Associate Deans Network) <<http://lawteachnetwork.org/>>.

359 Johnstone and Vignaendra (n 356); Davis and Owen (n 356).

360 See Learning and Teaching Repository <<https://ltr.edu.au/vufind/>>.

Legal Education Associate Deans (**LEAD**) Network.³⁶¹ With the support of OLT investment in pedagogical research and development, a diverse array of topics has been investigated, resulting in original and critical contributions to legal pedagogical content knowledge in areas such as: clinical legal education;³⁶² law students' mental health and well-being;³⁶³ sessional teaching quality;³⁶⁴ internationalising law curricula;³⁶⁵ regional legal education;³⁶⁶ first-year experience;³⁶⁷ capstone experiences in law;³⁶⁸ graduate professional entry;³⁶⁹ threshold concepts in law;³⁷⁰ law postgraduate research;³⁷¹ and multimedia affordances.³⁷² Encouragingly, and despite the demise of national enhancement funding,³⁷³ Australian legal education continues to thrive with a number of dedicated centres having emerged in recent years,³⁷⁴ which have sustained and enhanced pedagogical thought leadership. The academy is fortunate to have a very active Australian Law Students' Association (**ALSA**) with which it works also.³⁷⁵ Over 2020–2021, the pandemic has galvanised a global community that has led to advances in practice, particularly as regards assessment.³⁷⁶

The current context and multitude of change imperatives have delivered great disruption to both the educational and practising arms of the profession and suggest a number of foci for regulatory reimagining. The next section will now examine the national and international LE&T reviews that shine further light on how professional competence might be assured in these dynamic times across the regulatory continuum.

361 Kift, Israel and Field, *LLB TLOs* (n 71) and see [Sections 1.2 and 3.2.4](#). The Legal Education Associate Deans (LEAD) Network has developed and maintains a wealth of resources at <<http://lawteachnetwork.org/>>.

362 Evans et al, *Best Practices CLE* (n 279); Giddings (n 294).

363 Field, *Promoting Law Student Well-Being* (n 40). See also the Wellness Network for Law (Web Page) <<http://wellnessforlaw.com/>>

364 Mary Heath et al, *Smart Casual: Towards Excellence in Sessional Teaching in Law* (Final Report, 2018) <https://ltr.edu.au/resources/ID14-4320_Nettle_Flinders_ReportSmartCasual.pdf>.

365 Duncan Bentley et al, *Internationalising the Australian Law Curriculum* (n 57).

366 Amanda Kennedy et al, *Rethinking Law Curriculum: Development Strategies to Prepare Law Graduates for Practice in Rural and Regional Australia* (Final Report, 2013) <https://ltr.edu.au/resources/ID11_2010_Kennedy_Report_2013.pdf>.

367 Sally Kift, *Articulating a Transition Pedagogy to Scaffold and to Enhance the First Year Student Learning Experience in Australian Higher Education* (Final Report, August 2009) <https://ltr.edu.au/resources/Kift_ALTC_Senior_Fellowship_Report_Sep_09.pdf>.

368 Sally Kift et al, *Curriculum Renewal in Legal Education* (Final Report, 2013) <https://ltr.edu.au/resources/PP9-1374_Kift_Report_2013_1.pdf>.

369 Margaret Jackson et al, *Graduate Professional Entry Courses in Accounting and Law* (Final Report, 2012) <https://ltr.edu.au/resources/PP9_1386_Jackson_report_2012.pdf>.

370 Gerlese Åkerlind, Jo McKenzie and Mandy Lupton, *A Threshold Concepts Focus to Curriculum Design: Supporting Student Learning Through Application of Variation Theory* (Final Report, 2011) <https://ltr.edu.au/resources/PP8_885_Final_Report_Akerlind_2011.pdf>; Rachael Field and Jan Meyer, 'Threshold Concepts in Law: Intentional Curriculum Reform to Support Law Student Learning Success and Well-being' in Emma Jones and Fiona Cownie (eds) *Key Directions in Legal Education: National and International Perspectives* (Routledge, 2020) 142.

371 Stephen Colbran and Belinda Tynan, *Australian Law Postgraduate Network* (Final Report, 2008) <https://ltr.edu.au/resources/grants_le_project_report_alpn_feb09.pdf>.

372 Des Butler, *Using Cost-effective Multimedia to Create Engaging Learning Experiences in Law and Other Disciplines* (Final Report, 2011) <https://eprints.qut.edu.au/48365/1/Butler_D_QUT_Fellowship_report_2011.pdf>.

373 Sally Kift, 'The Decline and Demise of the Commonwealth's Strategic Investment in Quality Learning and Teaching' (2016) 7(2) *Student Success* 1-9.

374 For example, Bond University's *Centre for Professional Legal Education* <<https://bond.edu.au/researchers/research-strengths/university-research-centres/centre-professional-legal-education>>; College of Law's *Centre of Legal Innovation* <<https://www.cli.collaw.com/>>; Griffith University's *Law Futures Centre* <<https://www.griffith.edu.au/law-futures-centre>>; UNSW's *Allens Hub for Technology, Law & Innovation* <<https://www.allenshub.unsw.edu.au/>>.

375 Australian Law Students' Association (ALSA) (Web Page) <<https://alsa.asn.au/>>.

376 For example, Patrick Baughan (n 254); Sally Brown Assessment, Learning and Teaching in Higher Education, 'Kay Sambell and Sally Brown: Covid-19 Assessment Collection' (Web Page) <<https://sally-brown.net/kay-sambell-and-sally-brown-covid-19-assessment-collection/>>.

3 Legal Education and Training Reviews

Key points

- Advances in Australian legal education and its regulation have been inhibited by their segregation into three distinct stages: the academic; vocational/practical legal training; and Continuing Professional Development (CPD). It has been suggested that this structural disadvantage has led to incremental, siloed improvements and misses the opportunity to pursue development and enhancement for an integrated system response.
- The debate about the purpose of legal education continues, with three main positions argued: training ground for future legal practitioners; an academic discipline with its own intrinsic value; or the ‘sweet spot’ of a sensible common ground between those two positions.
- There has been a number of recent Australian reviews, those of a legal nature (professional and/or discipline-specific) and those with a general higher education focus. In combination, they have ramifications for the professional regulation of Australian legal education and training (LE&T). Recent Australian reviews of note include:
 - The *Learning and Teaching Academic Standards* project that developed the law discipline’s Threshold Learning Outcomes (2010, 2012)
 - The Productivity Commission’s *Access to Justice Arrangements* inquiry (2014) that questioned the current tripartite distinction across the LE&T continuum, amongst other matters
 - The Higher Education Standards Panel’s *Advice on the Impacts of Professional Accreditation in Higher Education* (2017) that examined professional accreditation requirements (all disciplines) with a view to reducing the regulatory burden on HE providers
 - Multiple Law Society reviews that have considered the future of the legal profession in times of dynamic change, including the Law Society of NSW’s *Future of Law and Innovation in the Profession* (2017)
 - LACC’s *Assuring Professional Competence Committee* review (2017), which had proposed a program of work over several years to develop a ‘Competence Statement for Australian Legal Practitioners’ as had occurred in both England and Canada, but did not proceed due to cost and other factors
 - The Victorian Legal Services Board + Commissioner’s (VLSB+C) review of the CPD system in that state – *Getting the Point?: Review of the Continuing Professional Development for Victorian Lawyers* (2020)
 - The *Review of the Australian Qualifications Framework* (2019), which recommended a new regulatory framework for qualification design, including the opportunity to quality assure micro-credential offerings.
- There has also been a number of influential reviews of LE&T internationally, many of which examine the legal education continuum from pre-admission (entry-level) to post-admission (new lawyer and continuing) competence, and consider models for assuring competence at those different career points. For example, in:

- England and Wales (the *Legal Education and Training Review* (LETR, 2013) and two Law Society investigations of modern skills and training needs (2019))
- Hong Kong (*Comprehensive Review of Legal Education and Training in Hong Kong* (2018))
- New Zealand (*Review of the Professional Legal Studies Course* (2013))
- Canada under two streams of work:
 - Efforts over 2009–2016 to develop a *National Competency Profile* (completed 2012) and National Admission Standards, including a common assessment tool (abandoned in 2016)
 - Canadian Bar Association's *Legal Futures Initiative* 2012–2014 (research report 2013; final report 2014)
- United States (the Carnegie Foundation's *Educating Lawyers: Preparation for the Profession of Law* (2007); the Clinical Legal Education Association's *Best Practices for Legal Education: A Vision and a Road Map* (2007); the Institute for the Advancement of the American Legal System (IAALS) *Foundations for Practice: The Whole Lawyer and the Character Quotient* (2016); the National Conference of Bar Examiners work over 2018–2021 to review the Uniform Bar Exam (*Final Report of the Testing Task Force* (2021)).
- A number of these reports consider the case for the introduction of a common, centralised examination to assure entry-level competence (such as the Uniform Bar Examination (**UBE**) in the US), which is to be compared with a distributed assessment system in which course providers design and deliver their own assessments (for example, as in Australia). While England and Wales have adopted a standardised qualifying examination as of September 2021, Hong Kong has a current moratorium in place on its exercise, and initiatives in Australia and Canada did not proceed for a number of reasons, including cost. The UBE, which has been long criticised on the grounds of validity and because of its negative impact on curricular and professional diversity, was severely impacted by COVID-19 in 2020 and has been beset by technical issues and delay in 2021, leading a number of US states to consider alternatives to it.
- Australian and international complaints and insurance data provide an important evidence base to inform LE&T and regulatory attention. A review of these data identifies that, while substantive legal knowledge is important, the foci for the biggest risks in continuing competence are in practice management (for example, handling of trust money and trust accounts, out-of-date precedents, costs), client relationships (particularly communication) and ethics and professionalism. Certain types of lawyers are more at risk (for example, those in sole principal and smaller incorporated legal practices, those who 'dabble' out of their areas of expertise and those with 'situational vulnerabilities', such as major life stressors). Certain areas of practice are also more at risk (for example, in Australia, family law, conveyancing, commercial litigation, succession).
- Increasingly, jurisdictions are accessing the client voice to inform regulatory responses. For example, in the US, the IAALS initiated a major project to examine what clients value in legal service providers. The IAALS '*Think Like a Client*' project identified key lawyer attributes from the client perspective as: *communicator* (prompt, proactive, explains, available); *demeanour* (integrity, professional, compassionate, courteous, respectful);

lawyering (expertise and quality advice, effective negotiation and advocacy, dedication to client); *business model* (provides best outcomes and value, honest and flexible billing); and *tenacity* (diligence, conscientiousness, attention to detail, work ethic). The Legal Services Board (**LSB**) for England and Wales has a standing 'Legal Services Consumer Panel', whose role is to provide independent advice to the LSB about the interests of legal services consumers.

3.1 The purpose of legal education

This report commenced with reference to the rigid dichotomies Twining observed in Pericles and the Plumber¹ — education v training, academic v practical, theory v practice, liberal education v vocational training, law v other disciplines. In the United Kingdom (UK), the Ormrod Committee in 1971 accepted and entrenched the three-stage divide across the Legal Education and Training (LE&T) continuum — the academic; the vocational/practical legal training (PLT); and Continuing Professional Development (CPD). For Australia, the Pearce Report in 1987 concluded that Australian legal education was both insufficiently practical and insufficiently theoretical, and urged greater attention be paid to the preparation of law students for legal practice post-graduation.² More recently, as the Productivity Commission has observed,³ it has become apparent that advances in legal education have been inhibited by its segregation into those three distinct stages. So much has changed in both the profession and the academy in the intervening decades that it is perhaps inevitable that we continue to come back to arguments about the core purpose of legal education, framed always as if there is no middle ground: training ground for future legal practitioners or an academic discipline with its own intrinsic value?⁴

Legal education [has shown] a structural disadvantage by approaching improvement only incrementally, missing the advantages that come with pursuing educational development in an integrated manner.

(Source: William M. Sullivan, 'After Ten Years: The Carnegie Report and Contemporary Legal Education' (2018) 14 University of St. Thomas Law Journal 331, 335.)

Arthurs identified three predominant positions regarding the purpose of law schools:

The first sees their primary, if not their sole, function as producing “practice ready lawyers” for today’s profession. The second proposes that they should produce “tomorrow’s lawyers,” lawyers with the capacity to adapt to the rapidly and radically changing circumstances of legal practice. And the third insists that the leading role played by law schools in the creation and transformation of legal knowledge, legal practice and the legal system requires them to provide their students with a large and liberal understanding of law which alone will prepare them for a variety of legal and non-legal careers.⁵

This tripartite categorisation can easily be reduced back to the two dominant views: the first and second conforming with the perspective that legal education is the training ground

1 William Twining, ‘Pericles and the Plumber’ (1967) 83 *Law Quarterly Review* 396.

2 Dennis Pearce, Enid Campbell and Don Harding, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (Report, 1987) (‘Pearce Report’).

3 Productivity Commission, *Access to Justice Arrangements* (Inquiry Report No 72, 5 September 2014) (‘Access to Justice Report’).

4 David Barker, *A History of Australian Legal Education* (Federation Press, 2017) 2, 3; Olivia Rundle and Lynden Griggs, ‘Law Schools and the Burden of Bureaucracy: Release the Yoke (A Plea from the Coalface). Part 1: Over-regulation in Australia’ (2019) 93 *Australian Law Journal* 389 (‘Law Schools and the Burden of Bureaucracy, Part 1’), 390–1.

5 H W Arthurs, ‘The Future of Law School: Three Visions and a Prediction’ (2014) 51(4) *Alberta Law Review* 705.

for legal practitioners; and the third aligning with the ideal of the law degree having its own intrinsic value, irrespective of career outcomes.

Coper believes that these two views are profoundly consistent because ‘the best and most effective lawyers, in any form of practice, are those with a deep understanding of the law and the legal system; a deep understanding not just of the rules but of their context, their dynamics, their role in society, and their limits; an understanding, in particular, of where the law has come from, as well as an intuition about where it might go.’⁶ This accords with the integrated position that the dichotomy is a false one and does ‘not represent dilemmas but different facets of legal education.’⁷ Whatever the framing, Rice, however, is of the opinion that the debate between the two core purposes for legal education, with its consequential effect on the law curriculum, has been largely resolved in Australia in favour of training for private practice.⁸ In the context of the exponential growth in student numbers (and law schools), and the diversity of career aspirations and individual motivations for undertaking legal study, Thornton refers to the discipline’s ‘schizophrenic’ ‘pendulum swing[ing]’ between professional and academic ascendancy over legal education constructs. Like Rice, she concludes that ‘the legal profession has chosen to retain its mastery over law schools by means of standardising the curriculum. The Priestley 11 remains a powerful symbol of the assumption that the primary role of legal education is to serve the legal profession, regardless of the reality ... [and] in the face of disruption and diversity.’⁹

James directly addresses the opposing positions of ‘vocationalism’ versus ‘professionalism’ and observes that law schools have it within their power to define either or both broadly or narrowly. For example, vocationalism, while focused on employability outcomes, might emphasise student preparation ‘to be a particular type of lawyer such as a commercial lawyer, or any type of lawyer, or a graduate with legal knowledge and skills able to be applied in any of a wide range of professions.’¹⁰ He particularly argues for an expanded notion of ‘professionalism’ as the [sensible] ‘common ground’ on which the various discourses could come together:

When professionalism is defined appropriately, the doctrinalists, the liberals, the educationalists and even the radical legal theorists can work together to embed the development of professionalism and a professional identity within the law school curriculum, and unite in the teaching and assessment of law students’ ability to behave professionally and be professionals.¹¹

6 Michael Coper, ‘Law Reform and Legal Education: Uniting Separate Worlds’ in Brian Opeskin and David Weisbrot (eds), *The Promise of Law Reform* (Federation Press, 2005) 388, 391.

7 Simon Rice, ‘Why Prescriptive Legal Education Demands Critical Perspectives’ in Kevin Lindgren, François Kunc and Michael Coper, *The Future of Australian Legal Education* (Thomson Reuters, 2018) 217 citing William Twining, *Law in Context* (Clarendon Press, 1997) 2.

8 Ibid 218-9.

9 Margaret Thornton, ‘The Challenge for Law Schools of Satisfying Multiple Masters’ (2020) 62(2) *Australian Universities’ Review* 5, 10.

10 Nick James, ‘More than Merely Work-Ready: Vocationalism Versus Professionalism in Legal Education’ (2017) 40(1) *UNSW Law Journal* 186, 186. See also Rundle and Griggs, ‘Law Schools and the Burden of Bureaucracy, Part 1’ (n 4) 392 arguing that the law degree should no longer be viewed as one that is designed primarily for the needs of the profession because the reality is that it is no longer a vocational training ground for lawyers where students are being taught by practitioners.

11 James (n 10) 209.

Quite pragmatically, James also observes that the substantial fees that students now pay for their law degrees (\$14,500 per full-time undergraduate year since 2021) place pressure on them to prioritise vocationalism over professionalism in order to repay their accumulated debt.

Similarly, in the United States (**US**), when the Institute for the Advancement of the American Legal System (**IAALS**) conducted its large-scale survey to identify necessary new lawyer competences for its *Foundations for Practice* initiative, it found there was a ‘sweet spot’ between the two opposing positions.

... successful entry-level lawyers are not merely legal technicians, nor are they merely cognitive powerhouses. The current dichotomous debate that places “law school as trade school” up against “law school as intellectual endeavor” is missing the sweet spot and the vision of what legal education could be and what type of lawyers it should be producing. New lawyers need some legal skills and require intelligence, but they are successful when they come to the job with a much broader blend of legal skills, professional competencies, and characteristics that comprise the whole lawyer.¹²

While purists might not agree, this sensible ‘common ground’ of the ‘sweet spot’ visioning for legal education seems to provide a constructive way forward and repositions educational agency within the law school remit to shape and shift as they see fit. Menkel-Meadow reflecting in 2020 helpfully observes that both law and legal education are ultimately ‘human constructs’ that seek to respond to a ‘multiplicity of human needs’.

Legal education can be used for and by legal professionals, lawyers, judges, paralegals and others, but it is also still an excellent education for generalists, government and civic employees, business people, educators, engineers, parents and any informed citizen. Thus legal education can be used for many things and, in my view, should not be cabined or confined to any one format. The use that humans make of law is too complex to be placed in an overly reductive education model.¹³

This report will now turn to consider more recent Australian reviews impacting on LE&T and its regulation, before turning to the great wealth of recent international examinations.

12 Institute for the Advancement of the American Legal System (‘IAALS’), *Foundations for Practice: The Whole Lawyer and the Character Quotient* (Report, 2016) (‘*Foundations for Practice*’) 2 <<https://iaals.du.edu/publications/foundations-practice-whole-lawyer-and-character-quotient>>.

13 Carrie Menkel-Meadow, ‘Thinking or Acting like a Lawyer’ in Ben Golder et al (eds), *Imperatives for Legal Education Research: Then, Now and Tomorrow* (Routledge, 2019) 223, 239. See also discussion in [Section 2.5.4](#) regarding graduate destinations.

... successful entry-level lawyers are not merely legal technicians, nor are they merely cognitive powerhouses. The current dichotomous debate that places “law school as trade school” up against “law school as intellectual endeavor” is missing the sweet spot and the vision of what legal education could be and what type of lawyers it should be producing. New lawyers need some legal skills and require intelligence, but they are successful when they come to the job with a much broader blend of legal skills, professional competencies, and characteristics that comprise the whole lawyer.

(Source: IAALS, Foundations for Practice: The Whole Lawyer and the Character Quotient (Report, 2016) 2)

3.2 Recent Australian reviews

Surprisingly, particularly given the extent of the wide-ranging review work that has been undertaken internationally, more recent reviews of Australian LE&T have been relatively few in number and often state-based in focus.¹⁴ Both the discipline and higher education (HE) reviews that do exist suggest that there is a pressing imperative for reform of various types, with a small number of them also touching on the need for reform of professional regulation across the entirety of the pre- and post-admission continuum. One of these latter inquiries was undertaken by the Productivity Commission in 2014, and it is discussed next.

3.2.1 Productivity Commission 2014

In 2014, the Productivity Commission released its inquiry report on *Access to Justice Arrangements* ('PC Report') that also contained a review of LE&T in the context of improving access to justice in Australia. The PC Report described the Priestley 11 as having the 'potential to limit the flexibility of universities to compete and innovate in offering more tailored degrees' despite the fact that they provide students with a strong base knowledge of the law.¹⁵ At the time of the PC Report, there were 33 law schools. There are now at least 39 Australian law schools and the issues of flexibility and differentiation remain live ones.

The Productivity Commission also stated that the Priestley 11 subjects were misaligned with current professional requirements due to their focus on ensuring doctrinal knowledge when '[t]oday, the challenge is not obtaining information, but rather knowing how to analyse it, use it, and place it in context'.¹⁶ The Productivity Commission cautioned against simply adding further areas to legal education, due to the risk of overloading law students and potentially driving up the costs and duration of education,¹⁷ and instead recommended that a review of the three stages of LE&T – law degree, PLT and CPD – be conducted to consider the:

- appropriate role of, and overall balance between, each of the three stages of legal education and training
- ongoing need for each of the core areas of knowledge in law degrees, as currently specified in the 11 Academic Requirements for Admission, and their relevance to legal practice

14 Older reviews include: the Committee of Inquiry into Legal Education in New South Wales, *Legal Education in New South Wales* (Report, 1979) ('Bowen Report'); Dennis Pearce, Enid Campbell and Don Harding, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (Report, 1987) and Craig McInnis and Simon Marginson, *Australian Law Schools After the 1987 Pearce Report* (Report, 1994). Aside from the 2014 Productivity Commission to be discussed next (*Access to Justice Report* (n 3)) and the 2017 Law Society of NSW, *Future of Law and Innovation in the Profession* ('FLIP Commission') discussed in Section 3.2.3, the most recent external (to the academy) review was the Australian Law Reform Commission ('ALRC'), *Managing Justice: A Review of the Federal Civil Justice System* (Report No 89, 2000) ('ALRC *Managing Justice Report*'), which also considered LE&T. Two large scale academy reviews of legal education have also been conducted: Richard Johnstone and Sumitra Vignaendra, *Learning Outcomes and Curriculum Development in Law* (Report, Australian Universities Teaching Committee, 2003) <https://cald.asn.au/wp-content/uploads/2017/11/AUTC-Threshold-Learning-Outcomes-Report_2003_Johnstone-Vignaendra1.pdf>; Gary Davis and Susanne Owen, *Learning and Teaching in the Discipline of Law: Achieving and Sustaining Excellence in a Changed and Changing Environment* (Report, 2009) <https://ltr.edu.au/resources/altc_LawReport.pdf>. See generally, Barker (n 4) and the discussion in Section 2.7.

15 Productivity Commission, *Access to Justice Report* (n 3) 241.

16 Ibid 250.

17 Ibid 248, 252.

...

- relative merits of increased clinical legal education at the university or practical training stages of education
- regulatory oversight for each stage, including the nature of tasks that could appropriately be conducted by individuals who have completed each stage of education [by way of identifying desired outcomes], and any potential to consolidate roles in regulating admission, practising certificates and [CPD].¹⁸

The Productivity Commission tasked the Law, Crime and Community Safety Council to conduct the systemic review, but it was never carried out.¹⁹

3.2.2 Higher Education Standards Panel 2017: Reducing the regulatory burden

In 2016, the Higher Education Standards Panel (**HESP**) was requested to advise the federal Minister on the professional accreditation requirements in HE and include options for reducing the regulatory burden on HE providers. PhillipsKPA was commissioned by the Commonwealth Department of Education and Training to examine the impact of professional course accreditation practices to inform that national review.²⁰ The HESP reported to the Minister in late 2017 with three recommendations, which were accepted in principle and are being progressed by the Tertiary Education Quality and Standards Agency (**TEQSA**).²¹ In short form, those recommendations were that:

- A legislated code of practice, in the form of a disallowable instrument, be developed to limit professional accreditation bodies to raising matters that are profession-specific, rather than those already assured by TEQSA against the Higher Education Standards Framework (**HESF**)
- TEQSA work with accrediting bodies to build their capacity to work more effectively and efficiently – by establishing formal guidance, participating in workshops, encouraging a focus on outcomes-based quality assurance, and promoting best practice regulation
- A stakeholder forum²² be held to discuss the future of professional work and ways to further streamline accreditation.²³

¹⁸ Ibid 46.

¹⁹ Although, the Law, Crime and Community Safety Council released a communique in 2017 noting the work of the National Justice and Policing Senior Officers Group for Victoria's Assuring Professional Competence Project in relation to the Productivity Commission's recommendation. See Law, Crime and Community Safety Council (Communique, 19 May 2017) <<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id=%22library/summary/summary.w3p;query=Source%3A%22LAW,%20CRIME%20AND%20COMMUNITY%20SAFETY%20COUNCIL%22>>.

²⁰ Department of Education and Training, *Professional Accreditation: Mapping the Territory* (Final Report, February 2017) ('*PhillipsKPA Report*') <<https://www.dese.gov.au/higher-education-standards-panel-hesp/resources/professional-accreditation-mapping-territory>>.

²¹ Higher Education Standards Panel ('HESP'), *The Higher Education Standards Panel's Advice on the Impacts of Professional Accreditation in Higher Education* (Advice, 2017) ('*HESP Advice*') 2-3 <<https://www.dese.gov.au/higher-education-standards-panel-hesp/resources/higher-education-standards-panels-advice-impacts-professional-accreditation-higher-education>>. See also Tertiary Education Quality and Standards Agency, 'Professional Accreditation Changes Welcomed by Regulator' (Web Page, 28 February 2018) <<http://www.teqsa.gov.au/latest-news/articles/professional-accreditation-changes-welcomed-regulator>>.

²² An inaugural 'Industry Professional Body Accreditation Forum', convened by TEQSA, was held on 13 December 2018.

²³ *HESP Advice* (n 21) 2.

The HESP also encouraged further development of the *Joint Statement* between Universities Australia (**UA**) and the Australian Council of Professions (previously Professions Australia) to underpin the proposed legislative option.²⁴

Throughout its deliberations, the Panel's vision has been for a system of professional accreditation that adds value to higher education delivery and outcomes, that is delivered effectively and efficiently without duplication of, or overlap with, the regulatory oversight responsibilities of the Tertiary Education Quality and Standards Agency (TEQSA).

In practice, this means that assessments of higher education courses by professional accreditation bodies should focus exclusively on matters that are profession-specific; and accept that academic accreditation under the Tertiary Education Quality and Standards Agency Act 2011 (the TEQSA Act) provides appropriate assurance of quality for matters covered by the Higher Education Standards Framework. This should be the case regardless of whether such assurance has been assured by TEQSA itself or through a self-accrediting provider's own internal quality assurance processes (which are, in turn, assured by TEQSA, through its periodic review of registration).

(Source: HESP, The Higher Education Standards Panel's Advice on the Impacts of Professional Accreditation in Higher Education (Advice, 2017) 1)

The *PhillipsKPA Report* noted that there has been a global shift away from *input-based* accreditation models – which focused, for example, on curriculum content, limits on class sizes, student–staff ratios and availability of facilities – to an emphasis on *learning outcomes*, such as the knowledge, skills, dispositions and abilities ('knowledge, skills and values' in this report) that a graduate ought to demonstrate upon completing a particular qualification.²⁵ In an effort to move professional accreditation practice forward, it was suggested that the HESF standards should be mapped to 'reassure professional accreditation bodies that input and process issues at an institutional level are [already] accredited by TEQSA', allowing professional accreditation to focus on specifying particular professional outcomes.²⁶ PhillipsKPA went on to note specifically that '[i]n the professional disciplines, [the Learning and Teaching Academic Standards (**LTAS**) project] built on and has subsequently influenced the development of professional accreditation standards',²⁷ prompting a shift to learning outcomes approaches with 'less prescriptive criteria for the inputs and methods by which providers assist students to achieve learning outcomes'.²⁸

When compared to good practice in other professional disciplines, progress in this regard in legal accreditation has been disappointingly slow. Despite the Council of Australian

²⁴ See discussion of the *Joint Statement* in [Section 1.8](#).

²⁵ *PhillipsKPA Report* (n 20) 33.

²⁶ *Ibid* 10.

²⁷ *Ibid* 33–34.

²⁸ *Ibid* 5.

Law Deans (**CALD**) *Australian Law School Standards'* embrace of the LTAS's Threshold Learning Outcomes (**TLOs**) for the LLB/LLB(Hons) and JD in 2013, and the subsequent broad engagement of law schools with the CALD Standards' interim certification process more recently, the accreditation bodies' move to a learning-outcomes focus for the *Academic Requirements*, leveraging the law TLOs, was left until relatively late. As mentioned above (see [Section 1.2](#)), the Law Admissions Consultative Committee (**LACC**) finally did attempt to recast the Priestley 11 as learning outcomes in 2019 and made explicit reference to the interrelationship between the TLOs and the *Academic Requirements* in prefatory comments. This exercise was later abandoned by LACC in 2020, despite a great deal of cooperative work having been undertaken between CALD's Legal Education Associate Deans (**LEAD**) Network and the LACC committee managing the project.

While these recent initiatives signal the potential for a significant and positive paradigm shift in professional-HE accreditation interactions, it would be fair to say that the opportunity has not been leveraged by law's accreditation arm. Rather, the pre-admission regulatory framework for Australian LE&T remains increasingly at odds with good practice approaches adopted by many other disciplines' professional accreditation bodies. The opportunity for harmonisation of LE&T's various regulatory regimes was further set back when the *LACC Standards*²⁹ were published in 2018. As has been referred to earlier (see [Section 1.6](#)), and as identified by Rundle and Griggs, in spite of the HESP and PhillipsKPA work, the *LACC Standards* have duplicated aspects of the HESF requirements and, in some instances, gone even further down the inputs-focused regulation path.³⁰

3.2.3 The Law Society of NSW FLIP Commission 2017

Professional bodies in Australia have been very active in their consideration of professional futures. The Law Council of Australia (**LCA**) established a Future of the Law Committee in late 2015 and recently re-established a Futures Committee in 2020 to advise the LCA on challenges and opportunities presented by social, technological and regulatory change impacting the Australian profession.³¹ To ventilate these matters, the LCA held a Futures Summit in 2018, informed by a background paper, to focus on three key policy areas: consumers of legal services of the future and what they might expect; characteristics of the legal profession; and regulation and ethics.³² The Law Society of Western Australia (**WA**) and the Law Institute of Victoria have also both produced their own *Future of the Legal*

29 Law Admissions Consultative Committee ('LACC'), *Accreditation Standards for Australian Law Courses* (Standards, July 2018) <<https://www.legalservicescouncil.org.au/Documents/accreditation-standards-for-law-courses.pdf>>.

30 See discussion in Rundle and Griggs, 'Law Schools and the Burden of Bureaucracy, Part 1' (n 4): for example, by requiring proof of how students acquired knowledge of each of the elements within the Priestley 11 content areas.

31 Law Council of Australia ('LCA'), 'Futures Committee' (Web Page) <<https://www.lawcouncil.asn.au/about-us/advisory-committees/futures-committee>>.

32 LCA, *Futures Summit* (Background Paper, 13 September 2018) <<https://www.lawcouncil.asn.au/about-us/advisory-committees/futures-committee>>.

Profession Report, in 2017 and 2015 respectively.³³ As would be expected, many of the issues and themes identified across these interrogations are common. However, for the purposes of this report, the Law Society of NSW's 2017 *Future of Law and Innovation in the Profession Commission of Inquiry* ('*FLIP Report*'), which attracted a lot of attention at the time and has continued to pursue a workstream of activity,³⁴ will be examined in further detail in this section.³⁵

In 2016, the Law Society of NSW established the Future Committee and, in turn, the *Future of Law and Innovation in the Profession Commission of Inquiry* ('*FLIP Commission*'), to 'shed light on the changes that are taking place within our profession, how it is adapting to those changes and to make recommendations on the way forward'.³⁶ The topics identified by the FLIP Commission for investigation included:

- Drivers of change (Part 1): Clients' needs and expectations
- Drivers of change (Part 2): Technology
- New ways of working
- Legal education, information systems and training
- Community needs, courts and funding
- Diversity, new processes and managing change
- Globalisation
- Regulation.³⁷

The *FLIP Commission* heard testimony from 103 witnesses and drew also on a number of interviews and written submissions. In 2017, the Commission's report was released, setting out 12 key findings and 19 recommendations for future action to 'enable lawyers to better accommodate new concepts and ideas, and adapt to changes that are taking place and will inevitably continue to do so'.³⁸

Throughout this report, reference is made to the FLIP Commission's findings, recommendations and commentary, as is appropriate given the *FLIP Commission Report*'s import for many of the matters considered herein. In those circumstances, the consideration of the FLIP Commission's report in this section is relatively limited. The *FLIP Commission* recommended that a number of additional knowledge and skills areas be included in the pre-admission stage: 'at least four areas of substantive knowledge, eight sets of skills and eight personal values or characteristics which every entry-level practitioner now requires',³⁹

33 See Law Society of Western Australia, *The Future of the Legal Profession* (Report, December 2017) ('*Future Legal Profession*') <<https://www.lawsocietywa.asn.au/wp-content/uploads/2015/10/2017DEC12-Law-Society-Future-of-the-Legal-Profession.pdf>>; Law Institute of Victoria, *Disruption, Innovation and Change: The Future of the Legal Profession* (Report, 2015) <<https://www.liv.asn.au/flipbooks/disruption--innovation-and-change--the-future-of-t.aspx>>

34 These are available via a portal for Society members.

35 Law Society of New South Wales, 'FLIP: The Future of Law and Innovation in the Profession' (Web Page) <<https://www.lawsociety.com.au/about-us/law-society-initiatives/flip>>.

36 Law Society of New South Wales, *The Future of Law and Innovation in the Profession* (Report, 2017) ('*FLIP Report*') 3 <<https://www.lawsociety.com.au/sites/default/files/2018-03/1272952.pdf>>.

37 Ibid 12.

38 Ibid 2.

39 Sandford D Clark, 'Regulating Admissions: Are We There Yet?' (2017) 91 *Australian Law Journal* 907, 911.

while also recording that the information and testimony provided to the inquiry were ‘in favour of the [existing] traditional black letter law areas of knowledge and lawyer skill sets being maintained’.⁴⁰ The FLIP Commission acknowledged that the ‘challenge’ inherent in this approach ‘appears to be how to include the skills and knowledge discussed [as necessary for success in future practice] in a crowded curriculum’,⁴¹ suggesting this was a matter for further research. Unfortunately, the FLIP Commission did not attempt to reconcile its additional curricular requirements with the current coverage of knowledge, skills and values in the TLOs (as influenced by the requirements of the Australian Qualifications Framework (AQF)) nor their coverage in the *PLT Competency Standards*, the latter also being a matter for ‘further research’.⁴² The Commission did not discuss the current reality that many students studying law do not enter the profession.

When compared to similar analyses internationally, particularly of note is that critical issues of post-admission continuing competence were not considered in any substantive way by the FLIP Commission, although occasional reference to CPD was made, as regards, for example, recommending that the Law Society: investigate the inclusion of ‘practices and skills to promote well-being into existing or new mandatory [CPD units]’ (Recommendation 10); and include in CPD ‘practical topics on private international law’ (Recommendation 13). As regards technological competence, the *FLIP Report* referred to the 2012 change to the American Bar Association’s (ABA) *Model Rules of Professional Conduct* that made clear that the lawyer’s duty of competence includes the necessity to stay abreast of changes in relevant technologies, and noted that a number of states in the United States (US) now mandated technology-specific CPD.⁴³ In this regard, the FLIP Commission recommended that its (then) proposed centre for legal innovation collaborate with the Law Society’s CPD Department to ‘research and design continuing legal education programs that assist lawyers to build core competencies in existing and emerging technologies relevant to the delivery of legal services’ (Recommendation 2). Elsewhere in the *FLIP Report* it was observed that what form this takes ‘and whether it should include changes to the regulatory framework for lawyers in New South Wales should be explored’.⁴⁴

... it was suggested that students be familiar with using new legal technologies, such as data analytics which underlies predictive coding for discovery or online dispute resolution platforms. Students would then be able to use technology in their future careers, including being able to provide assistance to clients who may need to use or provide these services. Being at least technology-literate, and preferably having some hands-on ability with technology was a central focus of representations to the Future Committee.

(Source: Law Society of New South Wales, The Future of Law and Innovation in the Profession (Report, 2017) 77)

⁴⁰ *FLIP Report* (n 36) 77 and see discussion at [Section 1.3.1](#).

⁴¹ *Ibid* 77.

⁴² *Ibid*.

⁴³ *Ibid* 41.

⁴⁴ *Ibid* 42.

The FLIP Commission reported that there was a strong focus in its inquiry on expectations of law schools and PLT to produce ‘practice-ready’ graduates ‘who could undertake many of the elementary tasks in practice and interact with clients ... [including] the basics of drafting, presenting and negotiating ... [and desirably] a familiarity with basic accounting, finance concepts and how a business operates.’⁴⁵ However, no regard was had by the Commission as to how best to support the first few years of new lawyer practice, as other reports nationally and internationally have canvassed. Matters of both ethics and competence more broadly were primarily viewed in the *FLIP Report* through a technology and innovation lens, and occasionally from the perspective of the risk to ethical practice presented by the unbundling of legal services and legal work being carried out by non-lawyers. Chapter 8 on Diversity usefully discussed important initiatives underway to reduce disadvantage and enhance diversity and inclusion, especially through flexible work practices.

3.2.4 Regulatory harmonisation: Law’s Threshold Learning Outcomes (TLOs) 2010

A major review of the pre-PLT requirements was undertaken in 2010 when the Australian Learning and Teaching Council (**ALTC**) oversaw the development of discipline standards under the auspices of the *Learning and Teaching Academic Standards (LTAS)* project.⁴⁶ Discipline Scholars were appointed across a number of broad discipline groupings to develop statements of minimum, discipline-based, academic standards — called Threshold Learning Outcomes (**TLOs**) — to harmonise the various regulatory and accreditation requirements that influence degree content. A working definition of ‘academic standards’ was agreed upon for the LTAS project: ‘Academic standards are learning outcomes described in terms of discipline-specific knowledge, skills and capabilities expressed as threshold learning outcomes that a graduate of any given discipline (or program) must have achieved.’⁴⁷

Of specific significance, the exercise was conducted by way of an inclusive, iterative consultation process, with extensive engagement across each discipline’s broad community of practice. In law’s case, this included the judiciary, the practising profession, peak bodies, students and graduates, for example: LACC, CALD, LCA, the eight Admitting Authorities, every law school, bar association and law society, the (then) Australasian Law Teachers Association (now Australasian Law Academics Association (**ALAA**)), APLEC, the Coalition of Australian Law Administrators (**COALA**), the Australian and New Zealand Academic and College Law Librarians (**ANZACLL**), Legal Services Commissioners, a newly established Law Associate Deans Network (now the LEAD Network),⁴⁸ student associations, individual students and recent graduates (including the LCA’s Young Lawyers Committee). Recognising the global nature of legal practice and law qualifications, specific regard was had to contemporary

⁴⁵ Ibid 77. See also discussion at [Section 2.5.3](#).

⁴⁶ Australian Learning and Teaching Council, *Learning and Teaching Academic Standards Project* (Final Report, 2010) <http://pandora.nla.gov.au/pan/127341/20110608-1311/www.altc.edu.au/system/files/altc_standards.finalreport.pdf>. See also [Section 1.2](#).

⁴⁷ Ibid 11.

⁴⁸ See Legal Education Associate Deans Network (Web Page) <<http://www.lawteachnetwork.org/>>.

international benchmark statements,⁴⁹ while a Law Expert Advisory Group and a Law Discipline Reference Group were established for project oversight, both with international expert membership.

The TLOs ultimately agreed in 2010 to set out the broad disciplinary consensus at that time as to what law students needed to know, understand and be able to do as a result of their discipline learning, at a threshold or minimum level of achievement. Law's six TLOs for the pre-PLT AQF Levels 7 and 8 – LLB and LLB(Hons) degrees respectively – were endorsed by CALD in November 2010 ('LLB TLOs', set out in [Appendix I](#)).⁵⁰ TLOs for the pre-PLT JD ('JD TLOs'), at AQF Level 9 Master Degree (Extended), were subsequently developed and endorsed by CALD in March 2012 ('JD TLOs', also set out in [Appendix I](#)).⁵¹ The JD TLOs took the LLB TLOs as their starting point and adapted them to assure alignment with the increased cognitive and skilled requirements of the AQF Level 9 qualification and level descriptors. The TLOs for both LLB/LLB(Hons) and JD are supplemented by explanatory, non-binding notes, which provide guidance on their interpretation.⁵² With their incorporation into the *CALD Standards* in 2013,⁵³ the TLOs are 'now firmly established as common and significant guiding educational principles for all pre-admission law courses'.⁵⁴ The TLOs for both the LLB/LLB(Hons) and the JD are organised under the following six headings:

1. Knowledge
2. Ethics and professional responsibility
3. Thinking skills
4. Research skills
5. Communication and collaboration
6. Self-management.⁵⁵

A specific objective of the LTAS project in 2010 was to harmonise professional accreditation requirements (the *Academic Requirements* for legal education) and academic quality assurance requirements at both the institutional and national (Tertiary Education Quality and Standards Agency (**TEQSA**)) levels of regulation. It was also considered essential that the

49 Sally Kift, Mark Israel and Rachael Field, *Bachelor of Laws Learning and Teaching Academic Standards Statement* (ALTC Learning and Teaching Academic Standards Project, 2010) ('LLB TLOs') <<http://disciplinestandards.pbworks.com/w/page/52746378/Law>>. See [Appendix I](#). As regards international benchmark statements, for example, the development of the Australian TLOs took account of the UK Subject 'Benchmark Statement–Law' at the time, which is now in its fourth edition (initial publication in 2000, reviews and revisions in 2007, 2015 and most recently in 2019): see Quality Assurance Agency for UK Higher Education (QAA), *Subject Benchmark Statement – Law* (Statement, November 2019) <https://www.qaa.ac.uk/docs/qaa/subject-benchmark-statements/subject-benchmark-statement-law.pdf?sfvrsn=b939c881_18>.

50 See *Ibid.* In short form, the six TLOs are: Knowledge; Ethics and professional responsibility; Thinking skills; Research skills; Communication and collaboration; and Self-management. See [Appendix I](#).

51 *Juris Doctor Threshold Learning Outcomes* (2012) ('JD TLOs') <<http://disciplinestandards.pbworks.com/w/page/52746378/Law>>.

See [Appendix I](#).

52 *LLB TLOs* (n 49).

53 Council of Australian Law Deans, *Australian Law School Standards with Guidance Notes* (Standards, 30 July 2020) <<https://cald.asn.au/wp-content/uploads/2020/07/Australian-Law-School-Standards-v1.3-30-Jul-2020.pdf>>.

54 Law Admissions Consultative Committee, *Specifying Learning Outcomes for Contract Law* (Report, 17 September 2018) ('*Specifying Learning Outcomes for Contract*') 2 <https://www.lawcouncil.asn.au/files/web-pdf/LACC%20docs/252098968_6_LACC%20-%20Specifying%20Outcomes%20for%20Contract%20Law.pdf>. See also Law Admissions Consultative Committee, 'Redrafting the Academic Requirements for Admission' (Discussion Paper, 2019) ('Redrafting the Academic Requirements') 2 <<https://www.legalservicescouncil.org.au/Documents/redrafting-the-academic-requirements-for-admission.pdf>>.

55 *LLB TLOs* (n 49) 10; *JD TLOs* (n 51) 3–4. See [Appendix I](#).

TLOs be drafted sufficiently broadly to assure flexibility as regards both their interpretation by individual law schools and to accommodate subsequent developments in contemporary legal practice. The TLOs' relationship with the Priestley 11 *Academic Requirements* is made explicit – the TLOs expressly include the Priestley 11 academic prerequisites for admission in TLO 1: Knowledge by requiring that graduates 'will demonstrate an understanding of a coherent body of knowledge that includes: (a) the fundamental areas of legal knowledge ...' As explained in the accompanying notes, "fundamental areas of legal knowledge" are those that are from time to time prescribed by the relevant Australian law admitting authorities ... The rules of statutory interpretation and the rule of law are examples of fundamental areas of legal knowledge.⁵⁶ The notes go on to record that TLO 1 is intentionally drafted in this way to be 'flexible enough to allow for subsequent developments as negotiated between CALD and the law admitting authorities',⁵⁷ in efforts to ensure that the stasis imposed by the 1982 articulation of the Priestley 11 is not further entrenched. It has been observed subsequently that '[t]he introduction of the TLOs led to a process of curriculum review in many Australian Law Schools with some evidence of wholesale change to align the learning outcomes with course delivery'.⁵⁸

As further set out in the accompanying notes, in arriving at the final, endorsed version of each TLO, regard was had to the AQF descriptors, the *CALD Standards*, and the many international benchmark statements in existence at the time. Resources and good practice guides for the implementation of the TLOs were subsequently developed and are housed on the LEAD website.⁵⁹ In a significant advance for Australian course design at the time, the *integrative* nature of professional learning outcomes was also made clear. For example:

... even at the threshold level of achievement it is expected that graduates would demonstrate a broad and coherent assimilation of the TLOs across the identified knowledge and skills.

For example, a graduate with an understanding of a 'coherent body of knowledge that includes ... the fundamental areas of legal knowledge' (TLO 1: Knowledge) will frequently apply the results of legal research (TLO 4: Research skills) to demonstrate the thinking skills set out in TLO 3 (Thinking skills). Any of those TLO 3 cognitive outcomes (critical analysis, legal reasoning, creative thinking, etc) will in turn need to be communicated effectively, appropriately and persuasively in various contexts, as required by TLO 5 (Communication and collaboration), and ethically, as required by TLO 2 (Ethics and professional responsibility). Thus, within the range of diverse programs developed by the various law schools, graduates' acquisition of the TLOs will most likely be facilitated in a structured and integrated, whole-of-curriculum approach through learning, teaching and assessment.⁶⁰

56 Ibid 13.

57 Ibid.

58 Natalie Skead, Sarah Murray and Penny Carruthers, 'Taking Up the Challenge: Embedding, Mapping and Maintaining Threshold Learning Outcomes in the Transition to the JD: The UWA Experience' (2013) 47 *The Law Teacher* 130.

59 Legal Education Associate Deans Network (Web Page) <<http://www.lawteachnetwork.org/>>.

60 *LLB TLOs* (n 49) 9. This conceptualisation was picked up by LACC in its 2019 consideration of the TLOs: see LACC, *Specifying Learning Outcomes for Contract* (n 54) and LACC, 'Redrafting the Academic Requirements' (n 54).

As has been referred to above ([Section 1.2](#)), although in 2010 it ‘seemed sensible for LACC and the Admitting Authorities to explore ways in which any discipline-specific TLOs for law might be integrated with, or complement, the existing 11 academic requirements for admission’ given ‘cogent reasons’ for regulatory harmonisation,⁶¹ it was ultimately decided by LACC not to proceed down that path.

Looking at the 2010 LLB/LLB(Hons) TLOs and 2012 JD TLOs through the 2021 disruption lens, it might fairly be observed that the broadly stated TLOs have retained their relevance and continue to stand the Australian academy in good, future-proofing, stead as a contemporary statement of entry-level competence for the *Academic Requirements* phase. They have also proven themselves to be flexible enough to accommodate the changing circumstances and demands of entry-level professional practice. The 2018 *Comprehensive Review of Legal Education and Training* in Hong Kong commented favourably on the TLOs, especially in comparison to the ‘highly prescriptive’ outcomes and associated standards that have now been implemented in England and Wales by the Solicitors Regulation Authority (**SRA**) (see [Section 4.4.3](#) below) saying: ‘broad benchmarks such as the English and Scottish [Quality Assurance Agency] Benchmarks, or the Australian TLOs create a framework, not a straightjacket’.⁶²

3.2.5 Assuring Professional Competence 2017

In 2017, and following the *FLIP Report*,⁶³ the desire to completely rethink the legal education continuum and the regulatory consequences of so doing – across the academic, PLT, pre-admission, post-admission and CPD span – led LACC to propose an ‘Assuring Professional Competence’ development program. A Committee chaired by the former Chief Justice of the High Court was established – the Assuring Professional Competence Committee (**APCC**)⁶⁴ – and a plan of work proposed to develop a ‘Competence Statement for Australian Legal Practitioners, as had recently been done in both England and Canada’.⁶⁵ Writing in 2017, soon after the APCC had begun its work, the Chair of LACC said that, in addition to a Competence Statement it was also proposed to develop:

- (a) a Threshold Statement, derived from the Competence Statement, which entry-level lawyers would be expected to meet; and
- (b) a statement of Legal Knowledge and Skills that someone will need to acquire in order to meet the Threshold Standard.

61 Law Admissions Consultative Committee, ‘Reconciling Academic Requirements and Threshold Learning Outcomes’ (Discussion Paper, June 2011) 1 <<http://www.lawcouncil.asn.au/files/web-pdf/LACC%20docs/20110624-ReconcilingAcademicRequirementsandThresholdLearningOutcomes-DiscussionPaper.pdf>>.

62 Standing Committee on Legal Education and Training, *Comprehensive Review of Legal Education and Training in Hong Kong* (Report, April 2018) 75 (*Hong Kong Review*) <<https://www.scler.gov.hk/eng/pub.htm>>.

63 *FLIP Report* (n 36).

64 Chaired by the Hon Robert French AC, the other members of the Committee were: Professor Sandford Clark AM (Chairman, LACC), Richard Besley (Director, Judicial Commission of Victoria), John McKenzie (NSW Legal Services Commissioner) and Professor Sally Kift (then Deputy Vice Chancellor (Academic), James Cook University).

65 Sandford D Clark, ‘Regulating Admissions: Are We There Yet?’ in Kevin Lindgren, Francois Kunc and Michael Coper (eds), *The Future of Australian Legal Education* (Thomson Reuters 2018) 69 (*Regulating Admissions*).

From there, it should be possible to work out where, in the continuum of legal education, the relevant knowledge and skills can best be acquired; and how compliance with the Threshold Standard can reliably be assessed.⁶⁶

The APCC, in their Discussion Paper, stated:

We will need to investigate whether it might be possible to develop a robust and consistent professional assessment regime at the threshold of practice, following the academic PLT and legal workplace training components of a lawyer's preparation – whether this occurs before or after admission to the profession. If there are reasons which preclude a mandatory professional assessment regime based on recent reputable models deployed in other professions, it may be possible to devise other means for applicants to provide appropriate evidence of their preparation and achievements. **One means might, for example, require applicants to prepare and maintain a portfolio which charts their development and provides sufficient evidence of the level of their achievements to an admitting authority.**⁶⁷

Unfortunately, there was no funding available to pursue this ambitious scheme of work. In its place, a small Steering Committee established by LACC⁶⁸ worked with CALD to recast the Priestley 11 as learning outcomes statements, the work of which was completed but ultimately not implemented (see [Section 1.2](#)).

3.2.6 VLSB+C Review of CPD Requirements 2020

While the quality, purpose, scope and structure of post-admission regulation is not a particular focus of this review, as national and international research and commentary make clear, continuing professional competence is as important as day-one competence and a light touch approach to regulation across this 'third stage' of LE&T has been subjected to increasing scrutiny globally (see [Section 4.5](#)). The international consensus is that CPD must take its quality-assured place in an integrated LE&T continuum for pre- to post-admission competence.⁶⁹ It is therefore most fortunate that the profession has had a significant and recent review to which regard may be had in the Australian context, one that mirrors the regulatory attention that CPD's contribution to continuing competence is receiving globally. As many of the latest reports and reviews have suggested, for example, in the context of sexual harassment training,⁷⁰ certain issues can be addressed more effectively via post-admission regulation than at the earlier pre-admission stage, while other matters are better addressed in an incremental and/or iterative way across each stage of the continuum.

⁶⁶ Ibid.

⁶⁷ Assuring Professional Competence Committee, 'What We Need to Do' (Discussion Paper) 9 (emphasis added) <<https://www.lawcouncil.asn.au/docs/490542a9-1665-e711-93fb-005056be13b5/Assuring%20Professional%20Competence%20-%20What%20we%20need%20to%20do.pdf>> ('What to Do').

⁶⁸ Steering Committee comprised of: Associate Professor Allan Chay, Professor Sandford Clarke, Professor Sally Kift and Professor Alex Steel.

⁶⁹ See, for example, United Kingdom, *Report of the Committee on Legal Education* (Report, 1971); Productivity Commission, *Access to Justice* (n 3); Clark, 'Regulating Admissions' (n 65).

⁷⁰ See, for example, Law Council of Australia, 'Addressing Sexual Harassment in the Australian Legal Profession' (Discussion Paper, July 2019) Appendix 1. See also [Section 2.5.2.4](#) above.

As referred to in **Section 1.7**, in June 2020, the Victorian Legal Services Board + Commissioner (**VLSB+C**) launched a review of the CPD system in that state. The *VLSB+C CPD Review* report was published in November 2020 and made 28 recommendations for change.⁷¹ All 28 recommendations have been accepted by the VLSB+C, and an implementation plan is being developed. The analysis in the *VLSB+C CPD Review* makes for sombre reading. Humphreys concludes that, since the early to mid-2000s when CPD became mandatory and a single set of Australian standards were formulated, ‘the sector has suffered from a lack of new policy ideas and has failed to keep up with evolving approaches to professional development.’⁷²

The efficacy of the annual 10-point threshold for CPD was particularly questioned. In 2000, the Australian Law Reform Commission (**ALRC**) expressed concern as to whether there was a basis for assuming that compliance with mandatory, hours-based CPD requirements leads to lawyer competence.⁷³ The efficacy of an inputs-based approach was also raised as an issue in submissions to the ALRC *Managing Justice* Inquiry.⁷⁴ The *VLSB+C CPD Review* found that the compliance-based, ‘tick-the-box’ approach to CPD was misaligned with adult learning principles and undermined a professional learning culture.⁷⁵ In response, and in accordance with growing good practice internationally, the *CPD Review* recommended that resources be developed to assist lawyers to self-assess and reflect on their own learning and development goals, and plan self-directed learning engagement accordingly, motivated by intrinsic drivers rather than externally imposed requirements.⁷⁶

A key recommendation of the review was the need to develop a **competency framework** to describe the core skills for practising lawyers, differentiated by levels of experience and expertise. A competency framework would then inform and support an alignment and organisation of relevant CPD for the state’s practitioners.

A competency framework would provide a readily understandable guide for lawyers about their expected level of competence consistent with their level of knowledge and experience. It would provide a basis for re-focusing the CPD framework on learning outcomes rather than measuring activity inputs. If mandatory CPD is justified by the need to maintain professional competence, a framework would provide the means by which competence could be defined and CPD was organised to support it.

*(Source: Chris Humphreys, *Getting the Point?: Review of the Continuing Professional Development for Victorian Lawyers* (Report, Victorian Legal Services Board and Commissioner, November 2020) 32)*

71 See Chris Humphreys, *Getting the Point?: Review of the Continuing Professional Development for Victorian Lawyers* (Report, Victorian Legal Services Board and Commissioner, November 2020) (*‘Getting the Point?’*) <https://lsbc.vic.gov.au/sites/default/files/2020-11/CPD_Report_Final_0.pdf>.

72 *Ibid* 59.

73 *ALRC Managing Justice Report* (n 14) 175.

74 *Ibid*: for example, by the NSW Law Society.

75 *Getting the Point?* (n 71) 5. See also Hook Tangaza, *International Approaches to Ongoing Competence: A Report for the LSB* (Report, 2021) <<https://legalservicesboard.org.uk/wp-content/uploads/2021/05/International-approaches-to-Ongoing-Competence.pdf>>.

76 *Getting the Point?* (n 71) 21.

Of particular interest in the context of this CALD review is that the *VLSB+C CPD Review* considered the development of a competency framework particularly important for ‘newly admitted lawyers’, which it defined as those less than three years out. Two particular issues were identified for this cohort. First, that many are ‘unaware of what level of competence is expected of them at completion of their supervision period. A [competency] framework would provide them and their supervisors with valuable guidance and form a basis for discussing the supervisory relationship and training goals.’⁷⁷ Secondly, the *CPD Review* referenced concerns that had been expressed about the quality of supervision and support provided to new lawyers in the period immediately following post-admission, a matter that has also been the subject of comment internationally. Relevantly, Humphreys in the *VLSB+C CPD Review* records that:

The concerns that used to be expressed about the inconsistent nature of supervision for articulated clerks who were training to be solicitors are now expressed about the supervision of newly admitted solicitors. **The VLSB+C is concerned that poor behaviours and substandard competence may be attributable in part to inadequate training and supervision at the outset of a lawyer’s career.**⁷⁸

Consequently, the *VLSB+C CPD Review* made specific recommendations regarding CPD for newly admitted lawyers in supervised practice as follows:

RECOMMENDATION 8

The VLSB+C should investigate the options for ensuring that CPD undertaken by newly admitted solicitors during their supervised period of practice and barristers within their first three years of practice helps them to develop values and behaviours that will sustain their career, including in the areas of ethics, diversity and inclusion, sexual harassment, family violence, and health and wellbeing. One option would be to make completion of such requirements a precondition for the grant of an unrestricted practising certificate.

RECOMMENDATION 9

*Newly admitted solicitors should be required to keep a CPD learning plan and reflective journal about their CPD activities during their supervision period.*⁷⁹

Recommendation 16 further proposed that Ethics CPD should be a strong focus for these newly admitted practitioners. In making these recommendations, Humphreys acknowledged that a potential consequence of specifying conditions for supervised practice was the risk that law firms might perceive them to be ‘too onerous’ and be dissuaded from taking on newly admitted lawyers as a consequence.⁸⁰

More broadly, the *CPD Review* discussed the imperative to develop a better evidence-based and proactive approach to identifying and managing risk, and endorsed the benefits

⁷⁷ Ibid 23.

⁷⁸ Ibid 23 (emphasis added).

⁷⁹ *Getting the Point?* (n 71) 38.

⁸⁰ Ibid 37.

of linking CPD programs to areas of regulatory risk. Specifically, it was recommended that CPD and resources be strengthened in key risk areas such as technology and the law, sexual harassment, family violence, diversity and inclusion, and health and well-being. Of further import was the strong focus in the *VLSB+C CPD Review* on improving the approach to Ethics CPD programs. In its response to the report, the VLSB+C welcomed the ethics emphasis.

... given the significant concerns raised by lawyers during the review and as further highlighted by the findings of the [Royal Commission into the Management of Police Informants]. A robust CPD scheme based on a culture of continuous learning and development will support lawyers achieve the highest standards of ethics and practice.⁸¹

3.2.7 Australian Qualifications Framework Review 2019

Though not a law discipline review, the recent review of the AQF ('AQF Review')⁸² is of interest to this report for two reasons: it provides a modern articulation of 21st-century knowledge, skills and general capabilities that should desirably underpin any qualification; and it canvassed options for leveraging the education and training potential of shorter form credentials, including micro-credentials.

As has been noted (see [Section 1.8](#)), the HESF incorporates the regulatory requirements of AQF. The AQF is the national policy for regulated qualifications and sets out the essential characteristics, including the required learning outcomes, of 14 different types of Australian qualifications from vocational education and training (VET) to HE (for example, Certificate, Diploma, Bachelor, Masters), across ten levels of increasing complexity. The government commissioned an Expert Panel to review the AQF in 2018 and the final report of the *AQF Review* was released in October 2019.⁸³ In December 2019, the Government accepted all the HE recommendations, and the aims of the VET recommendations, subject to further state and territory discussions.⁸⁴ The *AQF Review* provides some insight into modern qualification design and desirable learning outcome inclusions.

A modern articulation of desirable knowledge, skills and general capabilities. The *AQF Review* commissioned an extensive examination of the current evidence base relating to qualification design and qualification type descriptors in attempts both to remedy the many inconsistencies and conceptual flaws of the current AQF and also to develop a less complex framework. It was recommended that a revised AQF should focus on design specifications for qualification types linked to learning outcomes for individual qualifications, rather than an emphasis on levels. Specifically, the *AQF Review* recommended that new, contemporary

81 Victorian Legal Services Board + Commissioner, 'Progress on Our Review into CPD in Victoria' (Web Page, 22 July 2021) <<https://www.lsbvc.gov.au/lawyers/practising-law/continuing-professional-development-cpd/progress-our-review-cpd-victoria>>.

82 Peter Noonan et al, *Review of the Australian Qualifications Framework* (Final Report, 2019) ('AQF Review') <<https://www.dese.gov.au/reviews-and-consultations/australian-qualifications-framework-review>>.

83 Ibid.

84 See Dan Tehan and Michaelia Cash, 'A New Future for VET and Higher Education' (Media Release, 9 December 2019) <<https://ministers.dese.gov.au/tehan/new-future-vet-and-higher-education>>.

definitions of the framework's three domains — 'knowledge', 'skills' and 'application' — be adopted, each framed in terms of action: the information to *inform* action (knowledge); the capabilities to *take* action (skills); and the *context for* action via learning and assessment conditions (application). It was also recommended that the 'focus areas' for each domain be made explicit (which is not the case under the current AQF). The focus areas proposed for learning development in each of the three domains are as follows:

- **Knowledge**
 - Scope and complexity of information that learners are expected to access and understand
 - Inquiry — identify, locate, evaluate and acknowledge sources of information
 - Information management — manipulate information in various ways.
- **Skills**
 - Learner self-management skills
 - Problem-solving and decision-making skills
 - Skills to communicate in the context of learning
 - Skills to cooperate and collaborate in the context of learning
 - Psychomotor skills.
- **Application**
 - The context of learning
 - Assessment conditions.⁸⁵

As regard 'general capabilities' (sometimes referred to as '21st-century skills' or 'enterprise skills'), the Expert Panel was of the view that, of the myriad possibilities that might be included under this head for modern qualification design, those chosen for inclusion should be able to be:

- Taught in the context of a qualification's core content
- Acquired through the process of teaching and learning
- Assessed and reported in ways that are fair, valid and reliable.⁸⁶

The four 'general capabilities' that were found to meet these requirements and were therefore nominated for incorporation in the development of every qualification, as relevant to the specific context of the qualification in question, are:

- Language, literacy and numeracy skills (for example, the Australian Core Skills Framework)⁸⁷
- Core skills for work (for example, Australian Core Skills for Work Developmental Framework)⁸⁸

85 Ibid 29.

86 Ibid 37.

87 Department of Employment, Skills, Small and Family Business (Cth), *Australian Core Skills Framework* (Framework, 2015) <<https://www.dese.gov.au/skills-information-training-providers/australian-core-skills-framework>>.

88 Department of Employment, Skills, Small and Family Business (Cth), *Core Skills for Work Developmental Framework* (Framework, 2015) <<https://www.dese.gov.au/skills-information-training-providers/core-skills-work-developmental-framework>>.

- Digital literacy
- Ethical decision making.⁸⁹

Given the regulatory necessity under the HESF for alignment between degree learning outcomes and the AQF specifications, this contemporary iteration of knowledge, skills and general capabilities is informative and useful for two reasons of relevance to this current CALD inquiry: (1) as a future-proofing check for law curriculum design as regards possible knowledge, skills and capabilities for inclusion in qualifications, and (2) for use as a modern benchmark against which to consider relevant entry-level learning outcomes identified for day-one, post-admission professional competence.

Micro-credentials. The current AQF is not designed to recognise shorter-form credentials, including micro-credentials, despite their increasingly common use. Rather, the AQF recognises full qualifications as the primary means of providing tertiary/post-secondary education. Nevertheless, it has always been the case that a range of formal and non-formal (usually short) credentials, may complement and/or interact with AQF qualifications, though they remain outside the AQF (for example, CPD and extension courses, incomplete qualifications, professional and vendor courses, Massive Open Online Courses (**MOOCs**) and the like). The recent *AQF Review* did not recommend (and stakeholder submissions did not support) the inclusion of shorter form credentials, including micro-credentials, as formal qualifications to be brought within the AQF. Even so, the Expert Panel was of the view that enabling widespread recognition and transferability of micro-credentials learning did require a national approach, particularly for the development of a verifiable quality assurance process. This is now occurring at both the individual institution level and sector-wide; for example, Universities Australia (**UA**) has recently released its *Guidance for Portability of Australian Microcredentials*.⁹⁰

An interesting opportunity here from CALD's perspective is that law schools and PLT providers, if they do not already do so, might consider supplementing existing curricula with a range of micro-credentials that address, at least in the first instance, some of the knowledge, skills and values that have been identified as 'learning gaps' across the legal education continuum. These shorter forms of learning would benefit not only providers' own pre-admission students but could also be made available as possible CPD offerings in anticipation of any law competence statement that might be developed.

⁸⁹ *AQF Review* (n 82) 37-8.

⁹⁰ Universities Australia, *Guidance for Portability of Australian Microcredentials* (Guidance, September 2021) <<https://www.universitiesaustralia.edu.au/policy-submissions/teaching-learning-funding/guidance-for-portability-of-australian-microcredentials/>>.

3.3 Complaints and professional indemnity insurance data

When thinking about the available evidence base that might inform regulatory action in a risk-based approach to professional regulation, two of the few available data sources are complaints and professional indemnity insurance (PII) claims made. Some of these data, and analyses of them to inform the interrogation of professional competence, are presented in this section.

Sklar et al conducted a qualitative review of ‘problem lawyers’ in the Victorian legal profession to identify the contextual factors and characteristics that may help to explain why those particular lawyers were engaging in problematic behaviour.⁹¹ Their empirical study analysed 67 lawyers between 2005 and 2015 who were identified as ‘problem lawyers’ on the basis that, over those ten years, they had been: subjected to 20 or more complaints and at least one disciplinary hearing; engaged in dishonest or fraudulent behaviour that resulted in a paid fidelity fund claim; and/or struck off the Victorian roll.⁹² From their analysis, Sklar et al identified a number of personal vulnerabilities within the group of problem lawyers, including that they were generally older, male and had poor health.⁹³ Contextual factors that were also commonly present in addition to personal vulnerabilities – which were termed ‘situational vulnerabilities’ – included major life stressors such as: relationship/marital breakdowns; death or illness in the family; financial difficulties; and/or excessive workload.⁹⁴ Furthermore, the data demonstrated that the overwhelming majority of problem lawyers worked in private practice, while the odds of becoming a problem lawyer were higher in sole principal practices and smaller incorporated legal practices.⁹⁵ The behaviours of problem lawyers that were most commonly discussed in disciplinary determinations included low agreeableness (such as rudeness, disrespect and belligerence) and low conscientiousness (for example, the failure to keep accurate file notes, difficulties in corresponding with clients in a timely manner and mismanaging trust accounts). In light of these findings, Sklar et al highlighted the importance of ‘greater attention to the link between professionalism and well-being in the profession’, and additionally called for initiatives that: address the intolerance of disagreeable behaviour in the legal profession; emphasise the importance of conscientiousness in practice; and assist lawyers in regulating their emotions and responding proactively to complaints.⁹⁶ While the authors recognised limitations to their study,⁹⁷ the research demonstrates that issues of professionalism (that is, low conscientiousness and low agreeableness), rather than issues relating to the adequacy of legal knowledge, are more likely to be areas of regulatory concern.

The need to focus developmental attention on ethics and professional conduct in lawyer competence considerations is also supported by complaints and insurance data. A report

91 See Tara Sklar et al, ‘Vulnerability to Legal Misconduct: A Profile of Problem Lawyers in Victoria, Australia’ (2020) 27(3) *International Journal of the Legal Profession* 269 (‘Vulnerability to Legal Misconduct’).

92 Ibid 273.

93 Ibid 279–80. This was consistent with their findings from a prior study, see Tara Sklar et al, ‘Characteristics of Lawyers who are Subject to Complaints and Misconduct Findings’ (2019) 16(2) *Journal of Empirical Legal Studies* 18.

94 Tara Sklar et al, ‘Vulnerability to Legal Misconduct’ (n 91) 280.

95 Ibid 282.

96 Ibid 285.

97 Ibid 284.

in 2016, which examined insurance claims and complaints involving legal practitioners of up to five years' experience, concluded that many of these practitioners had an inability to understand and apply the ethical principles that underpin legal professional practice.⁹⁸ The Law Society of WA found further that practitioners who commence sole practice with limited experience attract a disproportionate number of complaints, leading the Law Society to question whether a period of one year restricted practice and undertaking a practice management course is sufficient for lawyers to set up their own firms.⁹⁹ This was identified as an issue in WA as the greatest number of complaints relate to sole principals (41.5%).¹⁰⁰

... Greater attention [ought to be given] to the link between professionalism and well-being in the profession. ... [L]awyers need to regulate their emotions in the face of stress, and to respond proactively to complaints, rather than hoping the problem will go away.

(Source: Tara Sklar et al, 'Vulnerability to Legal Misconduct: A Profile of Problem Lawyers in Victoria, Australia' (2020) 27(3) International Journal of the Legal Profession 269, 284-5 (internal footnotes omitted))

As recorded in its 2019–20 annual report, the WA Legal Profession Complaints Committee (LPCC) found that the practice area attracting the most inquiries and complaints was family law (making up 34.5% of inquiries and 28.2% of complaints), followed by civil litigation (13.6% of complaints) and probate/wills/family (10.7% of complaints).¹⁰¹ The LPCC notes that the preponderance of inquiries and complaints in family law is a trend that has not changed over recent years and was perhaps explicable on the basis that family law matters, whether divorce proceedings or litigation concerning wills and family provision, can be highly stressful and require sensitive handling. Looking beyond practice areas, of the total complaints received by the LPCC in the 2017FY, 2018FY and 2019FY, the issues that collectively represented more than 50% of complaints concerned communication, services by practitioners and their personal conduct — for example, unethical conduct, negligence, misleading conduct, conflicts of interest.¹⁰²

These trends are supported by an overview of the complaints in Uniform Law states.¹⁰³ Complaints in NSW and Victoria during the 2018–19FY mostly concerned issues with lawyer competence and diligence, ethical matters, costs, communication and handling of trust money and trust accounts. An analysis of complaints and insurance claims in the Uniform Law states found that most complaints related to Australian qualified solicitors as regards their competence, ethics and costs, whereas foreign lawyers rarely attracted insurers'

98 See Assuring Professional Competence Committee, 'What to Do' (n 67) citing Angela Josun Consulting, *Assuring Professional Competence – A Scoping Study for Stage 1* (Report, 8 December 2016).

99 Law Society of Western Australia, *Future Legal Profession* (n 33) 2.

100 Non-principals made up 19.5% of complaints and particular firms represented 11% of complaints. See Legal Profession Complaints Committee Western Australia, *Annual Report 2020* (Report, 2020) 13.

101 Ibid.

102 See Legal Profession Complaints Committee Western Australia, *Annual Report 2020* (Report, 2020) 93-4.

103 Note that WA has not officially adopted the Uniform Law however the data from the LPCC was reclassified to form part of this overview (aggregated data received internally from Legal Services Council, March 2021).

attention. It was concluded that: the Priestley 11 provides no guarantee that Australian practitioners will be ethical, competent and/or diligent in delivering their services; and there is no clear relationship between the prescribed academic areas of knowledge and minimisation of risk, particularly given that the most complaints were about ethics.¹⁰⁴ In a similar vein, the Victorian Legal Practitioners' Liability Committee (**LPLC**), in its submission to the *VLSB+C CPD Review*, said that skills and behaviours covered by the CPD categories of Professional Skills, Ethics and Practice Management are more likely to generate negligence claims than claims arising from lack of knowledge of the law.¹⁰⁵

Table 3 (below) presents the aggregated complaints and insurer data for the 2019–20FY across all states and territories, as collated by the Legal Services Council (**LSC**). These data also evidence that complaints and insurance issues are not predominately being raised in relation to lawyers' knowledge of the law; rather, many complaints relate to poor communication and the conduct of lawyers. It is noted that, as for WA, this national collection also reveals that family law is consistently cited as the practice area attracting the greatest number of complaints.

Lawcover's annual review in 2020 again demonstrates that issues with insured legal practitioners are less related to doctrinal knowledge and more concerned with practical matters. The data show that 'not knowing law adequately' represented 13% of claims in 2020,¹⁰⁶ which was down from 15% in 2019.¹⁰⁷ On the other hand, poor communication (32%) and document problems (18%) were the reasons cited as the highest causes of claims.¹⁰⁸ Contrasting with other findings, however, Lawcover's statistics show that conveyancing was the practice area receiving the highest percentage of claims notification (26%), while 'matrimonial' represented a far smaller number (8%).¹⁰⁹ These data are consistent with the Victorian LPLC report in 2019–20FY that found property and conveyancing had the highest percentage of claims in terms of practice area (27%), followed by commercial litigation (18%) and commercial (12%), while family law represented 9% of claims.¹¹⁰

In its submission to the *VLSB+C CPD Review* in 2020, the LPLC recorded that it offers CPD programs in areas at risk of higher claim numbers, such as conveyancing and cyber security, and also identifies certain types of lawyers, such as those who 'dabble' in areas that they do not usually practise in, as being at higher risk. 'Poor business systems, poor communication, and out-of-date precedents also contribute to claims risk'.¹¹¹ On the question of claims in relation to senior practitioners and whether senior lawyers should not be required to undertake as much CPD because of their seniority, the LPLC is quoted in the *VLSB+C CPD Review* as follows:

We believe more senior people should not be permitted to do less CPD. There are many and often overlapping reasons for claims and years of experience are not necessarily a guide to

104 Internal document provided by the Legal Services Council, 'Identifying Risk Factors in the Uniform Law States'.

105 *Getting the Point?* (n 71) 41.

106 Lawcover, *2020 Annual Review* (Report, 2020) 28.

107 *Ibid.*

108 *Ibid.*

109 *Ibid.*

110 Legal Practitioners' Liability Committee (Vic), *Annual Report 2019-20* (Report, 2020) 9.

111 *Getting the Point?* (n 71) 56.

avoiding claims. Our claims statistics suggest that principals of firms are responsible for more claims than younger employee lawyers. This is however open to interpretation as in some cases there is question as to whether the mistake was a failure to adequately supervise a junior practitioner or the actual error by the junior practitioner.¹¹²

This snapshot of Australian data provides an evidence-based perspective that could inform discussions about additional or even mandatory CPD requirements post-admission in specific practice areas, for certain groups of practitioners, for certain skills and types of behaviour, and/or for client relationships. Discussing claims and insurance data in law school and PLT, and identifying the areas of vulnerability and risk for continuing professional competence, would likely be a salutary exercise across pre-admission LE&T in the curriculum (law school) and as regards specific competencies (PLT).

State or Territory	% of Australian Practitioners (LSC AR FY19-20 at p 38)	Body	Relevant Function	Complaints		Source
				Main Area/s of Law	Issue/s	
ACT	3	ACT Law Society	Complaints investigations	Family Law, Property	Communication and services, personal conduct	ACT AR FY19-20 at p 30
NSW	42	Office of the Legal Services Commissioner	Complaints investigations not delegated by OLSC	Family Law, Civil, Probate/ Family Provision	Communication, negligence, overcharging	OLSC AR FY19-20 at pp 22-23
		Law Society of NSW	Investor in Lawcover	Civil Litigation	Personal conduct	LSNSW AR FY19-20 at p 19
		LSNSW Prof Stds Dept	Complaints delegated by OLSC about solicitors and unqualified practice	Family Law, Wills & Estates	Personal conduct, communication	LSNSW Prof Stds Report FY18-19
		NSW Bar Association	Complaints delegated by OLSC about barristers and unqualified practice		Communication, competence & diligence	NSW Bar Assn AR FY19-20 at p 63
		Lawcover	Claims by insured	Conveyancing, Litigation	Communication, document issues	LSNSW AR FY19-20 at p 21 Lawcover Annual Review FY19-20 at p 28

112 Ibid 34. See also David Adam Friedman, 'Do We Need A Bar Exam... for Experienced Lawyers?' (2022) 12 *UC Irvine Law Review* (forthcoming) <<https://ssrn.com/abstract=3803623>>.

NT	1	NT Law Society	Complaints investigation	Family Law, Workers Comp, Civil Litigation		NT AR FY19-20 at p 14
QLD	14	Queensland Law Society		Conveyancing, Commercial		QLS AR FY19-20 at p 59
		Lexon Insurance	Access only to QLS members			
SA	4	Legal Profession Conduct Commissioner (LPCCSA)	Complaints Investigations	Family Law, Civil Litigation	Poor handling, overcharging, delay, lack of communication	LPCCSA AR FY19-20 at pp 10, 11
TAS	1	Law Society of Tasmania	Practising Certificates and oversight of Trust accounts			TLS AR FY19-20 at p 14
		Legal Profession Board of Tasmania	Oversees complaints and discipline	Family Law, Probate and Estate work	Communication	LPBT AR FY19-20 at pp 16-21
VIC	27	VLSB+C	Oversees complaints and discipline	Family Law	Costs	VLSB+C AR FY19-20 at p 56
WA	8	Legal Profession Complaints Committee (LPCCWA)	Internal committee of the Legal Practice Board of WA, investigates complaints	Family Law	Communication, costs	LPCCWA AR FY19-20
		Law Mutual	PII insurer		See 'Risk Map' & Risk Management	

Table 3. Aggregated complaints and insurer data FY 2019–20¹¹³

International complaints and insurance data. Looking briefly internationally, a PII provider in Ontario, LawPRO, publishes 'Fact Sheets' that highlight the most common bases for claims, broken down for major practice areas, and also provides advice as to steps that can be taken to lessen the risk of a claim.¹¹⁴ These breakdowns provide useful data and suggest that many claims in that jurisdiction are based on practice management issues, such as communication concerns, clerical errors, and time management, rather than on 'errors of law'. The Law Society of Alberta explains its professional competencies approach in this regard by saying that:

This approach takes a more comprehensive approach to the lawyers' practice as a whole, rather than solely focusing on substantive law. The complaint history indicates that while substantive

¹¹³ Provided by the Legal Services Council (March 2021) [Used with permission].

¹¹⁴ LawPRO, 'Biggest Claims Risks by Area of Law' (Web Page) <<https://www.practicepro.ca/practice-aids/claims-fact-sheets/>>.

areas are important, the biggest risk to lawyers is a weakness in practice management, client relationships and ethics and professionalism. These are all areas of focus in a competency-based approach.¹¹⁵

In his review for the Law Society of Alberta, Furlong records that the Law Society's early interventions data show that there is no greater cause for concern as regards complaints against lawyers in their first three years of practice: problems experienced by junior lawyers are more likely to be due to lack of professional support and training than any 'inherent failing of the lawyer's conscientiousness or quality'.¹¹⁶ The Alberta early interventions data evidence that the two main categories of complaints against lawyers with ten or fewer years' experience are "client communications (general)" and "failure to respond" 20.8% (of 206 reported incidents).¹¹⁷ Furlong speculates that the communications issues are symptomatic of larger issues – potentially, overwork, anxiety and disorganisation – which require different support via CPD (for example, around management of workload, practice and/or time).

Consumers assume legal professionals are and remain competent and that there are robust checks in place to ensure that [competence].

(Source: Legal Services Board, 'Legal Services Board Ongoing Competence Call for Evidence' (Web Page))

The Legal Services Board (**LSB**) in England and Wales, as part of its ongoing competence project, called for evidence to gather information on a range of matters, including consumer expectations of competence. In its summary report in February 2021, the LSB recorded that some 'high risk practice areas' had been identified 'where there is evidence of actual harm to consumers or an increased likelihood of harm to citizens in vulnerable circumstances. The sorts of concerns highlighted by stakeholders could often be backed up by datasets or research or were so frequent themselves that they amounted to substantial anecdotal evidence'.¹¹⁸ The practice areas highlighted by the LSB were:

- Immigration and asylum law
- Criminal and youth advocacy
- Conveyancing
- Risks from certain professionals (for example, lawyers and advocates taking on cases beyond their level of competence and instances where mental health issues affected

115 Law Society of Alberta, 'Competencies' (Web Page) <<https://www.lawsociety.ab.ca/lawyers-and-students/continuing-professional-development/background/cpd-competencies/>>.

116 Jordan Furlong, *Lawyer Licensing and Competence in Alberta* (Report, Law Society of Alberta, November 2020) 6 ('Furlong Report'). At 41, Furlong records that the 'top yearly cohorts,' when ranked by Early Intervention activities, are lawyers in their fifth, tenth, third, and sixth years of practice, respectively. To the extent that these statistics tell us anything, it is that lawyers in their first three years of practice do not pose an outsized risk of activities that lead to client complaints and law society intervention'.

117 Ibid 42-43.

118 Legal Services Board, *Ongoing Competence: Call for Evidence Themes and Summary of Evidence* (Report, February 2021) 15 <<https://www.legalservicesboard.org.uk/wp-content/uploads/2021/02/Findings-report-OC-Feb-2021-Final.pdf>>. The LSB has established a 'Legal Services Consumer Panel' that represents the interests of consumers in the sector. The Panel is set up and maintained by the LSB but operates independently.

competence and judgement, usually due to the lawyer's work environment (for example, lawyers managing huge workloads, tight deadlines, clients' demands and billing targets).

The LSB also identified key themes from its call for evidence on consumer experience of legal services and found that there is a 'clear misalignment' between public expectations and current checks and balances: '[c]onsumers assume legal professionals are and remain competent and that there are robust checks in place to ensure that [competence]'.¹¹⁹ The LSB also recently commissioned further research into public attitudes to better understand consumer confidence in existing ongoing competence measures and to explore what mix of measures would provide consumers with sufficient confidence (for example, competence statements, CPD, recertification linked to competence, regulator checks) and what the expectations of regulators might be.¹²⁰ The LSB has constituted a standing 'Legal Services Consumer Panel' to represent the interests of consumers in the sector to inform its regulatory and policy development work.

Coming at this issue with a positive framing, in the US, the IAALS initiated a major project in 2019 to examine what clients value in legal service providers – the 'Think Like a Client' project.¹²¹ The project analysed a decade's worth of client/consumer reviews of lawyers posted after having used the services of online US lawyer marketplace *Avvo.com* (posted between 2007–2017 with a pool of around 700,000 reviews in total). The reviews were assessed against a set of inclusive criteria and a random sample selected, resulting in a data set of 2232 client reviews available for analysis against the lawyer skills, behaviours, and competencies identified in the IAALS *Foundations for Practice Report*.¹²² The project identified the key attributes that clients want from their lawyers as:

- **Communicator:** Prompt responses; Proactive status updates; Explains the case; Available to the client
- **Demeanour:** Integrity and trustworthiness; Professional; Tolerance, sensitivity, and compassion; Sociability; Taking a personal interest in the case; Courtesy and respect
- **Lawyering:** Knowledge of the law and expertise; Effective negotiation and advocacy; Quality of legal advice; Loyalty and dedication to the client; In-court advocacy
- **Business Model:** Produces best outcomes; Provides value; Honest and flexible billing
- **Tenacity:** Seeing a case through from start to timely finish; Diligence, Conscientiousness, and attention to detail; Work ethic.

The *Think Like a Client Report* concludes: 'Law schools teach their students to think like lawyers, and rightly so. We propose, though, that there is more to success in the legal field: lawyers also need to think like a client.'¹²³

119 Legal Services Board, 'Legal Services Board Ongoing Competence Call for Evidence' (Web Page) <<https://www.lawsociety.org.uk/Topics/Regulation/Whats-changing/Legal-Services-Board-ongoing-competence-review>>.

120 Community Research, *Ongoing Competence in Legal Services: Report on Public Attitudes* (Report, July 2021) <<https://www.lawsociety.org.uk/Topics/Regulation/Whats-changing/Legal-Services-Board-ongoing-competence-review>>.

121 Institute for the Advancement of the American Legal System ('IAALS'), *Think Like a Client* (Report, October 2019) <<https://iaals.du.edu/projects/think-client>>.

122 IAALS *Foundations for Practice* (n 12).

123 IAALS, *Think Like a Client* (n 121) 19.

3.4 International reviews

There have been many reviews of LE&T internationally. A number of them will now be canvassed, focusing on the major reviews over the last decade or so. Approaches in Canada and the US in response to COVID-19's disruption to the Uniform Bar Exam (**UBE**) have sparked a frenzy of regulatory review activity in those jurisdictions, a range of which will also be examined.

3.4.1 Legal Education and Training Review (LETR) 2013

In 2011, the UK SRA, the Bar Standards Board (**BSB**) and the (now) Chartered Institute of Legal Executives (**CILEx**), each of whom is a regulator overseen by the LSB, jointly commissioned the *Legal Education and Training Review (LETR)*, which reported in 2013.¹²⁴ The report runs to some 371 pages and is supported by a wealth of rigorous research, targeted discussion papers, extensive consultation and a substantial literature review. The review positioned LE&T reform as a 'socially complex' problem and took a 'problem-based', iterative approach to the LETR's research methodology as a consequence, using methods of thematic enquiry.¹²⁵

The LETR found the standard of education and training in England and Wales was generally good, but that there was little room for complacency. In particular, the LETR noted a number of fundamental regulatory challenges, including 'the lack of an overall and coherent legal education system as such',¹²⁶ as evidenced by, for example, the 'reliance on relatively shallow, vague or narrow conceptions of competence; a failure generally to adopt robust methods for deriving outcomes; the widespread absence of standardised assessment processes; [and] reliance on assessment practices that possess conformity rather than practice validity'.¹²⁷

Twenty-six high-level recommendations were made for specific reform to enhance the quality, accessibility and flexibility of the LE&T system in the following broad ways:

- **Quality.** Assuring quality through: greater consistency of outcomes and assessment standards; increased standardisation of assessment; strengthening competence requirements in some areas; and placing greater emphasis on assuring continuing competence through a CPD system that required active planning and demonstration of the value of continuing learning. The regulators were encouraged to gather key data and information for more effective, evidence-based regulation and to support informed decision making by all stakeholders, including consumers.
- **Accessibility.** Despite massification in HE, access to the legal profession was becoming more socially exclusive and elitist. Recommendations were made around the provision of non-standard pathways to qualification that would improve accessibility to the

124 Legal Education and Training Review, *Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales* (Report, June 2013) ('LETR Report') <<https://paulmaharg.com/letr/wp-content/uploads/LETR-Report.pdf>>.

125 Ibid 4.

126 Ibid vii.

127 Ibid 152.

legal profession for more diverse cohorts, for example: increasing opportunities for paralegal staff, based on voluntary certification against a common set of outcomes and standards; establishing professional standards for internships and work experience; better, more realistic and accessible careers advice; and supporting development of the UK's 'higher apprenticeships' for a non-graduate pathway.¹²⁸

- **Flexibility.** LETR expressed the expectation that regulators should co-operate in setting learning outcomes for LE&T to ensure equivalent baseline standards and remove unnecessary barriers to more flexible qualification pathways: for example, by clarifying systems for accreditation of prior learning and transfer between legal roles; and encouraging integrated course-based and workplace learning.

In seeking to distil the ingredients of legal competence, the LETR mapped key legal attributes against the various 'dimensions' identified by Epstein and Hundert in those authors' model for medical professional competence.¹²⁹ Epstein and Hundert's six dimensions, and the 32 legal attributes the LETR mapped against each are as follows:

- **Cognitive:** Eleven attributes: Core knowledge; Basic communication skills; Information management; Abstract problem-solving; Applying knowledge to real-world situations; Using tacit knowledge and personal knowledge; Self-directed acquisition of new knowledge; Recognising gaps in knowledge; Generating questions; Using resources and digital literacy; Learning from experience.
- **Integrative:** Three attributes: Using legal reasoning strategies appropriately; Linking legal knowledge and operational understanding of problems; Managing uncertainty.
- **Context:** Three attributes: Understanding the professional work setting and professional work; Office skills; Efficiency.
- **Relationship:** Four attributes: Interpersonal communication skills; Handling conflict; Teamwork and collaboration; Supervision.
- **Affective/moral:** Seven attributes: Integrity; Independence; Emotional intelligence; Respect for Clients; Resilience; Empathy; Social responsibility.
- **Habits of mind:** Four attributes: Attention to detail; Awareness of own competence limits; Reflection on one's own abilities, thinking, emotions and techniques; Willingness to acknowledge and correct error.¹³⁰

The LETR also discussed the content of the 'core knowledge' domain at the academic stage – the equivalent of the Australian *Academic Requirements*.¹³¹ The knowledge requirements across various jurisdictions are set out in **Appendix G**. As has been the case in Australia, the LETR research demonstrated 'little appetite' in either the academy or the professions to change the areas of knowledge, with the (then) current 'Foundation' subjects being

128 See, for example, Julie Brannan, 'SQE's Earn-as-you-learn Training Opens Door for New Legal Talent', *Legal Futures* (Blog Post, 5 March 2021) <<https://www.legalfutures.co.uk/blog/sqes-earn-as-you-learn-training-opens-door-for-new-legal-talent>>.

129 Ronald Epstein and Edward Hundert, 'Defining and Assessing Professional Competence' (2002) 287(2) *Journal of the American Medical Association* 226.

130 *LETR Report* (n 124) 340.

131 *Ibid* 140-144.

considered ‘about right’ for a ‘minimum common grounding for professional training’.¹³² The LETR found that the academic stage is valued when it:

... develops a strong foundation of substantive legal knowledge, and understanding of the social context within which law operates, as well as for the broad intellectual and critical capacities that are the hallmark of degree level education. These are all seen as pre-requisites to professional competence.¹³³

Ultimately, the LETR concluded that there was no rationale for proposing change to core knowledge requirements, though considered perhaps some description of the knowledge areas with a level of content detail similar to that provided by the Australian ‘Priestley 11’ might be desirable.¹³⁴ Interestingly, there was no recommendation to include ethics and professional values in the common core. The report specifically noted the transformative potential of technology’s impact both on LE&T, including the undergraduate degree, and on legal services employment and professional practice more broadly.

4.96 ... LETR research data indicate little appetite, amongst either academics or the professions, for changes in regulation of the academic stage, whether by creating a national assessment framework for entry to the professional schools, or by strengthening the role of the professional schools as gatekeepers to the profession. Further regulation could reduce innovation and narrow the focus of university legal education if it forced the academic law schools to focus more specifically on preparation for vocational requirements...

4.97 LETR research data also demonstrate that the academic stage is valued where it develops a strong foundation of substantive legal knowledge, and understanding of the social context within which law operates, as well as for the broad intellectual and critical capacities that are the hallmark of degree level education. These are all seen as pre-requisites to professional competence.

(Source: Legal Education and Training Review, Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales (Report, June 2013) 141)

The LETR did go on to identify a range of competence ‘gaps’¹³⁵ across the LE&T continuum, particularly in professionalism and ethics, but also including: legal research and digital literacy skills; oral and written communication skills; commercial and social awareness; management and financial skills, which were particularly an issue in high-risk practice areas (identified as ‘sole practice, small firms, and publicly funded work’);¹³⁶ and equality and diversity training (particularly in CPD). Particularly of interest to this CALD review, the LETR directly

132 Ibid 143.

133 Ibid 141.

134 Ibid 144.

135 Ibid 275.

136 Ibid 276.

tackled issues around the regulatory need to set evidence-based and robust competence standards for lawyers, both at the day-one, initial competence entry point *and* for continuing competence. Issues around quality assurance, assessment and the need for more flexibility in the regulatory system to dismantle unnecessary barriers to qualification were also discussed. The significant and wide-ranging regulatory responses to the LETR's call to set competence standards are discussed in **Section 4.4**, amongst which is the SRA's move to implement a standardised common assessment regime by way of its adoption of the Solicitors' Qualifying Exam (**SQE**) (see **Section 4.4.3**), an option that was not recommended by the LETR.

3.4.2 Law Society of England and Wales 2019: Skills needs and future legal workforce planning

To assist legal services providers in England and Wales to understand better the impact of regulatory, commercial and technological change on the profession, and on solicitors' roles and skills in particular, the Law Society of England and Wales commissioned research to inform legal services' workforce planning, future needs and individuals' career development planning. In late 2019, two complementary reports were published.¹³⁷ A report by the Institute for Employment Studies (**IES**) captured legal sector employment trends, workforce projections and solicitor firm perspectives.¹³⁸ IES conducted interviews with senior human resource professionals across 24 randomly selected legal services firms or in-house teams to assess: changes in the composition of the legal services sector; current and future skills issues; and the impact of change on five key occupational groups in legal services and other office support staff.¹³⁹ Analysis was then conducted of response data as against current forecasts under four alternative future scenarios (in blue italics next), with results as follows:

- ***The take-up of technology, particularly artificial intelligence, machine learning and automation*** – total employment level decrease of 7% across all groups; reduction in legal professionals of 4%; largest reduction in legal secretaries and other office support workers (19–20%)
- ***Increased competition as a result of deregulation*** – total employment level increase of 0.3% across all groups; reduction in legal professionals of 0.9%; no change for legal associate professionals; increases of 2–3% for senior support, legal secretary and other office support roles
- ***Increasing contracting out of support services*** – small overall decrease (0.3%) across all groups; senior support workers and other office support workers decrease of 3.3%; 0.6% increase for legal professionals and associate professionals

¹³⁷ See The Law Society, 'Research to Inform Workforce Planning and Career Development in Legal Services' (Web Page, 6 December 2019) <<https://www.lawsociety.org.uk/topics/research/research-to-inform-workforce-planning-and-career-development-in-legal-services>>.

¹³⁸ Institute for Employment Studies (IES), *Research to Inform Workforce Planning and Career Development in Legal Services: Employment Trends, Workforce Projections and Solicitor Firm Perspectives* (Final Report, December 2019) <<https://www.lawsociety.org.uk/topics/research/research-to-inform-workforce-planning-and-career-development-in-legal-services>>.

¹³⁹ Ibid 17 at 1.1.3 'Key definitions'. Five key occupational groups were used in the research: Legal professionals (barristers and judges, solicitors, legal professionals); Legal associate professionals (barrister's clerk, compliance officers, conveyancer, legal executive, paralegal); Legal Secretaries (legal secretaries, legal administrator, secretary (legal services)); Senior support staff (managers and officers in HR, IT, finance, accounts, marketing); and Other office support staff (administrative and secretarial roles apart from legal secretaries).

- **Increased supply to the sector from higher education as a result of the introduction of the new qualification system** – very slightly lower number of legal professionals; legal associate professionals 5% increase; legal secretaries 25% increase; senior support workers 3% increase; other office support workers decrease by 19%.¹⁴⁰

The report's findings on skills shortages and gaps are of particular interest, especially when considered in the context of the second December 2019 England and Wales report mentioned next. In 2019, IES reported that skills *shortages* were commonly found to be focused on time management, task prioritisation and problem-solving skills. For skills *gaps*, again planning and organisation skills and problem-solving skills were most commonly reported. IES found a common theme in employer interviews that:

... firms were paying more attention to softer people skills, such as communication and team working, when recruiting legal professionals, whereas in the past they had only looked at the technical legal skills. A commercial awareness, and management skills, were also seen as important for legal professionals. ***IT skills had increased in importance, but were generally seen as a life skill that all graduates had developed***, rather than being the preserve of secretarial or specialist roles. Numeracy skills were identified as a skills gap by many employers interviewed.¹⁴¹

It is noted that the categorisation of IT skills as a 'general life skill' is not to diminish its importance for firms, which view these skills as vital to drive efficiencies and match competitors by way of a 'greater blending of support and legal functions, with legal staff now able to complete discreet support tasks automatically with the assistance of technology and a higher degree of IT literacy'.¹⁴² Technology was also commonly mentioned with regard to future skills requirements and the report details observations made as to how technological change will likely impact future workforce reorganisation and restructuring for greater efficiency over the next five years. The potential for process-driven tasks to be undertaken by paralegals and for a higher degree of IT competency among senior lawyers were both mentioned. As regards the latter, several comments were recorded from firms that IT skills gaps continued to exist at senior levels of the profession, due to generational factors and the reluctance of some staff to use new technology.

Also in December 2019, the Law Society in England and Wales reported on a survey of individual solicitors detailing the state of skills, training, workplace changes and perceived job quality.¹⁴³ In particular, the survey report sets out the similarities and differences between the skill sets valued by private lawyers, in-house lawyers and government lawyers. Broadly speaking (see **Figure 3**), the top three, most important 'day-to-day' skills for all lawyers were: 'client handling' (56%); 'writing and drafting' (38%); and 'solving problems requiring solutions

¹⁴⁰ Ibid Chapter 5. Brexit scenarios are also considered.

¹⁴¹ Ibid 103 (emphasis added).

¹⁴² Ibid 91.

¹⁴³ The Law Society, *Research to Inform Workforce Planning and Career Development in Legal Services: Skills, Training, Workplace Changes and Job Quality in the Solicitors' Profession* (Report, December 2019) <<https://www.lawsociety.org.uk/topics/research/research-to-inform-workforce-planning-and-career-development-in-legal-services>>.

specific to the situation’ (36%). By comparison, the ‘least’ important in terms of day-to-day skills were considered to be: ‘setting objectives for others and planning human, financial or other resources’ (3%); ‘adapting to new equipment, technology or methods’ (2%); and ‘advanced or specialist IT skills’ (1%). ‘Computer literacy/basic IT skills’ and ‘business and marketing skills’ were also ranked quite low by all lawyers (5% and 13% respectively).¹⁴⁴

Chart 5: Which, if any, of the following skills are important to your day-to-day work? listed in top /three skills



Figure 3. Rank importance of day-to-day skills (Law Society of England and Wales, 2019, 14)¹⁴⁵

When considered across the three different practice types (see **Figure 4**), it is worth noting that, while ‘writing and drafting skills’ and ‘solving complex problems’ were rated in the top three skills for all practice types and ‘managing your own time and prioritising tasks’ was highly ranked by each group, other skills, such as ‘client handling’, ‘risk management’ and ‘team work’ were very differently ranked.¹⁴⁶

¹⁴⁴ Ibid 14.

¹⁴⁵ Ibid.

¹⁴⁶ Ibid 15-16. The full Table 3 can be found at pp 15-16, which sorts the 16 day-to-day skills across the three practice types and for all lawyers.

Rank	All PC holders	Private practice	In-house	Government
1	Client handling (56%)	Client handling (66%)	Solving complex problems requiring solutions specific to the situation (49%)	Solving complex problems requiring solutions specific to the situation (45%)
2	Writing and drafting (38%)	Writing and drafting (37%)	Persuading or influencing others, whether colleagues or clients (41%)	Writing and drafting (42%)
3	Solving complex problems requiring solutions specific to the situation (36%)	= Solving complex problems requiring solutions specific to the situation (33%) = Managing your own time and prioritising own tasks (33%)	Writing and drafting (40%)	Managing your own time and prioritising own tasks (37%)
4	Managing your own time and prioritising own tasks (32%)	Team working (19%)	Risk management (38%)	= Persuading or influencing others, whether colleagues or clients (27%) = Client handling (27%)
5	Persuading or influencing others, whether colleagues or clients (21%) = Risk management (21%)	Risk management (18%)	Managing your own time and prioritising own tasks (28%)	Legal research (26%)

Law Society, PC Holder Survey, 2018
(Base=1,503)

Technical and practical skills
People and personal skills

Both people and personal skills, and technical and practical skills, were considered important by solicitors in each sector. Equity partners (or equivalent) were significantly more likely than others in private practice to list 'managing or motivating staff' and 'business development and marketing' in their top three most important skills. None of the equity partners in the sample listed 'advanced or specialist IT skills' in their top three, although almost a quarter of this group did consider such skills as being important generally in their day to day work.

Figure 4. Rank importance of day-to-day skills across practice types (Top 5 (only) extract from larger table)¹⁴⁷

3.4.3 Review of Legal Education and Training in Hong Kong 2018

A review of LE&T in Hong Kong was recently conducted, the first substantial review of LE&T in Hong Kong since the *Redmond and Roper Report* was published in 2001.¹⁴⁸ The broad-ranging review was prompted by: the expansion of LE&T in Hong Kong, due particularly to the addition of a third law school and the offering of JD degrees; perceived concerns over access to the profession and consistency in quality and standards; and the changing demands on legal services, for example, due to globalisation, technology and the integration of Hong Kong and Mainland legal markets. One of the consultants appointed to the review in 2015 was Professor Julian Webb, who was also involved in the LETR exercise discussed in [Section 3.4.1](#). The review consultants reported in April 2018 ('*Hong Kong Review*').¹⁴⁹ The 255-page report canvassed the regulatory framework, history and policy context of LE&T in Hong Kong and looked at educational developments in a range of comparator (common law) jurisdictions, including Australia. It then went about examining: the academic stage; the PLT stage under Hong Kong's Postgraduate Certificate in Laws (**PCLL**); the debate on the Law Society's expressed intention to implement a common entrance examination (**CCE**); training requirements for supervised practice and overseas lawyers; and CPD requirements.

Ultimately, after setting out the potential benefits and risks regarding the introduction of a CCE, the *Hong Kong Review* proposed a moratorium on the implementation of a CCE,¹⁵⁰ which was accepted by the Law Society. The *Review* also recommended that:

¹⁴⁷ Ibid.

¹⁴⁸ Paul Redmond and Chris Roper, *Legal Education and Training in Hong Kong: Preliminary Review, Report of the Consultants* (Report, Steering Committee on the Review of Legal Education and Training, 2001).

¹⁴⁹ *Hong Kong Review* (n 62) 74.

¹⁵⁰ Ibid 117.

- The compulsory academic core be reduced to free up space for greater choice and innovation and to better prepare students for ‘legal practice in a rapidly changing, globalised, and technologically-enabled world’ [Recommendation 4.2]¹⁵¹
- Legal ethics and professionalism be introduced at the academic stage in an integrated and pervasive way across core curriculum [Recommendation 4.3]¹⁵²
- The outcomes and fit between the academic and vocational stages be re-evaluated, especially for any unnecessary duplication as regards the re-learning and re-examination of substantive law in the PCLL
- A uniform statement of outcomes and written standards be developed for the PCLL, which should also address a range of future training needs (for example, professionalism, commercial awareness, understanding new modes and technologies in legal practice; developing lifelong learning/reflective practice capabilities; the need for enhanced careers advice and support) [Recommendation 4.4]¹⁵³
- The Law Society and Bar should build on the outcomes developed for the PCLL and each devise a set of outcomes for the final stage of training that assures demonstration of competence to practise at the level expected of a ‘day-one’ practitioner [Recommendation 7.1]¹⁵⁴
- That outcomes and standards be developed and monitored for the training contract or pupillage, which the review said was ‘qualitatively different’ from the degree and PCLL, and could be characterised as a bridge between ‘historic competence’ of pre-admission LE&T and ‘future capability’ at the beginning of the new lawyer’s professional career.¹⁵⁵

Specifically, the *Hong Kong Review* suggested that the following discrete, generic elements of professional competence might be considered in this regard, with high-level statements such as these perhaps being supplemented by guidance and exemplars:

- To demonstrate competence in a relevant area or areas of practice (**technical knowledge**)
- To perform a range of legal tasks (**task skills** – client interviewing/conferencing, legal research, drafting and advocacy)
- To manage a range of tasks within a job (**task and project management skills** – including time management)
- To respond to uncertainties and breakdowns in routine/normal activities (**task/project contingency management**)
- To work effectively for and with others (**team and professional relationship skills**)
- To identify and deal with embedded issues of ethics, professionalism and professional regulation ‘in context’ (**ethical and regulatory risk management**)

151 Ibid 77.

152 Ibid.

153 Ibid.

154 Ibid 148.

155 Ibid 140–41.

- To reflect on and understand the limits of one's own competence and to address one's own personal and professional development needs (**self-management**).¹⁵⁶

In charting a careful middle course between over-specification on the one hand, and the provision of sufficient detail to be useful and relevant on the other, the *Hong Kong Review* also recommended that the following skills should be directly addressed, but specifically did not recommend that any further assessment of substantive areas be included 'given the diversity of modern legal practice':

- Client Interviewing
- Advocacy/Persuasive Oral Communication
- Case and Matter Analysis
- Legal Research and Written Advice
- Legal Drafting
- Task and self-management skills
- Ethics and professional standards/regulation.¹⁵⁷

Of interest in the Australian regulatory context of post-admission supervised practice, as regards the training contract, the *Hong Kong Review* recommended that 'the Law Society investigate the feasibility of introducing and maintaining an online portfolio template and training record for use by all trainees' as the assessment mechanism for workplace training outcomes (akin to the Law Society of Scotland's PEAT2 model¹⁵⁸ and as trialled by the SRA in an English pilot for work-based learning).¹⁵⁹ The Review also invited the Law Society of Hong Kong to initiate a review of its methods for regulating and monitoring CPD, particularly given the maturity of schemes in the UK, Canada and New Zealand.

3.4.4 New Zealand 2013

In 2013, the New Zealand Council of Legal Education commissioned a comprehensive review of the *Professional Legal Studies Course (PLSC)* to be conducted by the Right Honourable Sir Andrew Tipping ('*PLSC Review*').¹⁶⁰ It was found that the PLSC provided a satisfactory transition between university and practice and that there was no need to introduce articles or training contracts as a prerequisite for admission. The *PLSC Review* specifically recorded

¹⁵⁶ Ibid 141 (emphasis added and internal citation omitted). It is noted that the consultants were keen not to over-specify competencies, but provide sufficient detail to be useful and relevant.

¹⁵⁷ Ibid 142-143.

¹⁵⁸ Law Society of Scotland, 'PEAT2 Outcomes' (Web Page) <<https://www.lawscot.org.uk/qualifying-and-education/qualifying-as-a-scottish-solicitor/the-traineeship/information-for-trainees-and-practice-unit/peat-2-outcomes/>>: 'A trainee's achievement of the PEAT 2 outcomes should be recorded and reflected upon in the PEAT 2 record, discussed at each PEAT 2 quarterly performance review and aided by undertaking required continuing professional development for trainees (CPD)'.

¹⁵⁹ Julian Webb, Mike Maughan and William Purcell, *Project to Support Implementation of a New Training Framework for Solicitors Qualifying in England and Wales: Review of the Training Contract and Work-based Learning* (Report, 2004) <https://www.researchgate.net/publication/254150587_Project_to_support_implementation_of_a_new_training_framework_for_solicitors_qualifying_in_England_and_Wales>.

¹⁶⁰ Sir Andrew Tipping, *Review of the Professional Legal Studies Course* (Report, New Zealand Council of Legal Education, August 2013). The requirements of the New Zealand PLSC are set out in **Appendix H**.

that the primary focus of on-the-job experience and training should occur *post-admission* with the experience and supervision that is expected at that time: ‘The fact that in some cases the anticipated post admission supervision and training does not occur, or at least does not satisfactorily occur, should not skew the appropriate role of the [PLSC] Course’.¹⁶¹ The *PLSC Review* found that the 11 skills listed in the PLSC remained appropriate, though some enhancements were suggested, including greater emphasis on oral and written communication skills and more of a client focus for the advising skill. Sir Andrew suggested that some consideration might be given to expanding the traditional competencies to include matters such as: emotional intelligence; an appreciation of fundamental business concepts; exercising professional judgment; client relations; and running a practice in a businesslike manner.¹⁶²

Ultimately, no change was recommended to the structure of the course (for example, to shift it to a more transactional emphasis of the skills) as it was considered that such a change would fail to recognise the focus and purpose of the skills-based course. The *PLSC Review* did recommend that an externally set and assessed exam should be introduced as a precondition to admission, with a focus on skills acquisition. In 2014, the New Zealand Council adopted all recommendations in the *PLSC Review* except for the suggestion for an external exam, which the Council considered raised feasibility issues.

3.4.5 Canada

3.4.5.1 National Competency Profile and National Admission Standards (2009–2016)

Each Canadian law society has its own procedures for assessing candidates for admission to practice. The Federation of Law Societies of Canada (**FLSC**) is the coordinating body for Canada’s 14 provincial and territorial law societies. The Canadian Bar Association (**CBA**) represents lawyers, judges, notaries, law teachers and law students. In 2002, a national regime was introduced to allow the mobility of lawyers between Canadian common law provinces (updated in 2013 by the current *National Mobility Agreement*). The move towards national mobility prompted efforts to develop nationally consistent and defensible admission standards across the country, in place of the considerable variation that then existed from jurisdiction to jurisdiction. In 2009, the FLSC Council approved a plan to develop a *National Competency Profile (NCP)* and National Admission Standards. Work on the NCP was progressed by a task force of practitioners, in consultation with an advisory committee of law society experts and guidance from a consulting firm with international expertise on professional standards. A draft NCP was tested for validity in a national survey of new lawyers and Quebec notaries (those admitted to practice in the previous five years, n=7000). Respondents were asked to rate each of the identified individual competencies (knowledge, skills and abilities required for new members of the profession to practise competently) on two scales:

¹⁶¹ Ibid 3 [G.8].

¹⁶² Ibid 8.

1. How frequently they performed or used the competency
2. The severity of the consequences if an entry-level practitioner in their practice setting did not possess or was not able to perform the competency.

The final NCP was approved in September 2012¹⁶³ and adopted by law societies in 2013, subject to: the development and approval of an implementation plan; agreement on how the NCP was to be assessed; and the development of a 'good character'/'suitability to practise' standard. A draft *National Fitness and Suitability to Practise Standard* was prepared,¹⁶⁴ but the work on this project seems to have ceased, without concluding, in order to concentrate efforts on the National Admissions Standards Project.

In 2015, a proposal was presented by the National Admission Standards Project Steering Committee to develop a national qualifying assessment scheme for admission to the legal profession in Canada, which was to be administered by an Independent Assessment Agency. The proposal emphasised the importance of assessing competencies in skills, ethics and professionalism, with minimal overlap intended between this assessment and the common standard specified in the Federation's *National Requirement* that all law school programs must meet for their graduates to enter a Canadian law society admission program.¹⁶⁵ The 2015 proposal suggested four possible assessment methods (or combination of methods): (1) scenario-based multiple-choice; (2) long answers; (3) simulated practice scenarios with interactive audio-visual components in which complex critical and analytical thinking skills are applied; and (4) demonstrated experience in the legal workplace (for example, articling) or alternative environments.¹⁶⁶

Following extensive consultation:

... the Steering Committee concluded there was not a critical mass of law societies ready to move forward with the development of a national assessment tool ... [and] in June 2016 the Council of the Federation decided that work on developing a national assessment tool should cease. Law societies continue to determine the appropriate mechanisms to assess the competencies of entry level lawyers. It remains at the discretion of each law society to determine to what degree they will continue to rely on the National Competency profile.¹⁶⁷

¹⁶³ Federation of Law Societies of Canada, *National Entry to Practice Competency Profile for Lawyers and Quebec Notaries* (Standards, 2012) ('*National Competency Profile*') <<https://flsc.ca/wp-content/uploads/2014/10/admission4.pdf>>.

¹⁶⁴ Federation of Law Societies of Canada, *National Admission Standards Project Phase 1 Report* (Report, September 2012) <<https://flsc.ca/wp-content/uploads/2014/10/admission3.pdf>>. The Working Group identified conduct in following areas was relevant to such a standard: Respect for the rule of law and the administration of justice; honesty; governability; and financial responsibility.

¹⁶⁵ Federation of Law Societies of Canada, *National Requirement* (Requirements, January 2018) <<https://flsc.ca/wp-content/uploads/2018/01/National-Requirement-Jan-2018-FIN.pdf>>. The National Requirement requires that graduates of an LLB or a JD demonstrate competency in relation to specified substantive legal knowledge, skills, and ethics and professionalism as set out in the standard. The National Requirement specifies:

Skills: Problem Solving; Legal Research; Oral and Written Legal Communication

Ethics and Professionalism: both knowledge and skills components

Substantive Legal Knowledge: Foundations of Law; Public Law of Canada (including, constitutional, criminal and administrative law); Private Law Principles (including, contract, torts and property law).

¹⁶⁶ Federation of Law Societies of Canada, 'National Admission Standards Project: Frequently Asked Questions' (FAQs, December 2015) <http://businessdocbox.com/Human_Resources/118231620-National-admission-standards-project-frequently-asked-questions-december-2015.html>.

¹⁶⁷ Federation of Law Societies of Canada, 'National Admission Standards' (Web Page) <<https://flsc.ca/national-initiatives/national-admission-standards/>>.

The development costs for the proposed national assessment tool – the ‘National Law Practice Qualifying Examination’ – were estimated to be CAN\$2.8m (at Aug 2015), with operating costs likely to be set at CAN\$1725 per candidate (based on 3800 candidates). A three-phase approach was to have been developed over four years: (1) a National Qualifying Exam; (2) National Qualifying Exam (Skills and Tasks); and (3) National Practice Qualifying Experiential Learning Requirement (demonstrated experience in a legal workplace or alternative). While the advantage of uniformity was promoted, the law societies reportedly remained unconvinced. For example, the Law Society of British Columbia stated that it had significant concerns because the ‘proposal does not adequately deal with matters of provincial law, attempts to duplicate or replace by online testing PLTC’s in-person skills assessments, is not psychometrically defensible, relies far too heavily on multiple-choice testing, and is unduly expensive’.¹⁶⁸

The Federation’s *National Entry to Practice Competency Profile for Lawyers and Quebec Notaries* (2012), which is in use across the various provinces, provides as follows (with further detail set out in the *Profile* itself):

1. Substantive Legal Knowledge

Demonstrate a general understanding of core legal concepts applicable to the practice of law in Canada in:

1.1 Canadian Legal System

1.2 Canadian Substantive Law (Contracts, Property, Torts, Family, Corporate & Commercial, Wills & Estates, Criminal, Admin, Evidence, Rules of Procedure)

1.3 Ethics & Professionalism

1.4 Practice management (Client development, Time management, Task management)

2. Skills

2.1 Ethics and Professionalism Skills

2.2 Oral and Written Communication Skills

2.3 Analytical

2.4 Research Skills

2.5 Client Relationship Management

2.6 Practice Management Skills

3. Tasks

3.1 General tasks

- Ethics, professionalism and practice management
- Establishing client relationship
- Conducting matter
- Concluding retainer

3.2 Adjudicational/alternative dispute resolution

3.3 Transactional advisory matters.¹⁶⁹

¹⁶⁸ Law Society of British Columbia, *Admission Program Review Report* (Report, December 2015), 6 <https://www.lawsociety.bc.ca/Website/media/Shared/docs/publications/reports/LawyerEd_2015.pdf>. This Report appends the *National Law Practice Qualifying Assessment Business and Implementation Plan*, including costings, for the proposed ‘National Law Practice Qualifying Examination’.

¹⁶⁹ *National Competency Profile* (n 163).

3.4.5.2 Legal Futures Initiative (2012–2014)

The CBA created a ‘Legal Futures Initiative’ in 2012 to examine the fundamental changes facing the Canadian legal profession due to forces that included: globalisation; technology and market liberalisation; altered client needs and expanded expectations; and perennial access to justice issues. Over a four-phase workplan, extensive consultation, commissioned research and in-depth interviews were conducted. A comprehensive research report and a *Trends and Issues Report* were both released in 2013, as a basis for further consultation, survey feedback and response.¹⁷⁰ The final report was released in 2014 (‘*CBA Futures Report*’), which made 22 recommendations based around several key findings that emphasised:

- The profession’s commitment to flexibility and transformation in the delivery of legal services (for example, through new business structures that deliver better quality client services enabled by strong regulation)
- Diversity in the profession embedded in legal service providers and law societies for a more meaningful representation of the diversity of Canadian society
- Professional lifelong learning, including for new and current lawyers
- Openness to education and training for new legal disciplines created (such as legal knowledge engineers, legal process analysts, legal support system managers, and legal project and risk managers): ‘Parallel legal programs should be developed at existing legal education institutions or through new legal education and training providers’
- Data collection on the profession to support evidence-based innovation.¹⁷¹

As regards CPD, the CBA aligned with the international view that outcomes-based, national standards for CPD should be adopted for professional development that meets lawyers’ needs at their various career stages. The CBA also recommended that research should be conducted ‘to measure any link between quantity or input-based CPD and competence.’¹⁷²

An integrated, practical approach, including multidisciplinary skills training, should be incorporated into [law] curricula to provide “translational knowledge” – the ability to turn critical knowledge of legal concepts, regulatory processes, and legal culture into actual problem-solving ability in practice.

*(Source: Canadian Bar Association, *Futures: Transforming the Delivery of Legal Services in Canada* (Report, 2014) 173)*

Chapter 7 of the *CBA Futures Report* discussed legal education specifically and made recommendations for: expanding admission criteria; debt forgiveness; law school data collection; educational innovation for new models of legal education; a focus on learning

¹⁷⁰ Canadian Bar Association, *The Future of Legal Services in Canada: Trends and Issues* (Report, 2013) <<https://www.cba.org/Futures/Accessing-Resources/CBA-Resources>>.

¹⁷¹ Canadian Bar Association, *Futures: Transforming the Delivery of Legal Services in Canada* (Report, 2014) 6-7, 21 <<https://www.cba.org/Futures/Accessing-Resources/CBA-Resources>>.

¹⁷² Ibid 72. These findings are echoed in the VLSB+C CPD Review discussed in [Section 3.2.6, Getting the Point?](#) (n 71).

outcomes; and an easing of restrictions on law students' participation in legal clinics. Recommendation 16 encapsulated the thinking around modern curriculum design under the heading 'Problem-solving in the Practising World':

An integrated, practical approach, including multidisciplinary skills training, should be incorporated into curricula to provide "translational knowledge" — the ability to turn critical knowledge of legal concepts, regulatory processes, and legal culture into actual problem-solving ability in practice.¹⁷³

3.4.6 United States

3.4.6.1 MacCrate (1992), Carnegie (2007) and Stuckey (2007) Reports

Reports out of the US have been very influential in Australia, despite the difference in legal systems. The 1992 *MacCrate Report*¹⁷⁴ was seized on by the ALRC,¹⁷⁵ with potentially greater impact than it achieved at the time in the US. In particular, *MacCrate* argued for bridging the gap between what was being taught in law school and the fundamental lawyer skills and values required day-to-day of modern legal practitioners. The *MacCrate Report's* oft-cited 'Statement of Skills and Values'¹⁷⁶ sits comfortably today with the Australian Law TLOs and the Australian AQF requirements. Even more presciently and still relevant today, the *MacCrate Report's* articulation of the 'fundamental values of the profession' could easily be adopted as contemporary law competencies: the provision of competent representation; striving to promote justice, fairness and morality; striving to improve the profession; and professional self-development.¹⁷⁷ It was the ALRC's unflattering comparison of the Priestley 11's solitary focus on areas of substantive law with the *MacCrate Report's* 'knowledge-skills-values' conceptualisation that galvanised many in the Australian academy to re-focus their curricular efforts post-2000 on the integration of content with skills. At the time, the ALRC said: 'MacCrate would orient legal education around what lawyers need to be able to do, while the Australian position is still anchored around outmoded notions of what lawyers need to know'.¹⁷⁸

In 2007, the *Carnegie Report*¹⁷⁹ and *Stuckey Report*¹⁸⁰ provided further impetus for integrative curriculum reform, at a time when the Australian academy was directing concerted attention

173 Ibid 71.

174 American Bar Association, *Legal Education and Professional Development — An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* (1992) ('*MacCrate Report*').

175 ALRC *Managing Justice Report* (n 14).

176 *MacCrate Report* (n 174) 139-140. According to the *MacCrate Report*, the 10 fundamental lawyering skills are: problem solving; legal analysis and reasoning; legal research; factual investigation; communication (oral and written); counselling clients; negotiation; understanding litigation and alternative dispute resolution processes and consequences; organisation and management of legal work; recognising and resolving ethical dilemmas.

177 *MacCrate Report* (n 174) 139-140.

178 ALRC *Managing Justice Report* (n 14) 126.

179 WM Sullivan et al, *Educating Lawyers: Preparation for the Profession of Law* (Report, Carnegie Foundation for the Advancement of Teaching, 2007) ('*Carnegie Report*').

180 R Stuckey et al, *Best Practices for Legal Education: A Vision and a Road Map* (Report, Clinical Legal Education Association, 2007) ('*Stuckey Report*').

to refining its approaches to embed incremental skills development, including for ethics and professional values education. These three US contributions — the *MacCrate*, *Carnegie* and *Stuckey Reports* — were also critics of the failure to articulate a legal education continuum,¹⁸¹ exacerbated in the US by the absence of targeted and intentional development of the vocational/PLT component. The *Stuckey Report* said that law school ‘graduates are not sufficiently competent’,¹⁸² and specifically recommended in the context of US legal education (where law schools exist principally to prepare students for entry to the profession), that there should be a shift ‘from content-focused programs of instruction to outcomes-focused programs of instruction that are concerned with what students will be able to do and how they will do it, as well as what they will know on their first day in law practice.’ The *Stuckey Report* provides many examples of learning outcomes for competent performance.

[T]he primary goal of legal education should be to develop competence, that is, the ability to resolve legal problems effectively and responsibly.

(Source: R Stuckey et al, Best Practices for Legal Education: A Vision and a Road Map (Report, Clinical Legal Education Association, 2007) 6)

In 2007, the *Carnegie Report* tackled a number of these issues by suggesting a tripartite model of *integrated*, formative apprenticeships, all of which are essential preparation for professionals-in-development: the ‘cognitive apprenticeship’ for academic knowledge and ways of thinking; the ‘apprenticeship of skills and practice’ to develop the ability to do and act in the ways that professionals do and act; and the ‘apprenticeship of professional identity and values’ to introduce students to professional values.¹⁸³ The *Carnegie Report* authors observed that:

[a]cross the otherwise disparate-seeming educational experiences of seminary, medical school, nursing school, engineering school and law school, we identified a common goal: professional education aims to initiate novice practitioners to think, to perform, and to conduct themselves (that is, to act morally and ethically) like professionals.¹⁸⁴

It was specifically observed that the professional identity formation and the transition from novice to expert happens best ‘when an expert is able to model performance in such a way that the learner can imitate the performance while the expert provides feedback to guide the learner in making the activity his or her own.’¹⁸⁵ The *Carnegie Report* went on to say that *any* professional education involves six tasks:

181 Sally Kift, ‘21st Century Climate for Change: Curriculum Design for Quality Learning Engagement in Law’ (2008) 18 *Legal Education Review* 1.

182 *Stuckey Report* (n 180) 19.

183 *Carnegie Report* (n 179). See also, William M. Sullivan, ‘After Ten Years: The Carnegie Report and Contemporary Legal Education’ (2018) 14 *University of St. Thomas Law Journal* 331.

184 *Carnegie Report* (n 179) 22.

185 *Ibid* 26.

1. Developing students' fundamental knowledge and skills, especially an academic knowledge base and research;
2. Providing students with the capacity to engage in complex practice;
3. Enabling students to learn to make judgements under conditions of uncertainty;
4. Teaching students how to learn from experience;
5. Introducing students to the disciplines of creating and participating in a responsible and effective professional community; and
6. Forming students able and willing to join an enterprise of public service.¹⁸⁶

3.4.6.2 Foundations for Practice: The Whole Lawyer and the Character Quotient (2016)

In 2021, the *Carnegie Report's* integrated apprenticeship approach, stated as learning outcomes and embedded across *all* stages of LE&T, might provide a framework for lawyer competence that could enable the development of the 'whole lawyer', as it has been framed more recently by the IAALS in its *Foundations for Practice: The Whole Lawyer and the Character Quotient* ('*Foundations for Practice Report*').¹⁸⁷ The IAALS distributed an online survey over 2014–2015 to an estimated 780,694 US lawyers asking about new lawyer competencies. The survey garnered more than 24,000 valid responses, from a diversity of practitioner backgrounds and practice settings. Analysis of the data that it generated identified 77 'foundations for practice' — characteristics, professional competencies, and legal skills — that new lawyers must have from day one and/or in the short term and 35 foundations that must be acquired over time. The *Foundations for Practice Report* found that, underpinning it all, new lawyers must be 'whole lawyers' and have some 'threshold intelligence quotient (IQ) and, in more recent years ... a favorable emotional intelligence (EQ). Our findings suggest that lawyers also require some level of character quotient (CQ)'.¹⁸⁸

The data demonstrates that attorneys largely see characteristics as the most important foundations new lawyers need in the short term, while legal skills are necessary, but less urgent. This has valuable, and perhaps unexpected, implications for the path forward in legal education. In fact, it stands some presumptions on their head. It is not the granular, practical knowledge that new lawyers need to have in hand immediately; rather, it is the characteristics that will allow them to succeed and allow them to learn those practical skills over time. They need to show up with those characteristics, ready to learn the rest.

(Source: Institute for the Advancement of the American Legal System ('IAALS'), Foundations for Practice: The Whole Lawyer and the Character Quotient (Report, 2016) 28)

¹⁸⁶ Ibid 22.

¹⁸⁷ IAALS, *Foundations for Practice* (n 12).

¹⁸⁸ Ibid 1.

According to this large-scale IAALS survey, legal skills are generally considered to be less important in the first instance for new lawyers than characteristics and professional competencies. For example, of the top ten ‘foundations for practice’ identified by most of the 24,000 respondents as necessary for the success of new lawyers in the short term, none are legal skills (or content knowledge) (see **Table 4**).¹⁸⁹ The Top Ten foundations for practice categorised as necessary to acquire over time appear in **Table 5**, while the balance of the foundations for practice are set out in the report.¹⁹⁰ The top-ranked legal skill was ‘Effectively research the law’ at 83.7%, followed by ‘Understand and apply legal privilege concepts’ at 77% and ‘draft pleadings, motions, and briefs’ at 72.1%. IAALS concluded that, while legal skills are necessary, they are less urgent for new lawyer competence.

Percent Indicating Necessary in the Short Term	Type	Category	Foundation
96.1%	Professional Competency	Professionalism	Keep information confidential
95.4%	Professional Competency	Professionalism	Arrive on time for meetings, appointments, and hearings
93.7%	Characteristic	Professionalism	Honor commitments
92.3%	Characteristic	Qualities and Talents	Integrity and trustworthiness
91.9%	Professional Competency	Emotional and Interpersonal Intelligence	Treat others with courtesy and respect
91.5%	Professional Competency	Communications	Listen attentively and respectfully
91.0%	Professional Competency	Communications	Promptly respond to inquiries and requests
88.4%	Characteristic	Qualities and Talents	Diligence
88.1%	Characteristic	Passion and Ambition	Have a strong work ethic and put forth best effort
87.8%	Characteristic	Qualities and Talents	Attention to detail

Table 4. Top 10 foundations categorised as Necessary in the Short Term (IAALS, 2016, 26)¹⁹¹

¹⁸⁹ Ibid 26, 23: ‘The lawyers we surveyed ... were clear that characteristics (such as integrity and trustworthiness, conscientiousness, and common sense), as well as professional competencies (such as listening attentively, speaking and writing, and arriving on time), were far more important in brand new lawyers than legal skills (such as use of dispute resolution techniques to prevent or handle conflicts, drafting policies, preparing a case for trial, and conducting and defending depositions).’

¹⁹⁰ Ibid 27.

¹⁹¹ Ibid 26.

Percent Indicating Must be Acquired over Time	Type	Category	Foundation
73.7%	Professional Competency	Professional Development	Develop expertise in a particular area
70.0%	Legal Skill	Transactional Practice	Determine appropriate risk mitigation strategies
67.1%	Professional Competency	Workload Management	Delegate to and manage support staff appropriately
67.0%	Legal Skill	Transactional Practice	Objectively assess the soundness of a deal or proposed solution in terms of risks and rewards
65.5%	Legal Skill	Litigation Practice	Prepare a case for trial
64.8%	Legal Skill	Transactional Practice	Maintain knowledge of the relevant business, industry, and wider business landscape
64.4%	Legal Skill	Litigation Practice	Provide quality in-court trial advocacy
62.6%	Professional Competency	Working with Others	Determine ways to increase value to clients or stakeholders
62.6%	Legal Skill	Legal Thinking and Application	Assess possible courses of action and the range of likely outcomes in terms of risks and rewards
62.3%	Professional Competency	Workload Management	Manage meetings effectively

Table 5. Top 10 foundations categorised as Must Be Acquired Over Time (IAALS, 2016, 27)¹⁹²

3.4.6.3 Lessons from the US reports

In 2007, both the *Carnegie Report* and the *Stuckey Report* referenced the dominance of law's 'signature pedagogies'¹⁹³ (and its signature assessment practices), practices that Horn and Pistone from the Christensen Institute called out again in the US context in 2016, pointing to continuing issues with: exam-based assessment and (lack of) feedback; limited blended or online learning; only recent moves (in 2016) to outcomes-based learning and new methods of assessment *for* and *of* learning; and minimal practical training.¹⁹⁴

Carnegie's general critique was that the US assessment practice in law is: 'entirely summative', with an overreliance on examinations; bereft of formative feedback, when more attention should be paid to formative as well as the summative uses of assessment to enhance student learning; perceived by students to be 'unfair, counterproductive, demoralizing, and arbitrary' and 'intensely competitive'; not criterion-referenced but graded 'on the curve'; and concerned

¹⁹² Ibid 27.

¹⁹³ *Carnegie Report* (n 179) 23-24.

¹⁹⁴ Michael Horn and Michele Pistone, *Disrupting Law School: How Disruptive Innovation Will Revolutionize the Legal World* (Report, 2016) <<https://www.christenseninstitute.org/publications/disrupting-law-school/>>. And see discussion in [Section 2.6](#) above.

primarily, if not solely, with assessing conceptual knowledge (and not practical skills or professional responsibility).¹⁹⁵ It was the *Carnegie Report's* view that assessment practices in US legal education were underdeveloped when compared with other professional fields. The *Stuckey Report* similarly concluded that, with the possible exception of legal writing and research courses, 'the current assessment practices used by most law teachers [in the US] are abominable', especially as regards the use of invalid examinations. Echoing the Carnegie's exhortation for explicit professional identity development and learning-as-participation, the *Stuckey Report* goes on to state that:

... [a] better assessment system would find ways to stimulate student reflection on future professional paths, strengths and weaknesses and guide students toward relevant learning opportunities; provide incentives that lead students to take more active responsibility for their own learning as they undertake increasingly sophisticated work throughout students' law school careers; and document information that would attest to graduates' professional capabilities while assisting employers in making efficient and informed hiring decisions.¹⁹⁶

Though, as discussed in [Section 2.6](#) above, Australian legal educators are potentially better positioned to meet many of these criticisms than their US colleagues, the assessment critique is apposite in both jurisdictions. There is still much that can be done in Australian legal education to transform law's assessment practices to enable more accurate and 'richer portrayals' of graduates' and students' achievements in ways that assure learning outcomes for competence certification.¹⁹⁷

The *Stuckey Report's* call to engage students in reflective practice¹⁹⁸ is salutary also, particularly in the context where those authors go on to recommend that, in addition to capstone opportunities and increased clinical opportunities, students should 'be required to compile educational portfolios'; for example, so that learners are able to reflect on and articulate their achievements and to understand professional frameworks.¹⁹⁹ This resonates with the modern practice requirement, now consistently referenced, for the development of post-admission reflective capability to enable individual practitioners to manage their CPD learning to better effect. In all disciplines, a reflective and proactive stance on the part of the professional learner is now well-recognised as a core component of lifelong learning and continuing competency assurance (see [Section 4.5.1](#)). While potentially a more recent consideration for CPD learning in LE&T, reflective practice has long been cultivated in clinical

195 *Carnegie Report* (n 179) 164-170; see also *ibid.*

196 *Stuckey Report* (n 180) 178.

197 David Boud and Associates, *Assessment 2020: Seven Propositions for Assessment Reform in Higher Education* (Report, Australian Learning and Teaching Council, 2010) <<http://www.assessmentfutures.com>>. See also Patrick Baughan, *Assessment and Feedback in Law: Case studies from the sector* (Report, 2021) <<https://www.advance-he.ac.uk/news-and-views/assessment-and-feedback-law-case-studies-sector>>; Sally Brown Assessment, Learning and Teaching in Higher Education, 'Kay Sambell and Sally Brown: Covid-19 Assessment Collection' (Web Page) <<https://sally-brown.net/kay-sambell-and-sally-brown-covid-19-assessment-collection/>>. See also discussion in [Section 4.3.3](#).

198 See, for example, Michele M Leering 'Integrated Reflective Practice: A Critical Imperative for Enhancing Legal Education and Professionalism' (2017) 95(1) *Canadian Bar Review* 47 <<https://canlii.ca/t/735>>; Judith McNamara, Tina Cockburn and Catherine Campbell, *Good Practice Guide (Bachelor of Laws): Reflective Practice* (Guidelines, 2013), <<http://www.lawteachnetwork.org/resources/gpg-reflection.pdf>>; Mary Ryan and Michael Ryan, *Developing a Systematic, Cross-Faculty Approach to Teaching and Assessing Reflection in Higher Education* (Final Report, 2012) <https://ltr.edu.au/resources/PP9_1327_Ryan_report_2012.pdf>.

199 *Stuckey Report* (n 180) 196; see also Margaret Faulkner et al, 'Exploring Ways that ePortfolios Can Support the Progressive Development of Graduate Qualities and Professional Competencies' (2013) 32(6) *Higher Education Research & Development* 871.

legal education and experiential learning (see [Section 2.6.3](#)). Further, since 1983 Schön has argued that the crucial competence for all professionals is ‘reflection’. Schön holds that professional education and training should be centred on enhancing the practitioner’s ability for ‘reflection-in-action’ (that is, in the midst of a (lawyering) task) and ‘reflection-about-action’ (that is, post a (lawyering) task), such a capability being critical for initial development, day-to-day practice and continuous improvement.²⁰⁰

3.4.7 Centralised, standardised entry-level assessment (a common entrance exam)

Concerns expressed by some about the quality of pre-admission LE&T under a distributed assessment system (where assessment is carried out independently by individual legal education providers) frequently lead to calls for a common, centralised entry-level assessment system, under which it is claimed that day-one competence can be more rigorously assured. The *Hong Kong Review* described the difference between ‘distributed’ and ‘centralised’ assessments of professional competence as follows:

Distributed assessment describes systems where, as in the Australian, UK, and current Hong Kong model of vocational legal training, course providers predominantly design and deliver their own assessments, generally against an approved curriculum and/or set of learning outcomes. Centralised assessment, on the other hand, describes a system of commonly set and marked assessments, which may be either free-standing (ie structurally independent of any course offering, such as the US Bar Examination), or embedded in a course, as part of a hybrid system, such as the English Bar Professional Training Course.²⁰¹

Many jurisdictions already rely on external, centralised assessment for the primary assurance of legal education quality and standards pre-admission, and there have been determined efforts by others, that do not currently do so, to move to standardised assessment of entry-level competence, albeit with varying success. International benchmarking undertaken for the SRA in 2016 found that: centralised assessments were used in 13 of the 18 jurisdictions examined, though the nature and modes of assessment varied significantly; all of the distributed assessment examples were in common law systems; a five- to six-year qualification route is the most common pathway; and a law degree is needed to qualify as a legal practitioner in most jurisdictions.²⁰²

With the SRA’s recent move to implement a standardised common assessment regime post-LETR via its adoption of the Solicitors’ Qualifying Exam (**SQE**) as of September 2021 (see [Section 4.4.3](#)), there is renewed interest in considering this mechanism for assuring

200 Donald Schön, *The Reflective Practitioner* (Basic Books, 1983); Donald Schön, *Educating the Reflective Practitioner: Toward a New Design for Teaching and Learning in the Professions* (Jossey-Bass, 1987); Donald Schön, *The Reflective Practitioner: How Professionals Think in Action* (Routledge, 1992). See also Graham Cheetham and Geoff Chivers, ‘The Reflective (and Competent) Practitioner: A Model of Professional Competence which Seeks to Harmonise the Reflective Practitioner and Competence-based Approaches’ (1998) 22(7) *Journal of European Industrial Training* 267.

201 *Hong Kong Review* (n 62) 107.

202 Solicitors Regulation Authority, *Qualification in Other Jurisdictions: International Benchmarking* (Report, 2016). <<https://www.sra.org.uk/sra/policy/solicitors-qualifying-examination/research-reports/qualification-other-jurisdictions-international-benchmarking/>>.

entry-level competence with greater consistency. The various, more recent proposals in this regard are collated in this section for ease of reference. In this context, it is interesting to observe that the impact of COVID-19 on the administration of the Uniform Bar Examination (UBE) has led to a number of US states exploring alternative pathways to licensure. The US system of legal education has long embraced a standardised bar examination, despite extensive critiques as to its validity and efficacy, and also as regards the negative impact it is said to have on both curricular and professional diversity. The various responses to the stress test to which COVID-19 has subjected the UBE, and the likelihood of its continued dominance as the sole licensure model in those jurisdictions, will be discussed next (**Section 3.4.8** and see also **Section 4**).

... no serious evidence has been presented that [the distributed assessment approach] has resulted in a widespread failure by assessment institutions to hit a baseline standard of professional competence. Nor has any (proposed) system of centralised assessment, including the SQE, ever been properly validated against professional performance standards. It is tempting in this context to see centralised assessment as a proxy solution to what are essentially coordination and quality assurance rather than intrinsic quality problems per se.

(Source: Julian Webb, 'Gallop off Madly in One Direction: Legal Education Reform, the (Im?)possibility of Evidence-based Policy Making and a Plea for Better Design Thinking' in Ben Golder et al (eds), Imperatives for Legal Education Research: Then, Now and Tomorrow (Taylor and Francis, 2019) 196, 200)

The *Hong Kong Review* recorded the Hong Kong Law Society's expressed commitment to the introduction of a CEE since 2013.²⁰³ As discussed in **Section 3.4.3**, after carefully canvassing the benefits and risks of a CEE, the *Hong Kong Review* found that no adequate case had been made for it and that it was not clear that the benefits of such an approach outweighed the risks; the cost of developing a CEE was a factor, as was likely cultural resistance. The *Hong Kong Review* did not recommend progressing the CEE and proposed instead a moratorium on its development, which was agreed to by the Law Society.²⁰⁴ Most recently, the three Hong Kong university providers and the Law Society have agreed to a 'Protocol on the role of External Examiners, External Course Assessors and External Academic Advisors and other aspects of the [Postgraduate Certificate in Laws] PCLL programme', the aim of which is to assure uniformity and maintain standards for the PCLL. The Hong Kong Law Society is now monitoring the implementation of the Protocol, and its success or otherwise will determine the decision on the CEE, with no implementation of the CEE now anticipated before 2025.²⁰⁵

²⁰³ *Hong Kong Review* (n 62) vi and Chapter 6.

²⁰⁴ Law Society of Hong Kong, 'Response to Standing Committee on Legal Education and Training Consultants regarding unified law school and the Common Entrance Examination ("CEE") and Other Recommendations' (Response, 2018). <https://www.scler.gov.hk/eng/pdf/lawsociety_20180508.pdf>.

²⁰⁵ Standing Committee on Legal Education and Training, *Annual Report of the Standing Committee on Legal Education and Training (1 January 2020 to 31 December 2020)* (Report, 2021).

As discussed in [Section 3.4.5.1](#), in Canada, the FLSC, on behalf of Canada's 14 provincial and territorial law societies, also investigated the possibility of a national standardised assessment under the auspices of its National Admissions Standards Project. Although considerable time, effort and resources were invested in developing a national competency standard (that law societies in Canada continue to utilise; and see also [Section 4.5.2](#)) there was considerable resistance to adopting a national assessment for reasons of: cost; difficulty in accommodating differences in provincial and territory law; perceived duplication of existing qualification routes; and questions about the validity of the assessment format (multiple-choice questions), especially for the assessment of professional skills. In Australia, the desirability of moving to a uniform centralised assessment was to have been considered by the Assuring Professional Competence Committee (see [Section 3.2.5](#)),²⁰⁶ but that exercise did not proceed further due to a range of matters including cost.

Webb observes that, while both massification and diversity in assessment approaches have doubtless made the comparison of graduates more 'onerous' for employers and regulators:

... no serious evidence has been presented that this has resulted in a widespread failure by assessment institutions to hit a baseline standard of professional competence. Nor has any (proposed) system of centralised assessment, including the SQE, ever been properly validated against professional performance standards. It is tempting in this context to see centralised assessment as a proxy solution to what are essentially coordination and quality assurance rather than intrinsic quality problems *per se*.²⁰⁷

3.4.8 The Uniform Bar Examination

In the US, 38 states require new lawyers to pass the UBE, a two-day, 12-hour standardised examination. In 2018, the National Conference of Bar Examiners (**NCBE**) announced that it had appointed a 'Testing Task Force' to undertake a three-year study to review the UBE, with a view to retaining it but making it more integrated and skills-focused. To progress this work, the Testing Task Force sought to identify core competencies for newly licensed lawyers to ensure that the UBE 'continues to test the knowledge, skills, and abilities required for competent entry-level legal practice in the 21st century'.²⁰⁸ The work of the Task Force was founded on the principle that 'the purpose of the bar exam is to protect the public by helping to ensure that those who are newly licensed possess the minimum knowledge and skills to perform activities typically required of an entry-level lawyer'.²⁰⁹

The UBE currently consists of three exam components:

²⁰⁶ Assuring Professional Competence Committee, 'What to Do' (n 67).

²⁰⁷ Julian Webb, 'Gallop off Madly in One Direction: Legal Education Reform, the (Im?)possibility of Evidence-based Policy Making and a Plea for Better Design Thinking' in Ben Golder et al (eds), *Imperatives for Legal Education Research: Then, Now and Tomorrow* (Taylor and Francis, 2019) 196, 200.

²⁰⁸ National Conference of Bar Examiners ('NCBE'), 'The National Conference of Bar Examiners Appoints a Testing Task Force' (Web Page) <<https://www.ncbex.org/news/the-national-conference-of-bar-examiners-appoints-a-testing-task-force/>>.

²⁰⁹ NCBE, *Final Report of the Testing Task Force* (Report, 2021) ('*Testing Task Force Report*') 2 <<https://nextgenbarexam.ncbex.org/reports/final-report-of-the-ttf/>>.

- The Multistate Bar Exam (**MBE**), which consists of 200 practice-centred, multiple-choice questions in seven core areas of law
- The Multistate Essay Exam (**MEE**), which is a six-question essay exam that also covers core practice areas and assesses candidates' ability to identify and analyse legal issues in writing
- The Multistate Performance Test (**MPT**), which consists of two 90-minute case simulations that require candidates to create a written product for a supervising attorney using a case file and a 'closed universe of legal resources'.²¹⁰

Before the Testing Task Force had completed its work, the global pandemic hit, disrupting the administration of the UBE in 2020. In response to that situation, the NCBE released a White Paper to provide courts and admissions boards with information about options for how graduates might be licensed if the bar exam could not proceed in 2020.²¹¹ The paper discusses the 'diploma privilege' option, which allows law school graduates to secure a licence to practice without undertaking the bar exam. The balance of the paper argues the NCBE's position that the UBE is a valid, reliable and fair assessment of minimum competence for entry-level practice (rather than, for example, relying on the 'diploma privilege'). While the White Paper was said not to be 'the place to respond to the unfounded and unsubstantiated criticisms that some commentators are directing at the bar exam', two specific criticisms were addressed. First was that the UBE disproportionately disadvantages women and people of colour. The White Paper conceded that this was true as regards average performance across racial/ethnic groups and for women, but it was argued that these groups also had poorer performance for law school grade point averages (**GPA**s), for undergraduate GPA's and on the Law School Admission Test (**LSAT**). The second criticism addressed was as regards recent declines in bar pass rates. Again this was said to be true — pass rates had declined since 2014 and this was of concern — but it was said that the UBE performance 'correlated with a decline in the credentials of law students, such as undergraduate GPA's and LSAT scores that began with the recession of 2008'.²¹²

Having commenced in 2018, the *Testing Task Force Report* was released in April 2021, following a three-year empirical study over three phases: Phase 1, listening sessions with more than 400 stakeholders; Phase 2, a practice analysis survey conducted in 2019 (nearly 15,000 lawyers) to identify work done by newly admitted lawyers and the knowledge and skills needed to perform that work; and Phase 3, during which the committee considered the exam content, design and methods of assessment.²¹³ The Task Force's recommendations have been approved by the NCBE's Board of Trustees, and the 'NextGen Bar Exam' will now be implemented over the next four to five years.

210 NCBE, 'Bar Admissions During the COVID-19 Pandemic: Evaluating Options for the Class of 2020' (White Paper, 2020) ('NCBE White Paper') 5 <https://thebarexaminer.org/wp-content/uploads/Bar-Admissions-During-the-COVID-19-Pandemic_NCBE-white-paper.pdf>. Samples of MBE questions and past MEE and MPT questions are available on NCBE's website at <www.ncbex.org>.

211 NCBE White Paper (n 210).

212 Ibid 7.

213 *Testing Task Force Report* (n 209).

The NextGen Bar Exam structure recommended is an ‘integrated exam structure’ to assess both legal knowledge and skills holistically in a single, practice-related examination (that is, not separate exams for each knowledge and skills area). It is said that such an integrated exam allows for the use of scenarios that are representative of ‘real-world’ types of legal problems that new lawyers would encounter in practice. The content of the exam – the competencies to be assessed – are expressed as ‘Foundational Concepts & Principles’ (FC&P) and ‘Foundational Skills’ as follows (the scope of *what* will be assessed is to be set out in test content specifications, which are to be developed by the end of 2021):

[Eight] Foundational Concepts and Principles

- Civil Procedure (including constitutional protections and proceedings before administrative agencies)
- Contract Law
- Evidence
- Torts
- Business Associations (including Agency)
- Constitutional Law (excluding principles covered under Civil Procedure and Criminal Law)
- Criminal Law and Constitutional Protections Impacting Criminal Proceedings (excluding coverage of criminal procedure beyond constitutional protections)
- Real Property.

[Seven] Foundational Skills

- Legal Research
- Legal Writing
- Issue Spotting and Analysis
- Investigation and Evaluation
- Client Counseling and Advising
- Negotiation and Dispute Resolution
- Client Relationship and Management.²¹⁴

An interesting development is the decision by the Task Force to *increase* the emphasis on assessment of skills and *decrease* the depth and breadth of coverage of doctrine. In practical terms, this means:

The Foundational Skills may be assessed in the context of the FC&P, in which case candidates will be expected to know the applicable legal concepts and principles, or Foundational Skills may be assessed in other legal contexts, in which case a closed universe of appropriate legal resources (e.g., statutes, cases, rules, regulations) will be provided. **The objective is to reduce the amount of legal knowledge candidates must learn for the exam, while emphasizing skills such as interpreting and applying law.** The new exam will not be “open book” in the sense of candidates being permitted to bring in or otherwise access materials not made available in the exam materials provided to all candidates. However, the new exam’s emphasis on the

²¹⁴ Ibid 21.

application of provided legal resources will yield the practical effect of an open-book exam while maintaining the standardization central to applicant fairness.²¹⁵

A stand-alone Multistate Professional Responsibility Examination (**MPRE**)²¹⁶ is currently administered by the NCBE separately from the UBE and will remain that way under the new arrangements when they commence. The MPRE is a two-hour, 60-question multiple-choice examination that candidates must also undertake for admission purposes in all but two states.²¹⁷ The MPRE assesses ethical responsibilities related to the standards of professional conduct for lawyers and judges (for example, as articulated in the *ABA Model Rules of Professional Conduct* and in the *ABA Model Code of Judicial Conduct*). The MPRE requirements vary across the jurisdictions and passing scores are established by each jurisdiction. While the MPRE will remain as a standalone exam in the new regime, '[b]ecause of its importance, professional responsibility may serve as the context for assessing Foundational Skills (for example, legal analysis, client counselling and advising) on the new bar exam, but the applicable rules or other legal resources will be provided to candidates'.²¹⁸

3.4.8.1 The Uniform Bar Exam and COVID-19

As mentioned in previous sections, the UBE has long been criticised on a number of grounds, particularly as regards its assessment validity for certification of entry-level competence and also because of its effect on equity and diversity in the profession due to its claimed disadvantaging of women and racial and ethnic groups.²¹⁹ In 2020, when the pandemic hit and many law graduates were not able to undertake the bar exam for public health reasons, a number of states permitted law graduates to postpone the exam and instead accorded 'diploma privilege' to allow graduates to practise without taking the exam.²²⁰ In 2021, the latest rounds of the UBE were beset by some significant technology-delivery issues, while there were also subsequent marking and reporting delays.

These longer-term and more recent factors coalesced over the pandemic to prompt fresh deliberations around whether the UBE should be the *only* mechanism used to determine entry-level lawyer competence in jurisdictions where this was the case. At the time of writing, at least four states have established task forces to investigate permanent alternatives to the UBE — Oregon, New York, California and (most recently) Minnesota. Alternatives that have been suggested include: the diploma privilege; apprenticeship-style models of

215 Ibid 21-22 (emphasis added).

216 NCBE, 'Multistate Professional Responsibility Examination' (Web Page) <<https://www.ncbex.org/exams/mpre/>>.

217 The two states are Wisconsin and Puerto Rico. Connecticut and New Jersey accept successful completion of a law school course on professional responsibility in lieu of a passing score on the MPRE.

218 *Testing Taskforce Report* (n 209) 22.

219 Josh Verges, 'Should New Lawyers Have to Pass the Bar Exam? MN Supreme Court is Open to Alternatives', *Pioneer Press* (online, 30 September 2021) <<https://www.twincities.com/2021/09/30/should-new-lawYERS-have-to-pass-the-bar-exam-mn-supreme-court-is-open-to-alternatives/>>.

220 Oregon, Washington, Utah, Louisiana and Washington, D.C., each adopted some form of temporary diploma privilege over 2020, which offered law graduates a temporary path to licensure that bypassed the bar exam. As regards the 'diploma privilege' see Claudia Angelos et al, 'The Bar Exam and the COVID-19 Pandemic: The Need for Immediate Action' (Legal Studies Working Paper Series No 537, March 2020) <<https://www.abajournal.com/files/barexamoptionsCOVID-19.pdf>>.

varying types and supervision durations for a supervised practice pathway;²²¹ an experiential pathway provided by law schools such as New Hampshire's 'Daniel Webster Scholar Honors Program',²²² where students engage in real and simulated settings and build portfolios of written and oral work for bar examiners to assess every semester; and a "teaching law firm," a non-profit law firm serving low-income clients in which every [trainee lawyer] must successfully work for several months' (taking its name from the 'teaching hospital' experience of medical students, and similar to a law school legal clinic, except that supervisors would be practising lawyers and not academics).²²³ As one Law Dean commented in relation to this fresh push to re-examine alternatives to the UBE:

The pandemic forced conversations around alternatives to licensure ... [w]e now have some employers who are coming out and saying, 'This attorney, who graduated in 2020 [and was admitted through the temporary diploma privilege] is just as competent as the ones who started in 2019 and those before them. Those were just whispers at first. But now, people are saying, 'Hey, maybe there is something else attorneys can do to demonstrate minimum competence.'²²⁴

Furlong has suggested that criteria for assessing the efficacy of these potential alternatives might include that they are: universally accessible; systematically defensible; rigorously consistent; and compliant with professional standards for legal workplaces.²²⁵ Some of these state-based Task Force initiatives will now be considered briefly (**Section 3.4.8.2** next).

3.4.8.2 The Uniform Bar Exam, COVID-19 and state-based responses

In June 2021, the Oregon State Board of Bar Examiners' *Alternatives to the Exam Task Force* delivered its Recommendations to the Oregon Supreme Court,²²⁶ requesting that two additional pathways to licensure be immediately endorsed as alternatives to the UBE component of admission requirements, as follows:

The *Oregon Experiential Pathway*, which entails students spending their last two years of law school taking a set curriculum of coursework and experiential learning that would focus

221 For example, Washington has an alternative pathway under Washington Supreme Court's Admission and Practice Rule (APR) 6, commonly known as the 'Law Clerk' Program for those for whom a traditional law school education that might otherwise be unattainable due to economic and institutional barriers. See the *Washington Courts Admission & Practice Rules*, APR 6 <https://www.courts.wa.gov/court_rules/pdf/APR/GA_APR_06_00_00.pdf> In 2020, the Washington State Bar Association sought support for the Law Clerk Program to be granted Diploma Privilege: <https://www.wsba.org/docs/default-source/licensing/admissions/apr-6-resolution.pdf?sfvrsn=26fd08f1_2>.

222 University of New Hampshire Franklin Pierce School of Law, 'Daniel Webster Scholar Honors Program' (Web Page) <<https://law.unh.edu/academics/daniel-webster-scholar-honors-program>>.

223 See *Furlong Report* (n 116) 71 and Appendix A: 'A "teaching law firm" takes its name from teaching hospitals, where trainee medical personnel practise medicine on real patients under the eye of experienced doctors and nurses, receiving feedback on their performance and guidance on how to improve.'

224 Karen Sloan, 'Oregon Becomes First State to Weigh Permanent Bar Exam Alternatives Following Pandemic Upheaval', *Law* (Blog Post, 30 June 2021) <<https://www.law.com/2021/06/30/oregon-becomes-first-state-to-weigh-permanent-bar-exam-alternatives-following-pandemic-upheaval/?sreturn=20210901204021>> quoting Professor Brian Gallini, Dean of Willamette University College of Law and a member of the Taskforce that devised Oregon's attorney licensing proposals (discussed in **Section 3.4.8.2**).

225 *Furlong Report* (n 116).

226 Oregon State Board of Bar Examiners, *Recommendations of the Alternatives to the Exam Task Force* (Report, June 2021) <<https://taskforces.osbar.org/files/Bar-Exam-Alternatives-TFReport.pdf>>.

on ‘assessing competence in skills including legal research and writing, issue spotting, legal analysis, argument development, understanding of the law, attention to detail, written and oral advocacy, and teamwork.’²²⁷ Assessment throughout the course would be by way of formative feedback, intensive self-reflection and summative feedback and assessment by a dedicated bar examiner at the end of each semester. Students would submit a ‘capstone portfolio’ to the Oregon Board of Law Examiners for certification of minimum competence at the end of the course. The approach is modelled on the ‘Daniel Webster Scholar Honors Program’ at the University of New Hampshire School of Law²²⁸ and addresses the competencies of both the prescribed Oregon *Essential Eligibility Requirements* required by the Court (RFA 1.25) and the 12 building blocks identified in the IAALS *Building a Better Bar* report (see [Section 4.5.3](#)).

The ***Supervised Practice Pathway*** would see applicants establishing their minimum competence by engaging in 1000 to 1500 hours of supervised legal practice and submitting an ‘Exam Alternative Portfolio’ of non-privileged work samples for review by the Board of Bar Examiners. The Task Force’s report cites two examples of such a program: Utah’s modified diploma privilege/supervised practice program for 2020 in response to issues created by COVID-19 and Canada’s articling system. To enable flexibility, more than one qualified supervising attorney is to be permitted as supervisor.

While Oregon was the first US state to formally move and propose permanent alternatives to the UBE following the pandemic’s disruption in 2020, other states are also considering their options. Also in June 2021, the New York State Bar Association’s (**NYSBA**) *Task Force on the New York Bar Exam* released its third report and recommendations.²²⁹ The NYSBA Task Force had been established in 2019 to review the impact of the UBE on: applicants; qualifications and the relevant legal knowledge of newly admitted New York attorneys; employers; members of the Bar; the court system; and diversity in the profession. This third report assessed the proposal by the NCBE for a new online examination as a refreshed UBE and the long-term future of a New York bar examination in that light. The Task Force recommended, and the NYSBA House of Delegates has approved, which the state withdraw from the UBE and develop its own bar admissions exam, that could focus on New York law and be a fairer assessment of minimum lawyer competency. The NYSBA stated that it remained opposed to the adoption of a diploma privilege, as had occurred in some states in response to the pandemic. Specifically, the NYSBA said it was inappropriate that ‘any law school graduate from any law school, either inside or outside the country, may gain admission to practice in New York without any measurement of academic success or competency’. The NYSBA was, however, in favour of developing other alternative pathways as follows:

... *New York should consider providing two alternative pathways to admission: (a) a pathway for admission through concentrated study of New York law while in law school; and (b)*

²²⁷ Ibid 8.

²²⁸ Daniel Webster Scholar Honors Program at the University of New Hampshire School of Law <<https://law.unh.edu/academics/daniel-webster-scholar-honors-program>>.

²²⁹ New York State Bar Association, *Third Report and Recommendations of the Task Force on the New York Bar Examination* (Report, 2021) <<https://nysba.org/app/uploads/2021/06/9.-Task-Force-on-the-New-York-Bar-Examination-with-staff-memo.pdf>>.

*a pathway for admission through supervised practice of law in New York. Attainment of minimum competency to practice law in New York can, we believe, be demonstrated by law school achievement as well as by actual practice experience. An examination is not necessarily the exclusive means to judge minimum competence. Alternative pathways should be considered either as stand-alone alternatives or as complements to a written examination.*²³⁰

Also in June 2021, the State Bar of California²³¹ announced the creation of the *Blue Ribbon Commission* to look at what changes might be needed to the California Bar Exam and whether alternative or additional tools are needed to assure minimum competence to practise law. The Commission will specifically examine whether the UBE is the ‘correct tool’ to determine minimum competence in this regard, and determine specifications for other possible tools, should the Commission recommend that alternatives for gauging competence be explored and adopted. The Commission is due to report in 2022.

It has been observed that each of these state-based initiatives investigating alternative pathways to the UBE will need to grapple at some point with the underlying issue of what constitutes ‘minimum competence’ to practise, begging the question of the development of a ‘Competence Statement’ or similar.²³²

²³⁰ Ibid 13.

²³¹ State Bar of California, *Joint Supreme Court/State Bar Blue Ribbon Commission on the Future of the California Bar Examination* (Report, 2021) <<https://www.calbar.ca.gov/Portals/0/documents/factSheets/Blue-Ribbon-Commission-Future-of-California-Bar-Exam-Fact-Sheet.pdf>>.

²³² Jordan Furlong, ‘The Legal Regulation Revolution’, *LAW21* (Blog Post, 30 July 2021) <<https://www.law21.ca/2021/07/the-legal-regulation-revolution/>>.

4 Reimagining Professional Regulation: Competence and Key Considerations

Key points

- Almost every review internationally, together with the *CPD Review* recently conducted for the Victorian Legal Services Board and Commissioner, has signalled the imperative to address regulation of the legal education and training (**LE&T**) continuum for a more integrated approach to professional (and lifelong) education and training. Integrated legal *system*-wide regulation, from pre- to post-admission and for continuing competence, might be compared with a siloed and unbalanced scheme that focuses predominantly on the pre-admission stage for entry-level assurance, disconnected from regulation to support and assure continuing competence.
- In this environment, increased attention is being paid to the differing purposes, scope and structure of professional regulation and the importance of these factors for understanding the regulatory intent of different jurisdictions' schemes.
- The *Legal Education and Training Review (LETR)* in England and Wales advocated for a 'shared space' regulatory approach. In this more collaborative, co-regulatory model, all arms of the profession come together in the spirit of continuing dialogue for iterative and ongoing assurance and enhancement from the whole *system* perspective, drawing information from other jurisdictions, other professions and other regulators to identify best practices for LE&T regulation.
- In tandem with an increasingly mature regulatory focus, sophisticated analyses are being undertaken that seek to conceptualise 'competence'. As LETR's 2011 'Briefing Paper on Competence' identified, 'competence' can mean a range of things (2011, 1). LETR identified four meanings, observing that legal regulation tends to operate within the first and last of those meanings:
 - A meets a minimum standard of (historic) ability – this may simply mean that [they] have completed the formal requirements of a qualification system.
 - A meets a continuing standard of performance, measured against an occupational or socially expected norm – that is, the idea that 'professionals should be able to do that which they profess they can do'.
 - A is on the mid-point on a scale between novice and expert.
 - A's performance is not negligent or sufficiently incompetent to merit sanction or barring from practice.
- There are many examples internationally of 'competence' formulations, of competence-based approaches and of competence frameworks to which regard may be had for the development of an Australian Competence Statement, Threshold Standard(s) and underlying Statement(s) of Knowledge Skills and Values, should an Australian exercise consider embracing such an approach.
- Mechanisms for assuring competence, once it has been defined, are also being robustly discussed. At a time when England and Wales have just embarked on standardised entry-level assurance via the introduction of the Solicitors' Qualifying Exam (**SQE**) regime, the

Uniform Bar Exam (**UBE**) has been severely tested and subjected to increased scrutiny over the COVID period, with a number of jurisdictions now investigating alternatives to it.

- Interesting alternatives to traditional thinking about lawyer competence are also being developed. For example, in the United States, the Institute for the Advancement of the American Legal System (**IAALS**) has distilled an evidence-based definition of minimum competence by analysing data from 50 focus groups. Twelve interlocking components have been identified, which are called ‘building blocks’ (*Building a Better Bar*, 2000).
- The section concludes with an examination of how an Australian Competence Framework might be developed. Four examples of competence statements are selected for consideration and, given their importance to contemporary practice, an examination of both ‘Ethics and Professional Responsibility’ and ‘Technological Competence’ is provided from the regulatory perspective.

4.1 Introduction

The climate for change that makes the case for a reimagining of the professional regulation of Australian legal education, including the multi-faceted drivers that are prompting this review in late 2021, has been set out in the previous sections of this report. The current Australian regulatory context has been laid out and recent national and international analyses of various aspects of the legal education and training (**LE&T**) continuum have been discussed. In this section, the wider regulatory issues are canvassed with a view to generating options for a regulatory future state for the consideration in the first instance of the Council of Australian Law Deans (**CALD**) (see [Section 5](#)).

Almost every review internationally, together with the 2020 *Review of Continuing Professional Development (CPD)* conducted for the Victorian Legal Services Board and Commissioner (**VLSB+C**) in the Australian context, has signalled the imperative to address regulation of the legal education continuum (from pre- to post-admission and for continuing competence) for a more integrated and evidence-based approach to professional (and lifelong) education and training. As a number of international examinations make clear, this integrated *system* approach can be compared with a siloed and unbalanced scheme that focuses predominantly on the pre-admission stage for entry-level assurance, disconnected from any imperative to support and assure continuing competence. As many analyses have also found, such an approach replicates the modern regimes for many other regulated professions. It also speaks to the contemporary necessity to assure professional competence and lifelong learning in response to the impact of Industry 4.0's technology-driven disruption to the nature and scope of future legal work and skills. Legal services and legal practitioners, as for all industries and workers, must now constantly adapt, and up- and re-skill as the half-life of skills continues to shrink due to technological change. The framing of the *Carnegie Report's* three apprenticeships — cognitive; skills and practice; and professional identity and values — has been invoked with a view to educating and supporting the 'whole lawyer' over their professional lifespan, as recently conceptualised by the Institute for the Advancement of the American Legal System (**IAALS**) in its *Foundations for Practice* analysis.

It has been suggested by the *Legal Education and Training Review (LETR)* in England and Wales that the activation of lifelong learning over the professional continuum requires a 'shared space' regulatory approach, in which all arms of the profession come together in the spirit of continuing dialogue for iterative and ongoing assurance and enhancement. The ultimate objective of shared space regulation is considered to be the assurance of the LE&T system from the whole *system* perspective across the continuum, and then persistently to (re)consider the quality assurance mechanisms for the robustness of those systemic responses (see [Section 4.2.1](#)).

The remit has acquired some urgency. Recurring themes around the identification of key risk areas for the profession have presented for critical consideration and integrated responses, magnifying also the need for significant, distributed leadership to drive new approaches and deep cultural and behavioural change. As discussed in sections preceding this part, key

risk areas for the profession include: ethical alignment; professional conduct and values; the impact of technological change; the changing nature of legal and lawyer work; student, educator and practitioner mental health and well-being; the enabling of substantive access to justice; professional commitment to working with First Nations peoples to redress past injustices; and support for inclusion and diversity. Many of these challenges are interdependent, suggesting coordinated and holistic responses will be of maximum benefit. The legal academy's experience has, to a large extent, mirrored the double disruption faced by the profession's practising arm: Industry 4.0 trends have been accelerated by COVID-19's rapid upscaling of digitisation and digitalisation, highlighting higher education's (HE) own challenges around competition, unbundling, reducing budgets, precarious employment, deteriorating sector mental well-being, relationship management issues and a myriad, of often hostile, stakeholder calls for significant structural and business model change.

But, while time is pressing, the *timing* is nevertheless quite good, for the contextual reasons that have been canvassed across these pages so far, and also because of the increasingly sophisticated discussions now taking place internationally about legal regulation, which will be canvassed in this section. Mature analyses of regulation's purpose, scope and structure have been undertaken, together with rigorous thinking around multi-faceted 'competence' and its function in assuring the administration of justice and protection of client interests. Particularly, the mechanisms for certifying competence are being widely ventilated globally, providing a strong evidence base for contextualised and nuanced consideration in the Australian context. At a time when England and Wales have just embarked on standardised entry-level assurance via the introduction of the Solicitors Qualifying Exam (SQE) regime, the Uniform Bar Exam (UBE) has been stress tested and subjected to increased scrutiny over the COVID period, with the likely outcome now that its previous, multi-jurisdictional monopoly on entry-level assurance will no longer be sustained.

Having laid the groundwork with the environmental scanning in the preceding sections of this report for the 'why' and 'what' of the professional and academic regulatory regimes, this section will now discuss the 'how' and 'where' of reimagined professional regulation. It will first take a deep dive into the international work on legal regulation and competence — the 'how' — and then move to consider the most advantageous loci and foci for change — the 'where'. The responses to the 2013 *Legal Education and Training Review (LETR)* in England and Wales will be examined as a case study of a competence-based framework that has recently been implemented for professional accreditation ([Section 4.4](#)). Various other competence frameworks, including for continuing competence, will then be discussed, specifically: the Legal Services Board's (LSB) 2021 focus on CPD good practice responses ([Section 4.5.1](#)); a number of competence frameworks that have been recently implemented and examined in Canada ([Section 4.5.2](#)); and also the Institute for the Advancement of the American Legal System (IAALS) *Building a Better Bar* framework developed in the US ([Section 4.5.3](#)).

As the *Hong Kong Review* notes, there is much about the 'core' of knowledge, skills and values, at least up to day-one entry-level, that is 'not contested, and remains fundamentally

unchanged'.¹ The challenge is to reconsider the efficacy of the core for contemporary practice needs and to sequence and allocate the education and training imperative across the lifelong continuum.² Certainly, emphases have shifted; the complaints and professional indemnity insurance (PII) data discussed earlier (see [Section 3.3](#)) demonstrate that communication, ethics, values and professionalism — including client-focus as a compendium of it all — are in particular need of greater focus and assurance. LE&T to address the opportunities and challenges inherent in the exponential upscaling of legaltech, and its implications for legal and lawyer work across the knowledge, skills and values domains in a prudent and distributed way, must also be a focus. The interdependency between technological competence and communication, client-focus, ethics and professionalism is also significant, as many reviews have highlighted. For this reason, both ethics and professional conduct and technological competence will be the subject of further examination in this section; in this instance, through a competence lens.

In all of this, however, there is no evidence to suggest that any one-off injection of (even remarkable) LE&T prior to admission, or even immediately post-admission, will suffice for 'forever competence' in enduringly dynamic professional contexts. If there is true consensus internationally, as the evidence base presented in this report has sought to make clear, it is that competence standards, and evidence-based regulation against them across the professional learning continuum, are what is required to secure the future of the legal services industry and those who work within it. The locus of much of the contemporary regulatory attention is in the post-admission phase, where the regulatory gaps are considered to be most evident, particularly so for new lawyers within their first one to three years. This does not mean that the focus on pre-admission assurance of competence abates; for example, much warmer handovers *from* law school *to* practical legal training (PLT) *to* entry-level practice must be pursued, and pre-admission LE&T contributions better articulated and mapped as the foundation for post-admission continuing competence. But as regards regulatory frameworks at the pre-admission stage, between the Threshold Learning Outcomes (TLOs) and the *PLT Competency Standards*, Australia is comparatively well positioned, and objectively so given international commentary to that effect.³

1 Standing Committee on Legal Education and Training, *Comprehensive Review of Legal Education and Training in Hong Kong* (Report, April 2018) 155 ('*Hong Kong Review*') <<https://www.scler.gov.hk/eng/pub.htm>>.

2 Sandford Clark, 'Regulating Admissions: Are We There Yet?' (2017) 91 *Australian Law Journal* 907.

3 Legal Education and Training Review, *Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales* (Report, June 2013) 125-126 ('*LETR Report*'); *Hong Kong Review* (n 1) 48, 74-75 <<https://paulmaharg.com/letr/wp-content/uploads/LETR-Report.pdf>>.

4.2 Professional regulation

In 2016, the International Bar Association's (IBA) 'Regulation Directory Project' reported on the structure of legal profession regulation in 232 jurisdictions, including the several Australian jurisdictions ('*IBA Report*').⁴ The analysis found that the number of separate bodies involved in lawyer regulation remains very high in some jurisdictions, while overall, 'nearly 1200 separate bodies are involved in the regulation of lawyers in the 232 jurisdictions reviewed. This staggering number raises important questions about capacity, particularly in the light of the growing number of functions which lawyer regulators are being called on to perform, as well as consistency of approach'.⁵

The *IBA Report* revealed that a single regulator is responsible for substantially all regulatory functions in 52% of jurisdictions canvassed and that regulation of ongoing practice is, more often than not, delegated to a professional self-regulating association. The *IBA Report* identified a number of themes from its analysis, including that 'Lawyer legislation is being reviewed and updated at a quickening pace. 27% of all of the jurisdictions with legislation in force to govern legal practice have revised or introduced new legislation in the past five years'.⁶ Other themes recorded are as follows, many of which can be seen reflected in the Australian context:

- There has been a shift to: national systems of regulation (away from decentralised regulation); greater harmonisation in federal systems; and more openness to foreign lawyers.
- There has been a shift away from professional body oversight of complaints and discipline towards complaints commissioners and separate disciplinary agencies, in tandem with a trend towards greater separation of regulation from professional representation.
- The profession is becoming increasingly fused (rather than split) and barriers to intra-national practice have been removed.
- Some countries have introduced new 'stepping stone' professions and the regulation of paralegals alongside lawyers.
- There is a trend toward the professionalisation of lawyer regulation via more specialist agencies.

The *IBA Report* notes also that the predominant focus remains on regulation of individual practitioners and their conduct; "entity regulation" is still highly unusual and legal services market regulation even rarer'.⁷

4 International Bar Association (IBA), *Directory of Regulators of the Legal Profession* (Report, 2016) <<https://www.ibanet.org/MediaHandler?id=199b20ec-b7ab-4ef4-99c4-cd45c7b6371b>> ('*Directory of Regulators*').

5 Ibid 16.

6 Ibid 15.

7 Ibid 16.

Overall, nearly 1200 separate bodies are involved in the regulation of lawyers in the 232 jurisdictions reviewed. This staggering number raises important questions about capacity, particularly in the light of the growing number of functions which lawyer regulators are being called on to perform, as well as consistency of approach.

(Source: International Bar Association ('IBA'), Directory of Regulators of the Legal Profession (Report, 2016) 16)

A report by Hook Tangaza for the United Kingdom (UK) Legal Services Board (LSB) in 2021⁸ suggested that the *differing purpose, scope and structure of professional regulation* were important to an understanding of the regulatory intent of different jurisdictions' schemes. For example, systems might be focused on the maintenance of public trust; economic drivers; facilitating light-touch regulation for an essentially transactional exchange between provider and client; or the creation of regulatory independence from the state. Furlong refers to law societies that regulate for competence as having both a 'cop' (enforcer of norms and standards) and a 'coach' ('strengtheners' of norms and standards) role.⁹ These matters are now briefly considered.

Purpose of professional regulation: The differing purposes of legal regulation, which influence the associated development of competence schemes, are often said to include:

- To assure the proper administration of justice
- To maintain the reputation of the profession
- To safeguard the public interest
- To support the justification for self-regulation
- To permit individual professionals to substantiate claims to any special skills or knowledge they might have on an ongoing basis
- To assist consumers in choosing a lawyer and understanding the quality of service they need and the quality of service they are actually getting.

Leveraging work done in the LETR and his prior work for the Law Society of Scotland, Maharg¹⁰ canvassed regulatory imperatives and identified four domains that regulators of professional activity usually span: controlling risk; managing compliance regimes; consumer protection; and performance monitoring. Maharg observed that, more recently, command and control regulation had given way to various other regulatory strategies, which were often in competition with each other. These included: 'risk-based regulation, meta-regulation, principles-based regulation, outcomes-focussed regulation (OFR) and strategies of enrolment'.¹¹

8 Hook Tangaza, *International Approaches to Ongoing Competence: A Report for the LSB* (Report, 2021) <<https://legalservicesboard.org.uk/wp-content/uploads/2021/05/International-approaches-to-Ongoing-Competence.pdf>>.

9 Jordan Furlong, *Lawyer Licensing and Competence in Alberta* (Report, Law Society of Alberta, November 2020) 6 ('*Furlong Report*') 11.

10 Paul Maharg, 'The Gordian Knot: Regulatory Relationship and Legal Education' (2017) 4(2) *Asian Journal of Legal Education* 79 ('The Gordian Knot').

11 Ibid 80.

Hook Tangaza suggested a model for an ongoing competence regulatory regime — ‘A Model for the Competence of the Legal System’ (see **Figure 5**) — that highlights the necessity to understand ‘what any measure is primarily designed to achieve, and who is likely to be the main beneficiary, [before being able to] judge whether ongoing competence assurance schemes are fit for the purpose they are intended to serve’.¹² The point is also made that different, interdependent levels of competence also exist; for example, at the individual, firm, profession and sector levels. A toxic culture in the profession broadly or in a firm specifically will impact overall competence.

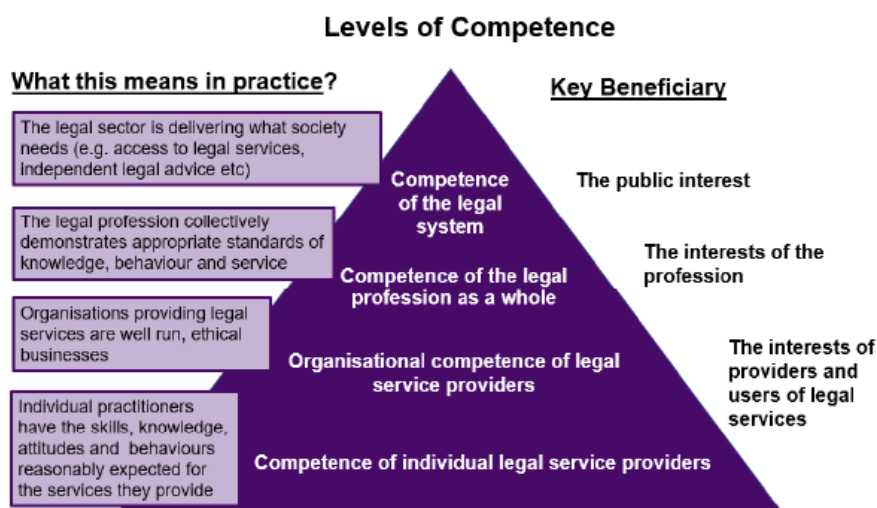


Figure 5. A Model for the Competence of the Legal System (Hook Tangaza, 2021, 11)¹³

Scope of professional regulation: Hook Tangaza observed that the scope of regulation obviously influences remit: ‘The wider the scope of the lawyer monopoly, the more the market will be distorted, so the greater need for some regulatory intervention to ensure public interest or consumer interests are considered’.¹⁴

Structure of professional regulation: Finally, the structure of regulatory systems is also important, because different regulators can be responsible for different regulatory functions across the professional competence span, which will affect their approach to regulatory tasks. Hook Tangaza suggests that professional regulation broadly carries out three functions: initial admission; ‘in practice regulation’; and a disciplinary role.¹⁵ The 2016 *IBA Report* analysed the predominate regulator as designated across these three functions for the 232 jurisdictions whose regulatory structures it examined as follows (noting that ‘Bar’ includes solicitor regulation).¹⁶

¹² Hook Tangaza (n 8) 10-11.

¹³ Ibid 11.

¹⁴ Ibid 9.

¹⁵ Ibid.

¹⁶ IBA, *Directory of Regulators* (n 4) 13-14.

Predominant regulator of admission	Number	Percentage
Court Admission	27	12%
National Bar Admission	71	32%
Local Bar Admission	22	10%
Government Regulated Admission	16	7%
Independent or Delegated Regulatory Authority	58	26%
Mixed or shared responsibility	29	13%
Total	223	100%

Table 6. Regulators of admission (Hook Tangaza, 2021, 13)¹⁷

Predominant regulator of practice	Number	Percentage
Court	42	19%
National Bar	114	52%
Local Bar	17	8%
Government	14	6%
Independent or Delegated Regulatory Authority	24	11%
Mixed or shared responsibility	8	4%
Total	219	100%

Table 7. Regulators of practice (Hook Tangaza, 2021, 14)¹⁸

Predominant disciplinary authority	Number	Percentage
Court	27	12%
National Bar	100	46%
Local Bar	16	7%
Government	13	6%
Independent or Delegated Regulatory Authority	51	24%
Mixed or shared responsibility	9	4%
Total	217	

Table 8. Lawyer disciplinary authorities (Hook Tangaza, 2021, 14)¹⁹

When laid out like this, the distributed nature of ‘who’s regulating what’ raises interesting questions in the context of good practice professional regulation in Australia. Writing in 2017, towards the end of his tenure as the Chair of the Law Admissions Consultative Committee (LACC), Clark suggested that, if legal education is conceived of as a continuum, it may be appropriate for the entire continuum to be regulated consistently by one body:

¹⁷ Ibid 13.

¹⁸ Ibid 14.

¹⁹ Ibid 14.

... if the academic and PLT components are regulated by an independent body, supervised practice and CPD may also need to be independently administered, rather than entrusted to the self-regulation of barristers and solicitors.²⁰

There is desirable scope for an independent body to have the carriage of developing any Australian competence framework, which this report presents as an option for consideration (**Section 5.2.1**). Such an independent body could have responsibility for a range of functions, as suggested below (**Section 5.2.5**), not the least of which might also be pursuing regulatory harmonisation and developing metrics and an evidence base on which to found, and iteratively inform the enhancement of, regulatory good practice. The opportunity of a 'shared space' approach to regulation is particularly relevant in this regard and a viable model for a refreshed Australian approach to adopt. It will now be discussed and is presented as one of the options for consideration in **Section 5.2.5**.

4.2.1 'Shared space' regulation

Maharg argues that the regulation of LE&T should go beyond basics and rather embrace, as LETR had suggested, a 'shared space' approach for collaborative inquiry and joint action that has the potential to transform the regulatory relationship between all legal education stakeholders, including regulators, to the benefit of enhanced LE&T theory and practice.²¹ Such an approach takes account of 'multi- and interdisciplinary approaches, and interjurisdictional approaches that consist of not just global best practices but the complex weave of global with local circumstances, local regulatory codes and local practices'.²² As defined by LETR, the 'shared space' is 'a community of educators, regulators, policy-makers and professionals working in provision of legal services, drawing information from other jurisdictions, other professions and other regulators to identify best practices in [LE&T] and its regulation'.²³ This approach is described by LETR as a more co-operative and coordinated, co-regulatory model, useful in its own right and also because it could be more dynamic, reflexive and self-renewing.

²⁰ Clark (n 2) 924.

²¹ Paul Maharg, 'Same As It Ever Was? Technocracy, Democracy and the Design of Discipline-Specific Digital Environments' in Catrina Denvir (Ed), *Modernising Legal Education* (Cambridge University Press, 2020) 147, 163.

²² Maharg, 'The Gordian Knot' (n 10) 80.

²³ *LETR Report* (n 3) 268.

... a sector-wide Legal Education Council [or similar] with the remit to support the legal services sector in maintaining the quality of [legal education and training (LE&T)] and to assist the regulators in continuing oversight and review of the [LE&T] system ... [could assume the role of] sustained development of a 'shared space', a community of educators, regulators, policy-makers and professionals working in provision of legal services, drawing information from other jurisdictions, other professions and other regulators to identify best practices in [LE&T] and its regulation.

*-(Source: Legal Education and Training Review, **Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales** (Report, June 2013) 268 (emphasis added))*

For LETR, the discussion about shared space regulation culminated in its calling for a sector-wide Legal Education Council to both maintain and enhance LE&T quality, and to assist regulators with their continuing LE&T oversight. LETR noted that calls for greater co-ordination of LE&T activity had been made by every major review on the subject in that jurisdiction since 1934.

The Ormrod Committee called for ... a standing Advisory Committee on Legal Education to bridge the gap between the universities and the professions ... The Benson Commission suggested some improvements, while Marre (1988: 143-5) went considerably further in calling for the creation of a Joint Legal Education Council ... ACLEC, which was intended to be the response to that call, in turn also proposed setting up, as a statutory sub-committee, a Joint Legal Education and Training Standards Committee to review the setting of standards, provide guidelines on minimum standards, and advise on ways of improving those standards (ACLEC, 1996:104-5).²⁴

As conceived of by LETR, this body would bring together all stakeholders – legal education providers, professional bodies, regulators and consumer representatives – with the following remit:

- oversight and expert advice to regulators and the [LACC] in a continuing review of [LE&T] regulation;
- maintenance of a clear map to show systems of movement within and between different qualification routes;
- creation and dissemination of advice on standards, qualifications and equivalences, with guidance on educational methods;
- quality marks for work placements, and possibly national paralegal (voluntary) accreditation;
- harmonisation of transfer regulations, including [accreditation of prior experience, and/or learning for entrants and transferees] ...;
- data pooling and publication;
- sustained development of a 'shared space' [for enhancement and regulation].²⁵

²⁴ Ibid.

²⁵ Ibid.

In the absence of any strong push for regulatory reform to date, the response by Australian legal educators to the distributed regulatory remits across both professional and HE requirements has been far more pragmatic and modest. In Australia, an approach of ‘virtuous compliance’ with multi-layered regulatory oversight has been adopted, which has yielded positive results for LE&T, in spite of the regulatory environment, and continues to be posited with some optimism for a future shared space model of professional-academy collaboration and co-ordination.

... Australian legal educators have adopted a conscientious approach of ‘virtuous compliance’ with broader regulatory intent in order to navigate its multi-layered complexity. Such an approach has been underpinned by an explicit commitment to assuring robust graduate outcomes through the delivery of quality and contemporary curricula. While agile regulatory reform and harmonisation have remained elusive, there is now some reason for optimism that eons of intractable impasse might yet yield to productive professional-academy dialogue in response to disruptive influences, both disciplinary and other-regarding.²⁶

4.2.2 Regulatory sandboxes

Though beyond the scope of this CALD project, the scale of some of the recent shifts in regulatory thinking has become evident nationally and internationally through the emergence and normalising of regulatory sandboxes.²⁷ These initiatives (in controlled environments) signal a regulatory openness to alternative business structures and innovative models for the delivery of legal services, primarily with a view to public benefit as regards the efficiency, accessibility and affordability of legal services. For example, the Institute for the Advancement of the American Legal System (IAALS) has an ongoing *Unlocking Legal Regulation* project that asserts:

A new framework is needed to regulate entities providing legal services if we are to expand access, better protect consumers, and respond nimbly to rapid social and technological changes. Through *Unlocking Legal Regulation*, IAALS will work with others seeking to open doors for lawyers and other service providers to use innovative ways to help more people access our legal system.²⁸

26 Sally Kift, ‘A Virtuous Journey through the Regulation Minefield: Reflections on Two Decades of Australian Legal Education Scholarship’ in Ben Golder et al (eds), *Imperatives for Legal Education Research: Then, Now and Tomorrow* (Routledge, 2019) 159 (‘A Virtuous Journey’), 160.

27 For example, in British Columbia, Ontario, Alberta, Utah, California, Arizona, England and Wales and more. See, for example, Dan Bindman, ‘Lawtech Sandbox Pilot Sparks Collaboration Ambitions’, *Legal Futures* (Blog Post, 26 March 2021); Law Society of Ontario Technology Task Force, *Report on Regulatory Sandbox for Innovative Technological Legal Services*, (Report, 22 April, 2021) <<https://www.lso.ca/about-lso/initiatives/technology-task-force>>; Marilyn Cavicchia, ‘Making Sense of a Shifting Landscape: Sandboxes, Alternative Business Structures, and Regulatory Change’ (2021) 47(1) *Bar Leader* <https://www.americanbar.org/groups/bar_services/publications/bar_leader/2021_22/september_october/sandboxes_alternative_business_structures_and_regulatory_change_making_sense_of_a_shifting_landscape1/>; Jordan Furlong, ‘The Legal Sandbox Tipping Point’, *LAW21* (Blog Post, 15 April 2021) <<https://www.law21.ca/2021/04/the-legal-sandbox-tipping-point/>>. In Australia: Karin Derkley, ‘Regulatory ‘Sandbox’ to Encourage Legal Tech Tools’ (2018) 92(12) *Law Institute Journal* 92 <<https://www.liv.asn.au/Staying-Informed/LIJ/LIJ/December-2018/Regulatory--sandbox--to-encourage-legal-tech-tools>>.

28 Institute for the Advancement of the American Legal System (IAALS), ‘Unlocking Legal Regulation’ (Web Page) <<https://iaals.du.edu/projects/unlocking-legal-regulation>>.

There is a number of initiatives on foot around the globe, which in particular seek to leverage technological transformation in the regulatory sphere, possibly the best known of which is in Utah. In August 2020, the Utah Supreme Court approved a two-year 'regulatory sandbox' to allow for experimentation with new regulatory reforms; for example, for nonlawyer ownership, investment in law firms and integrated services.²⁹ In Australia, NSW has been 'in the vanguard for legal services deregulation'³⁰ in allowing legal services to be offered by new types of entities, such as incorporated legal practices (**ILPs**) and multidisciplinary partnerships (**MDPs**); initiatives which other states have now also followed.³¹

29 The Office of Legal Services Innovation (Web Page) <<https://utahinnovationoffice.org/>>: 'The Office of Legal Services Innovation, a division of the Utah Supreme Court, is authorized to oversee the Utah legal Sandbox for new and innovative legal business models and services. The Office will accept and review applicants to the Sandbox and make recommendations to the Supreme Court as to those applicants to be approved to offer legal services within the Sandbox.' See also Centre on the Legal Profession (Harvard Law School), 'Enter the Sandbox: Utah's Bold Experiment in Lawyer Regulation' (2021) 7(2) *Perspectives on Legal Services Regulation* <<https://thepractice.law.harvard.edu/article/enter-the-sandbox/>>.

30 Law Society of NSW, *The Future of Law and Innovation in the Profession* (Report, 2017) ('*FLIP Report*') 101 <<https://www.lawsociety.com.au/sites/default/files/2018-03/1272952.pdf>> citing George Beaton and Imme Kaschner, *Remaking Law Firms: Why and How* (American Bar Association, 2016), 30.

31 For example, Terri Mottershead, 'Legal Regulatory Sandboxes – An Experiment that Might Reinvent the Legal Ecosystem?' (College of Law News & Insights, 20 May 2021) <<https://www.collaw.edu.au/news/2021/05/20/legal-regulatory-sandboxes-an-experiment-that-might-reinvent-the-legal-ecosystem-au>>; Christine Parker, 'Peering Over the Ethical Precipice: Incorporation, Listing, and the Ethical Responsibilities of Law Firms' (2008) <<https://ssrn.com/abstract=1132926>>.

4.3 ‘Competence’

Underpinning the increasing ‘professionalisation of lawyer regulation’, as it was referred to by Hook Tangaza above ([Section 4.2](#)), is the notion of ‘competence’. There is no one model of competence-based education and ‘competence’ itself can mean many things; for example, from assuring ‘mere adequacy’ at the barest minimum standard, through to lawyer ‘proficiency’ at a much higher level, which may also entail a commitment to continuous improvement of lawyer knowledge, skills and effectiveness.³² A range of definitions and conceptualisations are discussed in this part.

In 2013, [LETR](#) defined relevant terminology for the purposes of its review of LE&T as follows:

- **Competence** (generic term) – An ability to perform the tasks and roles required of a lawyer to (at least) a minimum standard of effectiveness.
- A **‘competence’** or **‘competency’** (specific term) – A sub-category or component of competence, defined in terms of a task to be performed or attribute to be demonstrated. These may be defined at a comparatively high level of abstraction (... the ‘broad view’) or with a considerable degree of task-based detail (... the ‘narrow view’).
- A **‘learning outcome’** or **‘outcome’** – The expected result of a learning process defined in terms of scope (what is to be known, understood and/or demonstrated). This will often be attached to an [AQF] level or other ‘marker’ describing the expected level of performance.
- **Standard** – A means of assuring or measuring the level of performance in a component of competence. This may involve a statement of measurement against predetermined criteria or by reference to, eg, a collaborative process (such as that used in medical assessment) which determines the characteristics of a ‘good enough’ performance.³³

The [American Bar Association \(ABA\) Model Rules of Professional Conduct](#) defines competence in Rule 1.1:

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.³⁴

The Comment under Rule 1.1: explains the notion of requisite ‘Legal Knowledge and Skill’; refers to competent handling of a matter with ‘Thoroughness and Preparation’; and, since 2012, specifically states as regards ‘Maintaining Competence’ that:

To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, **including the benefits and risks associated with relevant technology**,

³² *Furlong Report* (n 9).

³³ *LETR Report* (n 3) 119.

³⁴ American Bar Association, *Model Rules of Professional Conduct* <https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents/>.

engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.³⁵

Since the 2012 update to Comment 8 of *ABA Model Rules*, at least 31 states in the US have adopted the ethical duty of technology competence, while some have gone further and made CPD for technological competence mandatory.³⁶

In *Canada*, the FLSC's *Model Code of Professional Conduct* sets out a lengthy definition of a 'competent lawyer' in Rule 3.1-1 and then provides, in Rule 3.1-2, that 'A lawyer must perform any legal services undertaken on a client's behalf to the standard of a competent lawyer'. The Rule 3.1-1 definition is as follows:

"competent lawyer" means a lawyer who has and applies relevant knowledge, skills and attributes in a manner appropriate to each matter undertaken on behalf of a client and the nature and terms of the lawyer's engagement, including

- a) knowing general legal principles and procedures and the substantive law and procedure for the areas of law in which the lawyer practises,
- b) investigating facts, identifying issues, ascertaining client objectives, considering possible options, and developing and advising the client on appropriate courses of action,
- c) implementing, as each matter requires, the chosen course of action through the application of appropriate skills, including: [a range of skills] ...
- d) communicating at all relevant stages of a matter in a timely and effective manner;
- e) performing all functions conscientiously, diligently, and in a timely and cost-effective manner;
- f) applying intellectual capacity, judgment, and deliberation to all functions;
- g) complying in letter and in spirit with all rules pertaining to the appropriate professional conduct of lawyers;
- h) recognizing limitations in one's ability to handle a matter or some aspect of it, and taking steps accordingly to ensure the client is appropriately served;
- i) managing one's practice effectively;
- j) pursuing appropriate professional development to maintain and enhance legal knowledge and skills; and
- k) otherwise adapting to changing professional requirements, standards, techniques and practices.³⁷

The Canadian Rule is accompanied by a lengthy Commentary that makes clear, inter alia, that the 'rule does not require a standard of perfection. An error or omission, even though it might be actionable for damages in negligence or contract, will not necessarily constitute a failure

³⁵ Ibid Rule 1.1 Competence, comment at [8] (emphasis added) <https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents/>.

³⁶ Robert Ambrogio, '13-15-17-18-20-21-23-24-25-26-27-28-29-30-31 States Have Adopted Ethical Duty of Technology Competence, *LawSites* (Blog Post, 16 March 2015) <<https://www.lawsitesblog.com/2015/03/11-states-have-adopted-ethical-duty-of-technology-competence.html>>.

³⁷ Federation of Law Societies of Canada, *Model Code of Professional Conduct* ('*Model Code of Conduct*') <<https://flsc.ca/wp-content/uploads/2018/03/Model-Code-as-amended-March-2017-Final.pdf>> which is then adopted and adapted as appropriate by the various provincial and territorial law societies. See, for example, Law Society of Ontario, *Rules of Professional Conduct* <<https://lso.ca/about-lso/legislation-rules/rules-of-professional-conduct/chapter-3>>.

to maintain the standard of professional competence described in the rule ...³⁸ The Rule 3.1-1 Commentary also provides:

- [5] lawyer **should not undertake a matter without honestly feeling competent to handle it, or being able to become competent without undue delay, risk, or expense to the client.** The lawyer who proceeds on any other basis is not being honest with the client. This is an ethical consideration and is distinct from the standard of care that a tribunal would invoke for purposes of determining negligence.
- [6] A lawyer **must recognize a task for which the lawyer lacks competence** and the disservice that would be done to the client by undertaking that task. If consulted about such a task, the lawyer should:
- (a) decline to act; ...³⁹

In **Australia**, the objectives of the *Legal Profession Uniform Law* are set out in section 3 and provide that:

The objectives of this Law are to promote the administration of justice and an efficient and effective Australian legal profession, by—

...

- (b) ensuring lawyers **are competent and maintain high ethical and professional standards** in the provision of legal services; and
- (c) enhancing the protection of clients of law practices and the protection of the public generally; and

...

- (e) promoting regulation of the legal profession that is efficient, effective, targeted and proportionate; and ...

[emphasis added]

The *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* refer to 'competence' under 'Fundamental Duties of Solicitors' in section 4 as follows:

4 Other fundamental ethical duties

4.1 A solicitor must also:

4.1.1 act in the best interests of a client in any matter in which the solicitor represents the client,

4.1.2 be honest and courteous in all dealings in the course of legal practice,

4.1.3 deliver legal services competently, diligently and as promptly as reasonably possible,

4.1.4 avoid any compromise to their integrity and professional independence, and

4.1.5 comply with these Rules and the law.

[emphasis added]

The Priestley 11 *Academic Requirements* do not refer to competence, though the process of accrediting tertiary academic courses is on the basis that the course enables a student to

³⁸ Federation of Law Societies of Canada, *Model Code Conduct* (n 37) Commentary [15].

³⁹ *Ibid* Commentary [5]-[6] (emphasis added).

‘acquire and demonstrate **appropriate understanding and competence** in each element of the academic areas of knowledge’.⁴⁰

The *PLT Competency Standards for Entry-Level Lawyers*⁴¹ are explicitly (and obviously) framed as competency standards, requiring in Item 3.1(a) that ‘Every applicant is required to satisfy the Admitting Authority that the applicant has achieved the prescribed competence in the Skills, Compulsory and Optional Practice Areas and Values ...’ Item 2.2 sets out the principles of interpretation that apply to competency standards in items 5.1–5.16, and specifies that:

- an ‘Element’ describes a ‘relevant competence’ to be demonstrated
- a ‘Performance criterion’ sets out an activity by which achievement of ‘an appropriate level of competence’ for an Element may be demonstrated (and every Performance criterion is framed in the terms that ‘The lawyer has competently ...’)
- where a Performance criterion refers to:
 - an action to be *performed*, ‘the requisite competency may be demonstrated by satisfactorily completing a simulated exercise offered, and assessed in accordance with item 4.6(a)’ by the training provider
 - a competency to be demonstrated *by observing* something ‘(i) the entry-level lawyer must document in writing and critically evaluate what has been observed; and (ii) the resulting record must be assessed’ by the training provider in accordance with item 4.6(a).

Item 4.6 of the *PLT Competency Standards* deals explicitly with the assessment of competence.

4.6 Assessment of applicants

- (a) Each form of PLT must employ comprehensive methods, appropriate to post-graduate training, of:
 - (i) assessing an applicant’s competence; and
 - (ii) certifying whether or not an applicant has demonstrated the requisite level of competence, in each relevant Skill, Practice Area and Value.
- (c) Wherever practicable, an applicant’s competence in any Practice Area should be assessed in a way that allows the applicant, at the same time, to further develop and to demonstrate competence in, relevant Skills and Values.

Explanatory notes are provided in relation to each of the competency standards set out in the *PLT Competency Standards* items 5.1–5.16.

⁴⁰ For example, *Legal Profession Uniform Admission Rules 2015* (NSW) section 5(1)(c) (emphasis added). See also **Appendix A**.

⁴¹ Law Admissions Consultative Committee (‘LACC’), *Practical Legal Training Competency Standards for Entry-Level Lawyers* (Standards, October 2017) <<https://www.legalservicescouncil.org.au/Documents/PLT-competency-standards-for-entry-level-lawyers-Oct-2017.pdf>> (‘*PLT Competency Standards*’).

Competence in competence-based systems of education tends to be defined and measured functionally as the ability to perform an activity to the standard required using an appropriate mix of knowledge, skills and attitude.

(Source: Legal Education and Training Review, 'Competence' (Briefing Paper 1/2011, 2011) 2)

Jordan Furlong, writing for Canada and the US, recently suggested that 'lawyer formation' is a process by which a person becomes a 'competent, confident, and independent lawyer', which he describes in the following terms:

- **Competent:** The lawyer has established to the satisfaction of the relevant licensing authority that they possess the minimum capacities and characteristics necessary for licensure.
- **Confident:** The lawyer has acquired enough professional experience and received sufficient guidance and validation to attain emotional self-assurance and trust in their own abilities.
- **Independent:** The lawyer can serve clients, manage tasks, fulfil professional duties, and regulate themselves without requiring supervision or oversight by more experienced practitioners.⁴²

Furlong suggests that a unified, multi-dimensional competence framework that focuses explicitly on the 'needs and interests of lawyers and clients' is what is needed for lawyer formation, and his conceptualisation of a competence framework for admission purposes, around which assessment should be designed, includes the attributes of: legal reasoning and knowledge; legal ethics and professional identity; legal business skills and client service; and empathy and emotional resilience.⁴³ Interestingly, and aligned with the recent changes effected by the SRA in England and Wales, Furlong believes that as long as competence requirements are satisfied in a valid assessment process, a law degree is optional. He does hold, however, that supervised practice experience should be required for certification, whether pre- or post-licensing/admission (for example, by way of: a mandatory period of supervised post-graduate training; a specified amount of supervised clinical education in law school; or via a simulated law firm program as is currently integrated into the bar admission program in five Canadian provinces).⁴⁴

Also of interest in the context of this CALD report and similar to the conclusions reached in the VLSB+C *Review of CPD*, Furlong suggests that a comprehensive CPD program should be mandated for novice lawyers in their first three to five years of practice to support their continuing development and for assurance of competence, which he says could be provided as follows:

42 Jordan Furlong, 'Radical Roads to Reform Lawyer Formation', *LAW21* (Blog Post, March 31 2021) <<https://www.law21.ca/2021/03/radical-roads-to-reform-lawyer-formation/>> ('Radical Roads'). See also *Furlong Report* (n 9) 11.

43 Furlong, 'Radical Roads' (n 42).

44 Ryerson University, Law Practice Program, Prospective Candidates – Program Overview (Web Page) <<https://lpp.ryerson.ca/prospective-candidates/>>: 'Once you have successfully completed [this simulated] Training, you begin your in-person Work Experience within Ontario, applying all that you have learned. This licensing pathway is equivalent to articling. Innovative, rigorous and demanding, the eight-month LPP aims to help you succeed.'

- asynchronous learning through online videos and interactive materials,
- mandatory in-person workshops and conferences for junior practitioners,
- access to toolkits filled with resources for running a legal business,
- mentoring opportunities with multiple senior lawyers in their jurisdiction, and
- an anonymous Help Line that can be called any time day or night for assistance, support, or counselling.⁴⁵

4.3.1 LETR on competence

In its 2011 Briefing Paper on Competence, LETR identified at least four ways in which ‘competent’ might be used:

- A meets a minimum standard of (historic) ability — this may simply mean that s/he has completed the formal requirements of a qualification system
- A meets a continuing standard of performance, measured against an occupational or socially-expected norm — that is, the idea that “professionals should be able to do that which they profess they can do”
- A is on the mid-point on a scale between novice and expert
- A’s performance is not negligent or sufficiently incompetent to merit sanction or barring from practice.⁴⁶

LETR observed that legal regulation tends to operate within the first and last meanings: initial competence deemed by virtue of input(s) — having passed the relevant course(s) — with no specific assurance that the day-one lawyer is actually competent to perform legal work; and, having satisfied initial competence, continuing competence is assumed unless the practitioner does something sufficiently incompetent to attract a disciplinary sanction. Others have also called attention to the lack of focus on ‘output regulation’ to ensure continuing competence and a lawyer’s provision of quality services post-entry to the profession.⁴⁷

In the course of canvassing approaches to competence and outcomes in medical and accountancy education, as noted in **Section 3.4.1**, LETR referenced Epstein and Hundert’s multi-faceted understanding of professional competence based on those authors’ meta-analysis of professional competencies for medical education.⁴⁸ Epstein and Hundert state that competence is built on a foundation of (scientific medical) knowledge, basic clinical skills and moral development. They define professional competence as:

45 Furlong, ‘Radical Roads’ (n 42). In this blog Furlong suggests a five-year span. In his report for the Law Society of Alberta, *Furlong Report* (n 9) he suggests targeting the first three years post-admission. On supporting new lawyers, see also the VLSB+C *Review of CPD* at **Section 3.2.6**.

46 Legal Education and Training Review, ‘Competence’ (Briefing Paper 1/2011, 2011) 1 <<http://www.lettr.org.uk/briefing-and-discussion-papers/index.html>>.

47 See, for example, Brooke MacKenzie, ‘Ensuring Professional Competence?’, *Slaw* (Blog Post, 18 March 2021) <http://www.slaw.ca/2021/03/18/ensuring-professional-competence/#_ftn2>.

48 *LETR Report* (n 3) 121 citing Ronald M Epstein and Edward M Hundert, ‘Defining and Assessing Professional Competence’ (2002) 287(2) *Journal of the American Medical Association* 226, 227.

... the habitual and judicious use of communication, knowledge, technical skills, clinical reasoning, emotions, values, and reflection in daily practice for the benefit of the individual and community being served.⁴⁹

Such a conceptualisation emphasises professional competence's complexity, given that it is 'developmental, impermanent, and context-dependent'.⁵⁰ Epstein and Hundert cite Schön's observation that 'professional competence is more than factual knowledge and the ability to solve problems with clear-cut solutions; it is defined by the ability to manage ambiguous problems, tolerate uncertainty, and make decisions with limited information.'⁵¹ In this way, Epstein and Hundert suggest that professional competence is more integrative than a demonstration of isolated competencies. Competence is the 'integrative ability to think, feel, and act like a [professional]' and 'depends on habits of mind, including attentiveness, critical curiosity, self-awareness, and presence', that involves at least four functions (in the medical context):

- a cognitive function—acquiring and using knowledge to solve real-life problems
- an integrative function—using biomedical and psycho-social data in clinical reasoning
- a relational function—communicating effectively with patients and colleagues, and
- an affective/moral function—the willingness, patience, and emotional awareness to use these skills judiciously and humanely ...⁵²

Epstein and Hundert also usefully canvasses issues around the necessity to develop valid and reliable assessment practices to assure acquisition of these cognitive, technical, integrative, contextual, relational, reflective, affective and moral aspects of competence. The complexity of distributed assessment for assurance of the *Academic Requirements* in pre-admission legal education in Australia is discussed briefly above in [Section 3.4.6](#) and for PLT by reference to Item 4.6 of the *PLT Competency Standards* in this section. Assessment in the context of assuring competence more broadly is discussed further below in [Section 4.3.3](#).

'Competent can mean a number of things;

- *A meets a minimum standard of (historic) ability – this may simply mean that s/he has completed the formal requirements of a qualification system*
- *A meets a continuing standard of performance, measured against an occupational or socially-expected norm – that is, the idea that “professionals should be able to do that which they profess they can do”*
- *A is on the mid-point on a scale between novice and expert*
- *A's performance is not negligent or sufficiently incompetent to merit sanction or barring from practice*

(Source: Legal Education and Training Review, 'Competence' (Briefing Paper 1/2011, 2011) 1)

⁴⁹ Epstein and Hundert (n 48) 226.

⁵⁰ Ibid 227.

⁵¹ Ibid citing Donald Schön, *The Reflective Practitioner* (Basic Books, 1983).

⁵² Ibid 226-228.

4.3.2 Hong Kong Review on competence

In 2018, reflecting on modern conceptualisations of competence and having considered LETR's observations as regards the four ways in which 'competent' might be used (referred to in [Section 4.3.1](#)), the *Hong Kong Review* drew a distinction between two types of professional competence regulation:

- (i) There are those standards that are concerned with a practitioner's actual performance in practice, which are usually part of the profession's code of conduct and/or the court's supervisory jurisdiction [closer to LETR's meaning four]. The standard of competence in this context is largely tacit, and generally applied after the event where there is an assertion of unsatisfactory conduct.
- (ii) Increasingly, law firms and regulators also adopt explicit standards that set a threshold of ability, which must be met as a benchmark for initial education and/or continuing professional development.

This report is of course concerned with this latter type of standard. Competence in this educational sense does not focus exclusively on either underlying knowledge, or real-world professional performance. It operates as an *ex ante* functional standard which seeks to train students, trainees, or practitioners to the level of what they should be able to do. This brings us closest to the second or third meanings identified by the LETR.⁵³

Working through the modern history of competence-based training (**CBT**), the *Hong Kong Review* traces CBT's origins back to developments in occupational and workplace training. The *Hong Kong Review* observes that CBT has now progressed to become a 'globalised norm', with three main claims underpinning the rationale for its adoption:

1. It provides a broader-based assessment of ability: knowing alone is not sufficient, competence requires knowledge to be deployed in combination with skilled application and other attributes. The 'indicators of functional competence' should be specified and then taught, learnt and assessed as a whole.
2. Specified standards of competency reduce consistency issues around performance and assessment (though potentially not as much as had been originally hoped given assessment of performance inevitably retains variable aspects of individualised judgement).
3. The focus on competences and outcomes should shift regulatory attention away from the need to prescribe learning inputs and processes. This enables an approach that balances maximising flexibility for innovative education and training with assuring consistency of outcomes.⁵⁴

The *Hong Kong Review* referred to Lester's 2014 analysis of 40 competence standards and frameworks in the UK, in which that author said that 'competence' can be considered from two broad perspectives:

⁵³ *Hong Kong Review* (n 1) 43.

⁵⁴ *Ibid* 44.

- ‘An individual, internal, attributes-based perspective’ that focuses on the *competencies that the individual has* that contribute to competent performance (the skills, knowledge, attributes, behaviours), that will change over time as the person loses currency in one area and gains it in another
- ‘A social, external, activity- or outcome-based perspective’ that focuses on *what the individual does* to perform competently – their ‘competent actions’ as outputs – in a particular context (social, study, work) *rather than* the knowledge, skills or attributes that enabled those actions.⁵⁵

Lester acknowledges that, in practice, there can be various hybridisations of these two approaches, usually to include ‘soft skills, values and knowledge alongside activity-based descriptions of competence’.⁵⁶ The *Hong Kong Review* referred to this as a third, ‘integrated’ approach to competence⁵⁷ that combines the essence of both the activity-based and attributes-based approaches; for example, by adding supplementary statements of required knowledge, as the SRA has done with its new competence model with the inclusion of detailed descriptors of Functioning Legal Knowledge (**FLK**).

In his 2014 analysis of 40 UK competence frameworks, Lester observed that:

- There was a growing trend towards predominately activity-based frameworks (88% of those examined), which had an ‘increasing sophistication and clarity of language to describe competence precisely enough, without becoming over-prescriptive or resorting to large amounts of detail’.
- The majority of frameworks limited assessment of competence to the point of qualification or licensure and had not extended their assessment to assure coherence and consistency beyond that point.
- Only a few frameworks specified a threshold standard for a *level* of competence.
- The majority of frameworks were designed to be universal and apply to all professionals, though some did reflect specialisations or different sets of activities.
- The quality of the frameworks was variable with issues including: insufficient clarity and precise detail to support valid and reliable assessment of competence; and the fact that some were more a knowledge curriculum expressed in terms of competence, which could not validly assess or guide practice.⁵⁸

55 Stan Lester, ‘Professional Competence Standards and Frameworks in the United Kingdom’ (2014) 39(1) *Assessment & Evaluation in Higher Education* 38, 39.

56 *Ibid* 41.

57 *Hong Kong Review* (n 1) 45–46.

58 Lester (n 55) 47.

4.3.2.1 Competency-based learning: Pros and cons and the importance of valid assessment.

The benefits of competency-based learning (CBL) for professional education are frequently mentioned as including promoting public confidence and the consistency, clarity and transparency of standards. However, CBL is not without its detractors. Critiques include:

- It is a reductionist approach to learning that reduces the intellectual challenge
- There is no incentive to exceed the threshold level of competence
- It encourages fragmented learning in a mechanistic, narrowly task-based, approach
- It leads to assessment-driven curricula and reduces scope for innovation in learning, teaching and assessment, especially if over-specified
- A pre-determined framework cannot adequately capture professional work's complexity, creativity, professional values and attitudes
- There is too much focus on observable skills to the detriment of underlying knowledge, values and motivations, and
- It is a one-off measure that fails to take account of ongoing personal and professional self-development.⁵⁹

In response, it has been argued that an integrated approach to competence and its assurance allays these concerns. In an Australian analysis referencing 21 professions that had established competency standards, Hager et al state that competency-based assessment is the process of assessing a person's competence against prescribed standards of performance, which can, in fact, present rich portrayals of a learner's competence. In an *integrated* conception, competence:

... is conceptualised in terms of knowledge, abilities, skills and attitudes displayed in the context of a carefully chosen set of realistic professional tasks which are of an appropriate level of generality ... The main attributes that are required for the competent performance of these key tasks or elements are then identified. Experience has shown that when both of these are integrated to produce competency standards, the results do capture the holistic richness of professional practice.⁶⁰

Shifting the focus to assurance of learning, Hagar and colleagues emphasise that valid and reliable assessment of performance is required to assure (integrated) competence. This challenges the efficacy of current HE assessment approaches and strategies, and requires integrated assessment design that: is authentic and has regard to both the product of and process undertaken in performance; provides evidence of the acquisition of knowledge, skills and attitudes/values; and uses a broad mix of assessment forms that could include assessment tasks such as 'direct observation of work activities; skills/work sample tests; projects/assignments; evidence from prior learning; log books; records of achievement/

⁵⁹ For example, see *LETR Report* (n 3) 129-130.

⁶⁰ Paul Hager, Andrew Gonczi, and James Athanasou, 'General Issues about Assessment of Competence' (1994) 19(1) *Assessment & Evaluation in Higher Education* 3, 4.

portfolios').⁶¹ Some specific examples of effective integrated assessment in disciplines other than law, which simultaneously assess a number of 'key tasks or elements' central to professional practice against specified performance criteria, include:

- Standardised cases in social work⁶²
- Clinical competence assessments in medical education, such as patient management problems (written simulations much like law hypotheticals) and objective structured clinical examinations (**OSCEs**) that comprise a circuit of 10 or so, 5–15-minute patient stations⁶³
- Standardised patients.

It remains the case that the legal academy must continue to work on its assessment approaches to enable more 'inclusive and trustworthy representation[s] of student achievement ... [and] certification [that] accurately and richly portrays graduates' and students' achievements to inform future careers and learning'.⁶⁴ To a significant extent, this also requires legal educators to re-examine their traditional allegiance to law's signature assessment pedagogies, to understand 'what is missing' from the assessment repertoire. In the context of American legal education, Shulman said in 2005 that:

... we can examine what is missing in this signature [law] pedagogy. The missing signature here is clinical legal education – the pedagogies of practice and performance. While these pedagogies can be found in all [American] law schools, they are typically on the margins of the enterprise, are rarely required, and are often ungraded.⁶⁵

There has been considerable recent improvement in authentic assessment practice in Australian legal education, including, for example, the embrace of capstone assessments, the proliferation of practice-based tasks used for PLT competency certification, attention paid to the assurance of learning in clinical legal education and assessment reform prompted by the pandemic.⁶⁶ Nevertheless, there is still more pedagogical work to be done, not only to innovate for the assurance of 'rich portrayals' of learning acquisition for competency certification, but also to leverage opportunities for simulated practice and for constructive

61 Ibid 7.

62 Ibid 8: '[S]tandardised cases are used to assess elements such as conducting individual interviews, monitoring the progress of clients, and compiling case records and reports. These standardised cases are also capable of measuring a number of attributes at the same time, such as attitudes, communication skills, background knowledge and so on'.

63 Ibid 9: 'This method assesses a candidate's skills, attitudes and knowledge through the undertaking of a variety of tasks, such as history taking, physical examination, data interpretation, specimen handling, emergency procedure ...'

64 David Boud and Associates, *Assessment 2020: Seven Propositions for Assessment Reform in Higher Education* (Australian Learning and Teaching Council, 2010) 3 <www.assessmentfutures.com>. See also, for example, Sally Brown Assessment, Learning and Teaching in Higher Education, 'Kay Sambell and Sally Brown: Covid-19 Assessment Collection' (Web Page) <<https://sally-brown.net/kay-sambell-and-sally-brown-covid-19-assessment-collection/>>.

65 Lee Shulman, 'Signature Pedagogies in the Professions' (2005) 134(3) *Daedalus* 52. <<https://www.jstor.org/stable/pdf/20027998.pdf>>. See also discussion in [Section 3.4.6.3](#).

66 For example, Kift, 'A Virtuous Journey' (n 26); Sally Kift et al, *Curriculum Renewal in Legal Education* (Final Report, 2013) <https://ltr.edu.au/resources/PP9-1374_Kift_Report_2013_1.pdf>; Patrick Baughan, *Assessment and Feedback in Law: Case Studies from the Sector* (Report, 2021) <<https://www.advance-he.ac.uk/news-and-views/assessment-and-feedback-law-case-studies-sector>>. See also, for clinical legal education and experiential learning the discussion in [Section 2.6.3](#).

alignment in technology-enhanced learning, teaching and assessment (for example, as regards other experiential learning opportunities).

As regards the determinative assurance of learning assessment for entry-level practice, as Steel observes, the current Australian regulatory settings are somewhat at odds with the concerted accreditation effort directed at assuring student learning for day-one practice.⁶⁷ Both LETR and Steel point out that the regulators' focus for assuring entry-level competence is concentrated on a series of single data points of historic learning certification: Did the student pass the exam (for contract law three or four years at least before graduation)? Did the graduate cover all the Priestley 11 areas of knowledge (six or more months before the completion of their PLT course)? Did they demonstrate the PLT competencies at some point earlier than day-one, entry-level practice?⁶⁸ And then, as LETR further highlighted, unless the post-admission lawyer is 'negligent or sufficiently incompetent to merit sanction or barring from practice', they are deemed 'competent' from that point on, with Australian regulation requiring only that an initial period of supervised practice be completed (that has no mandated learning outcomes nor quality assurance of the supervision conducted) and that ten hours of annual CPD be undertaken, lightly regulated over four broad areas that, as LETR observed, may or may not make a contribution to maintaining competence to practice (see [Section 4.5.1](#)). Objectively, it could be observed that it is difficult to equate the warranted and intense scrutiny to which lawyer formation is subjected at the pre-admission stage for day-one competence (accompanied by constant agitation to incorporate ever more professional learning into the two regulated initial stages), with the quite laissez-faire, light-touch regulation to which that same lawyer is subjected once in actual practice.

7.27 CPD seems to work in spite of rather than because of the current system. While there is high quality training available, and many practitioners take their commitments seriously, it is subject to the risks of 'creative compliance', doing the hours without learning much from them. There is a tendency to define CPD in terms of hours and courses. This can fail to develop informal learning and overlook the need for reflection and evaluation, which are central to the development of expertise. CPD needs to be both more flexible and more structured and useful. Moreover, in the majority of regulated occupations, workplace learning could be more closely linked to CPD as part of a more coherent system of lifelong learning.

7.28 Consequently the report proposes that approved regulators, where they have not already done so, should adopt a predominantly cyclical or benefits-led model of CPD, requiring participants to plan, implement, evaluate and reflect annually on their training needs and their learning.

(Source: Legal Education and Training Review, Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales (Report, June 2013) 277)

⁶⁷ Alex Steel, 'Reflections on Approaches to Drafting Regulatory Standards: Finding Ways to Quicken, Not Deaden, the Spirit of Legal Education' in Kevin Lindgren, François Kunc and Michael Coper, *The Future of Australian Legal Education* (Thomson Reuters, 2018) 99.

⁶⁸ Ibid 103-4; Legal Education and Training Review, 'Competence' (n 46).

By way of comparison, a number of review reports draw attention to the existence of quite mature competence assurance and training programs already operating in law firms, the public sector and corporate law departments that adopt a more rigorous approach to maintaining competence via in-house regulatory tools.⁶⁹ Given the culture shift required for the profession to move towards embracing Schön's 'reflective practitioner' approach to lifelong learning for continuing competence,⁷⁰ it would seem wise to acknowledge and leverage such initiatives and ensure that broader competence efforts coalesce with, and do not duplicate, such existing professional good practice.

⁶⁹ See, for example, *Furlong Report* (n 9); Hook Tangaza (n 8).

⁷⁰ Schön (n 51); Donald Schön, *Educating the Reflective Practitioner: Toward a New Design for Teaching and Learning in the Professions* (Jossey-Bass, 1987); Donald Schön, *The Reflective Practitioner: How Professionals Think in Action* (Routledge, 1992); Graham Cheetham and Geoff Chivers, 'The Reflective (and Competent) Practitioner: A Model of Professional Competence which Seeks to Harmonise the Reflective Practitioner and Competence-based Approaches' (1998) 22(7) *Journal of European Industrial Training* 267. See also discussion in [Section 3.4.6.3](#).

4.4 The LETR and Hong Kong Reviews: Competence-based approaches

Drawing the regulatory and competence threads together, LETR said that the development of an effective outcomes-based competence framework, developed on a ‘needs-led approach’, required:

- (i) the identification of the appropriate starting point for any outcome specification process
- (ii) the identification of the range of knowledge, skills and attributes that might need to be addressed, and
- (iii) setting standards that will provide clear principles for maintaining the quality and consistency of learning.⁷¹

Central to many of LETR’s recommendations was the expectation that ‘competence is, so far as possible, standardised across the sector as a consistent baseline and at an appropriate level’ and that ‘the robust setting of standards is central to assuring quality [in LE&T] and maintaining consistency’.⁷² It was LETR’s view that the defining of competence, and setting standards for it, should be a collaborative process – the ‘shared space’ referred to earlier (**Section 4.2.1**). While it was agreed that the starting point must be to define initial ‘day-one’ competence – the minimum level of competence the public is entitled to expect from a person licensed to carry out professional activities – LETR observed that much less attention had been paid to:

... **continuing competence** being demonstrated throughout that career. Whilst initial competence is essential, it is not sufficient training for a working life that may span 40 or more years beyond qualification. **This report recommends some transfer of the burden of competence from the initial to the continuing stages of training.**⁷³

As LETR recorded, the accepted mechanism for implementing a competence-based regulatory approach is for a framework of outcomes statements to be developed. This requires a shift *from* content-based LE&T to competence-based education and training that is reflective of the nature of professional work and enables a balanced focus across the necessary knowledge, skills and underlying personal and professional values (or attributes). This threefold, outcomes-based approach – knowledge, skills and values (see **Section 2.5**)⁷⁴ – is familiar to Australian legal and HE educators. It is the language of law’s TLOs and is mandated by the HESF, underpinned by the HESF’s requirements for Australian courses to align with the AQF. The tripartite approach – knowledge-skills-values – was at the heart of the US *MacCrate Report* and ACLEC in the UK, and was endorsed by the Australian Law Reform Commission (**ALRC**) in 2000 when it called for a shift in focus from ‘outmoded notions of what lawyers need to know’ to include also what lawyers need to be able to do

⁷¹ *LETR Report* (n 3) 131.

⁷² *Ibid* 275.

⁷³ *Ibid* 277 (emphasis added).

⁷⁴ ‘Values’ has been chosen because that is the language of the *PLT Competency Standards* (n 41).

with what they know.⁷⁵ Both the LETR and Hong Kong reports explicitly adopt the knowledge-skills-values approach and identified some gaps in current LE&T approaches in that regard. What remains unresolved is the precise (but desirably broadly expressed) constitution of the knowledge-skills-values requirements across the LE&T continuum and their appropriate sequencing. What are the essential knowledge components required of a practitioner at the point of qualification, immediately post-admission and for continuing competence, and how should those substantive law requirements be balanced with demands for a growing range of both generic and legally-specific skills and values across the individual professional's career?

4.4.1 Competence-based approaches

Similarly to the methodology subsequently adopted by the *Hong Kong Review* (Section 4.3.2), LETR had also observed that competency-based (or outcomes-based) approaches to education and training are well-established in a range of professions and occupations, including medicine (since the late 1960s/early 1970s) and accountancy (since the mid-1990s). Both the *Hong Kong Review* and LETR identified that outcomes statements have been developed for LE&T in the common law jurisdictions of Australia, Canada and Scotland; for Australia, both LETR and the *Hong Kong Review* referenced the APLEC *PLT Competency Standards* (LACC *National Competency Standards for Entry Level Lawyers* and the *Uniform Standards for PLT Providers and Courses*) and the TLOs.

The *Hong Kong Review* records that 'Outcome statements are then commonly supported by other written standards. As noted, these will often focus on other input (content), process (teaching and assessments methods) and resource criteria'.⁷⁶ In Australia, LACC, the CALD Standards, the TLOs and the HESF provide these supporting standards. The HESF in particular provides regulatory support for quality assuring input, process and resources. For example, it regulates: course design, delivery, monitoring, review and improvement; assurance of learning; the learning environment, its resourcing, facilities and infrastructure; learning, teaching, staffing and educational support provision; alignment to the national qualifications framework (the AQF) and requirements for external benchmarking; institutional academic governance; monitoring and improvement of student performance and experience; and other matters. In reviewing the various competence statements, the *Hong Kong Review* said that:

75 Australian Law Reform Commission ('ALRC'), *Managing Justice: A Review of the Federal Civil Justice System* (Report No 89, 2000) ('ALRC *Managing Justice Report*') [2.21]. Many in the academy endorsed this critique: see, for example, Sharon Christensen and Sally Kift, 'Graduate Attributes and Legal Skills: Integration or Disintegration?' (2000) 11(2) *Legal Education Review*, 207; Mary Keyes and Richard Johnstone, 'Changing Legal Education: Rhetoric, Reality, and Prospects for the Future' (2004) 26(4) *Sydney Law Review* 537; Sally Kift, '21st Century Climate for Change: Curriculum Design for Quality Learning Engagement in Law' (2008) 18(1 & 2) *Legal Education Review* 1; Kate Galloway et al, 'The Legal Academy's Engagement with Lawtech: Technology Narratives and Archetypes as Drivers of Change' (2019) 1(1) *Law, Technology and Humans* 27, 37; Margaret Thornton, 'Dreaming of Diversity in Legal Education' in Ron Levy et al (eds), *New Directions for Law in Australia: Essays in Contemporary Law Reform* (ANU Press, 2017) 549; Sally Kift, 'A Virtuous Journey' (n 26). The TLOs for Law have been identified as a positive step towards such an approach: see, for example, Lyria Bennett Moses, 'Artificial Intelligence in the Courts, Legal Academia and Legal Practice' (2017) 91 *Australian Law Journal* 561, 568-7.

76 *Hong Kong Review* (n 1) 48.

... the SRA Day One outcomes and associated standards are now quite highly prescriptive; by comparison, broad benchmarks such as the English and Scottish QAA Benchmarks, or the Australian **TLOs create a framework, not a straightjacket**. If professional standards are better assured by prescription and harmonisation of standards on the [Postgraduate Certificate in Laws] PCLL ... there seems to us to be a good case for allowing greater freedom at the academic stage, consistent with recognised principles of university autonomy.⁷⁷

LETR observed further that the monitoring of supervised practice, CPD and continuing learning needed greater quality assurance. The *Hong Kong Review* similarly found that a competency framework should be extended to the standardisation and assessment of workplace training as the ‘final stage of (initial) education and training’,⁷⁸ and that ‘monitoring of more standardised (and measurable) outputs from trainees’⁷⁹ could assure greater consistency of standards at the point of qualification. The *Hong Kong Review* pointed to the earlier work of the English Law Society’s *Training Framework Review (TFR)*,⁸⁰ which had explored a common workplace competence framework, and also to the SRA pilot programme on work-based learning (**WBL**), which had tested the feasibility of an alternative competence-based system to the traditional training contract. Neither of these initiatives was pursued further and events in England and Wales have now been overtaken by the SRA’s response to LETR (discussed next).

The *Hong Kong Review* acknowledged that the move to a competency-based model for the workplace training stage would not be simple for the jurisdiction but said also that it did not necessitate a shift to a central, formalised assessment (such as a CCE, as the Hong Kong Law Society was considering). Rather the *Review* recommended that an ‘evaluation’ of a trainee should take place on the basis of a portfolio of evidence, whereby the firm/supervisor or an external assessment organisation, or some combination of them both, assessed and certified the trainee’s competence for practice, as occurs in other training regimes. In the context of workplace training specifically, the *Hong Kong Review* said that the development of a competency framework required:

- A set of generic competences and standards for workplace training
- A system of assessment or evaluation
- Some quality assurance or monitoring mechanism.⁸¹

Against that broad-brush regulatory and competence background, the regulatory responses to the LETR in England and Wales will now be discussed (**Sections 4.4.2–4.4.5** next). These responses present an interesting contemporary case study of evolving competence-based frameworks, all of which, as of 1 September 2021, have now been implemented for professional accreditation.

⁷⁷ Ibid 74–75.

⁷⁸ Ibid 138. In Australia, this is governed by both the *PLT Competency Standards* (n 41) and the Law Admissions Consultative Committee, *Standards for PLT Workplace Experience* (Standards, 2016) <<https://www.legalservicescouncil.org.au/Documents/standards-for-PLT-workplace-experience.pdf>>.

⁷⁹ *Hong Kong Review* (n 1) 138.

⁸⁰ Julian Webb and Amanda Fancourt, ‘The Law Society’s Training Framework Review: On the Straight and Narrow or the Long and Winding Road?’ (2005) 13(4) *Legal Education Digest* 7.

⁸¹ *Hong Kong Review* (n 1) 138.

4.4.2 Post-LETR case study: The Legal Services Board response

There are few mandatory requirements to maintain competence across the legal profession ... Lawyers' careers can be long, but regulators do not currently conduct regular checks on competence beyond qualification, in contrast to what people assume.

(Source: UK Legal Services Board, Ongoing Competence in Legal Services: Research into Public Attitudes (Report, July 2021) 32)

The Legal Services Board (**LSB**) oversees 15 approved regulators of legal services in England and Wales and operates independently of the profession and government. The UK *Legal Services Act 2007* sets out eight regulatory objectives that the LSB shares with the organisations it oversees. Those regulatory objectives are: protecting and promoting the public interest; supporting the constitutional principle of the rule of law; improving access to justice; protecting and promoting the interests of consumers; promoting competition in the provision of services; encouraging an independent, strong, diverse and effective legal profession; increasing public understanding of the citizen's legal rights and duties; and promoting and maintaining adherence to the professional principles.

Once LETR had reported, each of the LSB, the SRA, the Bar Standards Board (**BSB**) and the Chartered Institute of Legal Executives (**CILEx**), which commissioned the report, responded. Of particular interest is that the LSB issued statutory guidance under s 162 of the UK *Legal Services Act 2007* in March 2014, stating that, over time, it expected regulators to have regulatory arrangements in place for LE&T that delivered the following outcomes:

- Education and training requirements focus on what an individual must know, understand and be able to do at the point of authorisation
- Providers of education and training have the flexibility to determine how to deliver training, education and experience that meets the outcomes required
- **Standards are set that find the right balance between what is required at the point of authorisation and what can be fulfilled through ongoing competency requirements**
- Regulators successfully balance obligations for education and training between the individual and the entity both at the point of entry and on an ongoing basis
- Regulators place no inappropriate direct or indirect restrictions on the numbers entering the profession.⁸²

The LSB has also recently said that it intends to issue a 'statutory statement of policy on ongoing competence' under s 49 of the UK *Legal Services Act 2007*, to set out its expectations of regulators to pursue outcomes that assure legal service providers are

⁸² Legal Services Board, *Guidance on Regulatory Arrangements for Education and Training Issued under Section 162 of the Legal Services Act 2007* (Guidelines, 4 March 2014) (emphasis added). <https://legalservicesboard.org.uk/what_we_do/regulation/pdf/20140304_LSB_Education_And_Training_Guidance.pdf>.

competent at entry-level and remain so throughout their careers. At the time of writing, the LSB is currently consulting on a draft statutory statement of policy in this regard.

4.4.3 Post-LETR case study: The SRA response

For England and Wales, following the *LETR Report* though not recommended by it,⁸³ the SRA proceeded with the development of a two-stage centralised assessment – the Solicitors Qualifying Examination (SQE) – that commenced on 1 September 2021 and covers both the academic (SQE1) and the PLT requirements for practice (SQE2).⁸⁴ At the time of writing this CALD report, the assessment results from the first sitting of the SQE1 are due in January 2022. The centralised assessment reforms were proposed in the SRA's *Policy Statement: Training for Tomorrow*,⁸⁵ released in October 2013, which committed to a more rigorous, relevant and flexible outcomes-based system of standards, delivered under a competence framework, that provided assurance to and built the confidence of consumers, the public, the courts and employers. The proposal discussed opening up pathways to qualification and specifically included:

- ... [setting] out the day-one skills, knowledge and attributes that a new solicitor must possess and permit much greater flexibility as to how those competencies are acquired
- Ending the current discredited 'tick-box' approach to post-qualification training [CPD] and introducing a system under which, while professional development remains mandatory, it is in large part the obligation of individuals, in conjunction with the organisation in which they work, to tailor professional development to reflect their particular needs and circumstances – leaving the regulator to prescribe only where there are identified and significant risks to the public interest
- Stripping away a number of the technical regulations which require unnecessary SRA involvement in the detail of the education and training process.⁸⁶

The SRA's 'Competence Statement', ultimately adopted in 2015, defines competence as 'the ability to perform the roles and tasks required by one's job to the expected standard.'⁸⁷ The SRA's Competence Statement is made up of three parts:

83 While LETR recognised concerns existed over comparability and consistency of standards, it did not support change of this magnitude to a centralised assessment in the absence of clear evidence to warrant such an approach.

84 Solicitors Regulation Authority, *SQE Assessment Regulations* <<https://www.sra.org.uk/sra/policy/solicitors-qualifying-examination/sqe-assessment-regulations/>>; see also <<https://www.sra.org.uk/become-solicitor/sqe/sqe-visuals/>>

85 Solicitors Regulation Authority, *Policy Statement: Training for Tomorrow* (Policy, 2013) <<https://www.sra.org.uk/sra/policy/training-for-tomorrow/resources/policy-statement/>>.

86 Ibid.

87 Solicitors Regulation Authority (Web Page) <<https://www.sra.org.uk/solicitors/resources/cpd/competence-statement/>> citing Michael Eraut and Benedict du Boulay, *Developing the Attributes of Medical Professional Judgement and Competence* (Report, 2001) <<http://users.sussex.ac.uk/~bend/doh/reporhtml.html>>.

- The ‘Statement of Solicitor Competence’⁸⁸
- The ‘Threshold Standard’⁸⁹
- A ‘Statement of Legal knowledge’,⁹⁰ though the SQE2 recently implemented also assesses ‘legal skills acquisition’, which are also prescribed.

The Competence Statement specifically includes reference to the ‘the continuing competences required of all solicitors’. There is explicit recognition that competence is dynamic, that it develops and changes over time, and that a practitioner may work competently at different levels, at different stages in their career, and even from one day to the next, depending on the work being undertaken. The Statement identifies key activities for competent performance in practice — ‘Solicitors should be able to:’ — which are enforced via the Standards and Regulations.⁹¹ The competences are aggregated under the following headings and ‘should be read holistically’⁹² (set out fully in **Appendix J**):

- Ethics, professionalism and judgment
- Technical legal practice
- Working with other people
- Managing themselves and their own work.

This [statement of solicitor competence] takes a broad definition of competence as being “the ability to perform the roles and tasks required by one’s job to the expected standard” (Eraut & du Boulay, 2001).

The advantage of this definition is that it recognises that requirements and expectations change depending on job role and context. It also recognises that competence develops, and that an individual may work ‘competently’ at many different levels, either at different stages of their career, or indeed from one day to the next depending on the nature of their work.

(Source: Solicitors Regulation Authority, ‘Statement of Solicitor Competence’ (Web Page, 2019))

88 Solicitors Regulation Authority, ‘Statement of Solicitor Competence’ (Web Page, 2019) <<https://www.sra.org.uk/solicitors/resources/cpd/competence-statement/>>.

89 Solicitors Regulation Authority, ‘Threshold Standard’ (Web Page) <<https://www.sra.org.uk/solicitors/resources/cpd/competence-statement/threshold-standard/>>.

90 Solicitors Regulation Authority, ‘Statement of Legal Knowledge’ (Web Page) <<https://www.sra.org.uk/solicitors/resources/cpd/competence-statement/statement-legal-knowledge/>>.

91 Solicitors Regulation Authority <<https://www.sra.org.uk/solicitors/standards-regulations/>>.

92 Solicitors Regulation Authority, ‘Statement of Solicitor Competence’ (n 88): ‘The competence statement should be read holistically. By way of example, the requirement in A1e to respect diversity and act fairly and inclusively pervades all areas of work and underpins all of the competences in the statement.’

This new SRA approach to continuing competence has been further enabled by reform of the CPD scheme for solicitors. In a statement in response to the Legal Services Board's 'Request for Evidence' as regards its regulation of ongoing competence, the SRA sets out a significant change in its approach and states that it is now 'focussed on ongoing reflection and development and encourages individuals to take responsibility for ensuring they are up to date and safe to practise'.⁹³ Various processes and mechanisms are in place to enable ongoing monitoring and enforcement of the new regulatory approach, which is applied against the regulatory principles of: consumer protection; open and diverse marketplace; access to justice; and risk-based and proportional regulation of individual solicitors and their employers. The SRA's CPD processes now include: enabling solicitors' self-reflection and development with a toolkit provided;⁹⁴ an annual solicitor declaration; thematic work; monitoring and regulatory action; site visits as required; horizon scanning; and other regulatory tools for assuring ongoing competence by solicitors and firms pursuant to obligations under the Standards and Regulations. It is noteworthy that, in the four-five years since the introduction of the SRA's current approach to continuing competence, outcomes are reported as positive. The SRA has proposed a strategic review of the approach over 2020/21.⁹⁵

4.4.3.1 SRA Threshold Standard and SQE qualification route

Because the Competence Statement applies generically to all solicitors, the SRA has developed a **Threshold Standard** 'to set out the level at which the competences in the competence statement should be performed upon qualification as a solicitor. Level three is the threshold standard required at the point of qualification; the other levels are provided for the purpose of context'⁹⁶ (though arguably the higher levels could apply for continuing competence). Level three of the SRA Threshold Standard, which is the standard required at qualification, is as follows:⁹⁷

93 Solicitors Regulation Authority, *Response to the Legal Services Board's Call for Evidence: Ongoing Competence* (Report, June 2020) ('*Response to LSB*') 6 <<https://legalservicesboard.org.uk/wp-content/uploads/2020/10/SRA-C4E-submission-OC.pdf>>.

94 Solicitors Regulation Authority, 'Resources' (Web Page) <<https://www.sra.org.uk/solicitors/resources/cpd/tool-kit/resources/>>. As regards the obligations of employers, it is noted here that 'Employers are responsible for delivering a proper standard of service to their clients and for training their staff to maintain a level of competence appropriate to their work and level of responsibility. [Employers] may want to consider how this resource aligns with [their] current approach to learning and development so that [they] continue to meet this obligation.'

95 Solicitors Regulation Authority, *Response to LSB* (n 93) 6.

96 Solicitors Regulation Authority, 'Threshold Standard' (Web Page) <<https://www.sra.org.uk/solicitors/resources/cpd/competence-statement/threshold-standard/>>.

97 Solicitors Regulation Authority, 'Threshold Standard' (Web Page) <<https://www.sra.org.uk/solicitors/resources/cpd/competence-statement/threshold-standard/>>.

Threshold standard

Level	Functioning knowledge	Standard of work	Autonomy	Complexity	Perception of context	Innovation and originality	
3	Identifies the legal principles relevant to the area of practice, and applies them appropriately and effectively to individual cases'.	Acceptable standard achieved routinely for straightforward tasks. Complex tasks may lack refinement.	Achieves most tasks and able to progress legal matters using own judgment, recognising when support is needed.	Able to deal with straightforward transactions, including occasional, unfamiliar tasks which present a range of problems and choices.	Understands the significance of individual actions in the context of the objectives of the transaction/strategy for the case.	Uses experience to check information provided and to form judgments about possible courses of action and ways forward.	Threshold Standard required at qualification

Figure 6. SRA Threshold Standard: Level 3 Threshold Standard required at qualification

To qualify through the SQE route, an applicant must:

- Have a degree in any subject (not necessarily law) or equivalent level qualification
- Pass both stages of the SQE as follows:
 - SQE1, which consists of two multiple choice exams (180 questions each, 10 hours in total) covering the Functioning Legal Knowledge (FLK) required to qualify as a Solicitor of England and Wales as set out by the SRA (see [Appendix G](#)), with ethics tested throughout. Both exams must be passed to pass SQE1 and candidates must pass SQE1 before enrolling in SQE2
 - SQE2, which assesses oral and written legal skills and consists of twelve written and four oral tasks over 14 hours, ethics tested throughout; six skills over five contexts/ FLK areas (see [Appendix H](#))
- Have two years' full-time (or equivalent) 'qualifying work experience' which is intended to provide the opportunity to develop some or all of the competences set out in the statement of solicitor competence, including professionalism and ethics⁹⁸
- Pass the 'character and suitability' requirements.⁹⁹

When regard is had to the FLK areas, it may be seen that there has been a considerable expansion from the seven foundations of legal knowledge that were previously prescribed (as set out in [Appendix G](#) under the BSB entry).¹⁰⁰ The effect of the SRA changes on LE&T in England and Wales regime will not be known for some time, but it is unsurprising to observe that the legal academy in the UK has significant reservations about the new SQE regime. For example, it has been observed in relation to the breadth of the FLK areas that are tested before the SQE2 skills assessment, and usually in advance of or in conjunction with the qualifying work experience, that:

98 Solicitors Regulation Authority, 'Statement of Solicitor Competence' (Web Page, 2019) <<https://www.sra.org.uk/solicitors/resources/cpd/competence-statement/>>.

99 Solicitors Regulation Authority, 'Character and Suitability' (Web Page, 21 September 2021) <<https://www.sra.org.uk/become-solicitor/character-and-suitability/>>.

100 The BSB has not gone down the SRA SQE route and has retained the requirement for a qualifying law degree.

Testing a wide variety of sometimes irrelevant legal knowledge three years or more before practice is not an obviously strong candidate for significantly improving the competence of lawyers' ... Sensibly defining knowledge requirements on a subject by subject basis as the SRA has done is a fool's errand: it is way too over and under-inclusive to be useful.¹⁰¹

4.4.4 Post-LETR case study: Bar Standards Board's (BSB) response

Though consideration of bar training is out of scope for this CALD work, the BSB response to LETR, as one of the commissioning regulators, is included briefly for completeness and comparison. Though a competency statement has been developed, the BSB's response to LETR has been more conservative than the SRA's. In 2014, in response to both LETR and the LSB's statutory guidance under the *Legal Services Act 2007* (**Section 4.4.2**), the BSB launched the *Future Bar Training* program and released a July 2015 *Consultation Paper* that considered the strengths and weaknesses of the current academic, vocational and pupillage stages of barristers' training.¹⁰² In October 2015, the BSB published its *Professional Statement for Barristers*, which was updated in 2016. The 2016 *Professional Statement for Barristers incorporating the Threshold Standard and Competences* describes the knowledge, skills and attributes that all barristers should have on 'day one' of practice (see **Appendix G** and **Appendix H**).¹⁰³ Detailed competences are defined for each knowledge, skill and attribute for day-one competence, under four key headings as follows:

- Distinctive characteristics (such as advocacy or relevant legal knowledge)
- Personal values and standards (including integrity and self-awareness)
- Working with others (colleagues and clients)
- Practice management.

For the academic stage, the BSB ultimately retained the requirement to complete either a law degree or a non-law degree together with the Graduate Diploma in Law (**GDL**). During the academic component, seven foundations of legal knowledge are required (as was previously the case): Criminal Law; Equity and Trusts; Law of the European Union (subject to change post-Brexit); Obligations 1 (Contract); Obligations 2 (Tort); Property/Land Law; and Public Law (Constitutional Law, Administrative Law and Human Rights Law). In addition to these seven foundation subjects, the degree or GDL 'should also cover the skills associated with graduate legal work such as legal research'.¹⁰⁴ The vocational stage of training requires the 'day-one' competences identified in the previous dot points, which may be satisfied in one of three ways:

101 Richard Moorhead, 'My Response to the SRA's Proposal for an SQE', *Lawyer Watch* (Blog Post, 28 February 2016) <<https://lawyerwatch.wordpress.com/2016/02/28/my-response-to-the-sras-proposals-for-an-sqe/>>.

102 Bar Standards Board, *Future Bar Training, Consultation on the Future Training for the Bar: Academic, Vocational and Professional Stages of Training* (Report, July 2015) <<https://www.barstandardsboard.org.uk/uploads/assets/31bb8fb7-824a-46e6-908699f3a74b461a/futurebartrainingroutesconsultationfinal.pdf>>.

103 Bar Standards Board, *Professional Statement for Barristers Incorporating the Threshold Standard and Competences* (Statement, 2016) <<https://www.barstandardsboard.org.uk/training-qualification/the-professional-statement.html>>. See **Appendix G** and **Appendix H**.

104 Bar Standards Board, 'Becoming a Barrister: An Overview' (Web Page) <<https://www.barstandardsboard.org.uk/training-qualification/becoming-a-barrister.html>>.

- a course in one part, which may be full-time over a year or part-time over a longer period, similar to the old Bar Professional Training Course (BPTC);
- a course in two parts, which may involve face-to-face teaching for both parts or may involve self-study only for one of the parts; and
- a longer course which combines study of the subjects of the vocational component with an undergraduate degree in law.¹⁰⁵

A pupillage or period of work-based, practical Bar training component under the supervision of an experienced barrister is also required. The BSB requirements for CPD differ according to whether the barrister is within their first three years of practice ('New Practitioner' for a minimum number of hours) or is an 'Established Practitioner' (an outcome-focused, reflective approach).¹⁰⁶

4.4.5 Post-LETR case study: The Chartered Institute of Legal Executives (CILEx) response

Though again out of scope for the purposes of this report, the response of the CILEx, the regulator of Chartered Legal Executive Lawyers and one of the bodies that commissioned LETR is also included briefly for completeness and comparison. The CILEx has also subsequently developed its own Competence Framework.¹⁰⁷ The Framework has:

- **Core principles.** Nine core principles¹⁰⁸ that underpin everything that a legal professional does and embody the CILEx *Code of Conduct*, together with the identification of five 'job roles',¹⁰⁹ across which the competency standard is developed and becomes progressively more advanced the higher the role.
- **Core Behaviours.** 'The How': the behaviours that should be demonstrated when carrying out activities – collaborative; critical thinker; influencer; driven to deliver; authentic; and curious.
- **Core Activities.** 'The What': what legal professionals need to know and do on a day-to-day basis to be successful – ethics and professional responsibility; client relationship; technical expertise; legal practice; commercial awareness; representation and advocacy; managing performance.

¹⁰⁵ Bar Standards Board, 'Vocational Component of Bar Training' (Web Page) <<https://www.barstandardsboard.org.uk/training-qualification/becoming-a-barrister/vocational-component.html>>.

¹⁰⁶ Bar Standards Board, 'Continuing Professional Development' (Web Page) <<https://www.barstandardsboard.org.uk/for-barristers/cpd.html>>.

¹⁰⁷ Chartered Institute of Legal Executives (CILEx), *Professional Competency Framework* (Framework) <https://www.cilex.org.uk/cilex_lawyer/about_cpq/competency_framework>.

¹⁰⁸ Ibid 6. The nine Core Principles are: Uphold the rule of law and the impartial administration of justice; Behave with honesty and integrity; Act competently and in the best interests of your client and respect client confidentiality; Treat everyone fairly and without prejudice; Ensure your independence is not compromised; Maintain high standards of professional and personal conduct and justify public trust in you, your profession and the provision of legal services; Comply with your legal and regulatory obligations and deal with your regulators and ombudsmen openly, promptly and co-operatively; Act effectively and in accordance with proper governance and sound financial and risk management principles; and Protect client money and assets.

¹⁰⁹ Ibid. The five job roles are: Office Support Legal Secretary Administrator; Paralegal Case Handler Legal Assistant; Senior Paralegal Experienced Paralegal; CILEx Lawyer Authorised Practitioner Manager; and Partner Director Board Member.

The CILEx framework makes some provision for emotional competence. For example, under 'authentic' at the 'Authorised Practitioner Manager Partner' level, it is said: 'I take responsibility for my own performance, behaviour and emotions and role model in a consistent way of working to the team.'¹¹⁰

CPD requirements for CILEx members differ according to status:¹¹¹ associate members complete hours-based CPD, while graduate members, fellows/practitioners/legal accounts executives and associate prosecutors complete outcome-based CPD. There are specific requirements for some practice areas, such as advocacy, where individuals must complete two outcomes focussed on advocacy.

¹¹⁰ Ibid 12.

¹¹¹ Chartered Institute of Legal Executives (CILEx), *CPD* <<https://cilexregulation.org.uk/cpd/>>.

4.5 Competence and continuing competence

Having examined the responses to the 2013 LETR in England and Wales as a case study of competence-based frameworks that have recently been implemented for professional accreditation, this section will now proceed to explore other examples of competence-based approaches, a number of which provide useful models for potential adoption or adaption for any Australian exercise. In the first instance, the vexing issue of assuring continuing competence via CPD will be discussed, with particular reference to the LSB's 2021 focus on CPD good practice ([Section 4.5.1](#)). The section will then turn to a broader examination of a number of competence-based frameworks that have been recently implemented and examined in Canada ([Section 4.5.2](#)), following which the work of the Institute for the Advancement of the American Legal System (**IAALS**) in the *Building a Better Bar* report will be considered for a US response ([Section 4.5.3](#)).

Much of the focus of [LE&T] has been on establishing initial competence: a baseline of knowledge and skills that form the foundation for a legal career. Until relatively recently [LE&T] has paid less attention to continuing competence being demonstrated throughout that career. Whilst initial competence is essential, it is not sufficient training for a working life that may span 40 or more years beyond qualification. This report recommends some transfer of the burden of competence from the initial to the continuing stages of training.

(Source: Legal Education and Training Review, Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales (Report, June 2013) 277)

4.5.1 Continuing competence: CPD good practice

As mentioned in [Section 4.2](#), the UK LSB commissioned a report by Hook Tangaza on how different jurisdictions are managing the ongoing competence of their lawyers ('*Hook Tangaza Report*').¹¹² This very useful report finds that ongoing competence schemes internationally have very different intentions and produce very different results according to their purpose, scope and structure. The *Hook Tangaza Report* observes that hours-based CPD schemes are the most common around the world but are, at best, 'blunt instruments' with little evidence of impact.¹¹³ While efforts have been made to supplement a number of hours-based schemes with specific sub-requirements in various attempts to enhance their impact, the *Report* also notes that there is little evidence to suggest this has been effective; in some circumstances, it has unfortunately resulted in more complex schemes that are not well understood by the professionals they seek to support.

¹¹² Hook Tangaza (n 8).

¹¹³ Ibid 26.

Few, if any, jurisdictions demonstrate any overarching approach to competence, either in the form a competence model which seeks to link individual measures across the work of the regulatory body or a definition of competence which goes beyond that required of new entrants. The NOVA (Netherlands Bar), Law Society of Alberta and the Victorian Legal Services Board and Commissioner seem furthest advanced in their thinking in this area.

(Source: Hook Tangaza, International Approaches to Ongoing Competence: A Report for the LSB (Report, 2021) 41)

The *Hook Tangaza Report* argues that, while CPD can make a contribution to maintaining ongoing lawyer competence, it cannot be the only mechanism and should rather be positioned within a wider framework to address ongoing lawyer competence issues. The *Report* canvasses various measures that have been adopted by regulators, usually alongside traditional CPD and often in combination with each other. Examples of input or process ('ex-ante') measures that have been used *in advance* of legal services delivery include: self-reflection and self-assessment models of CPD; mentoring and coaching programs, especially for new lawyers; specialist certifications in nominated practice areas; and accreditation systems to permit specialist practice. Examples of *review* ('ex-post') measures, applied *after* services delivery, have included: assurance visits and audits; liability management; thematic reviews; peer review; routine revalidation or re-evaluation of professional competence; early intervention; remediation; and rehabilitative sanctions.¹¹⁴ While the *Hook Tangaza Report* notes that many of these tools are an improvement on traditional CPD, the general absence of metrics and/or data collection to assess 'the effectiveness of these competence assurance measures, is a widespread weakness'.¹¹⁵ Further, it is observed that it would be difficult to demonstrate that many of these initiatives have had any significant impact on competence because they are often applied without regard to each's underlying purpose; for example, a specialisation scheme is likely to be of more benefit to lawyers as a marketing tool than to be of consumer protection benefit to clients.

The *Hook Tangaza Report* concludes with a range of suggestions for more comprehensive, evidence-based competence frameworks, including, specifically:

- The need to embed a strong lifelong learning culture and inclusion of the skill of self-assessment in competence schemes from the point of qualification and onwards
- Linking ongoing competence considerations more effectively with other, in-practice, regulatory tools
- To make clear the difference between the public purpose CPD the regulator requires for the profession in whole or part *and* the learning a lawyer should undertake for themselves and their practice to keep up-to-date and competent in what they do
- The potential development of competence statements for specific tasks (for example, as regard technological affordances)

¹¹⁴ Ibid.

¹¹⁵ Ibid 5.

- To consider the development of a competence framework based around career stages, which might enable more accurate self-assessment and self-reflection around needs-based CPD. An aspect of this could be, for example, requiring new entrants within their first year(s) to complete a suite of online learning (as the California Bar requires)¹¹⁶ and/or assuring mentoring arrangements.¹¹⁷

Many of the observations made in the LSB's *Hook Tangaza Report* resonate with the findings and recommendations of the VLSB+C's CPD Review.¹¹⁸

In February 2021, the LSB confirmed that it would proceed to introduce 'continuing competence checks for lawyers', noting that, in the Netherlands, advocates undergo an 'annual quality assessment', involving eight hours of structured peer discussion and four hours of peer review.¹¹⁹

4.5.2 Competency frameworks: Canada

As has been mentioned above in the context of considering recent international reviews of LE&T (**Section 3.4.5**), the Federation of the Law Societies of Canada (**FLSC**) developed its 2012 *National Competency Framework*¹²⁰ under the auspices of a broader *National Admissions Standards Project*. When work ceased on the National Assessment Proposal in 2016, the *National Competency Framework* that had been developed remained available for individual law societies to rely upon as they deemed fit. In some instances, that use by a number of organisations and jurisdictions has extended to harnessing the *Competency Framework* in various ways across the LE&T continuum, examples of which will now be discussed as follows:

- **Canadian Centre for Professional Legal Education** (2019) for the *Practice Readiness Education Program* (PREP) for competencies developed over the articling period
- **Nova Scotia Barristers' Society** (2019) for the articling and admission process
- **Law Society of Alberta** (2020) for a review on lawyer licensing and competence (but not law school)
- **Law Society of New Brunswick** (2021) for a Competency Profile
- **Law Society of Ontario's** Competence Task Force (2021) consultation for a Continuing Competence Framework

116 State Bar Association of California, 'New Attorney Training Program' (Web Page) <<https://www.calbar.ca.gov/Attorneys/MCLE-CLE/New-Attorney-Training-Program>>. The online training includes: 4 hours of legal ethics; 3 hours of basic skills; 1.5 hours on competency (substance abuse, mental health issues); 1.5 hours on recognition and elimination of bias in the legal profession.

117 Hook Tangaza (n 8) 26-42 'Part 4: So what else is being done to try to improve Lawyer Competence?'

118 Chris Humphreys, *Getting the Point?: Review of the Continuing Professional Development for Victorian Lawyers* (Report, Victorian Legal Services Board and Commissioner, November 2020) ('*Getting the Point?*') <https://lsbc.vic.gov.au/sites/default/files/2020-11/CPD_Report_Final_0.pdf>.

119 Legal Services Board, 'Ongoing Competence' (Web Page) <<https://legalservicesboard.org.uk/our-work/ongoing-work/ongoing-competence>>; See also Nick Hilborne, 'LSB to Press Ahead with Continuing Competence', *Legal Futures* (Blog Post, 10 February 2021) <<https://www.legalfutures.co.uk/latest-news/lsb-to-press-ahead-with-continuing-competence-regime>>.

120 Federation of Law Societies of Canada, *National Entry to Practice Competency Profile for Lawyers and Quebec Notaries* (Report, 2012) <<https://flsc.ca/wp-content/uploads/2014/10/admission4.pdf>>.

Though out of scope for this CALD exercise, it is also noted that some of the Canadian regulators have moved towards new models of legal entity regulation to oversee the conduct of law firms and to support all firms to develop robust policies, practices and systems for ethical and competent practice.¹²¹ Such approaches recognise that individual lawyers are influenced by the professional and ethical environment and culture within which they work, as Hook Tangaza suggested in the ‘Model for the Competence of the Legal System’ (see **Section 4.2, Figure 5**).

4.5.2.1 Canadian Centre for Professional Legal Education

As a part of the redesign of the Bar admission program for students in Alberta, Manitoba, Nova Scotia and Saskatchewan, the **Canadian Centre for Professional Legal Education (CPLED)** developed a *Competency Framework (2019)*¹²² to guide students, facilitators, assessors and other stakeholders as regards the specific skills and abilities the Practice Readiness Education Program (**PREP**) develops over the articling period. The PREP is a nine-month course administered by the CPLED that offers: Foundation Modules; Foundation Workshops; a Virtual Law Firm; and a capstone final assessment to demonstrate ‘skills and competencies in one final simulated transaction.’¹²³ The CPLED’s competency framework consists of three key categories set out in detail, broadly framed as follows:

Lawyer Skills: What a Lawyer Does

Communication — language, cross-cultural communication, oral and written communication and drafting/legal writing skills (medium and audience neutral)

Legal matter management — taking a legal matter from initiation, planning, fact gathering, client advising, research, analysis, problem solving and resolution.

Practice and Self-Management: How a Lawyer Practises

Risk management

Trust accounting

Technology skills¹²⁴

Time/project management

121 For example: Nova Scotia Barristers Society, ‘Self-Assessing your Law Firm (MSELP)’ (Web Page) <<https://nsbs.org/legal-profession/your-practice/practice-support-resources/mselp/>>. ‘Approximately every three years, law firms (including sole practices) review and assess their Management Systems for Ethical Legal Practice (MSELP).’ A Self-Assessment Tool and the MSELP Workbook are provided to assist in this process. For example, Law Society of British Columbia, *Law Firm Regulation Pilot Project and Recommendations Report: Final Report of Law Firm Regulation Task Force* (Report, October 2019) <<https://www.lawsociety.bc.ca/Website/media/Shared/docs/publications/reports/LawFirmRegulation-2019.pdf>>. The Law Society of Ontario utilises a range of tools to review lawyers’ practices to assure professional competence under the *Law Society Act RSO 1990*, c L.8 (see especially s 42), including: audits; annual reporting; ‘focused practice review’ if there are reasonable grounds for believing professional competence standards are not being met; ‘practice management reviews’ of lawyers in their first eight years of practice, using a ‘risk based random selection process.’ The Law Society of Saskatchewan has recently developed a competency based approach to ‘Firm Regulation’ following a Law Firm Practice Management Pilot Project in 2017. Since 2014, firms in Saskatchewan have been members of the Law Society under *Legal Profession Act 1990*: see <<https://www.lawsociety.sk.ca/initiatives/innovating-regulation/>>.

122 Canadian Centre for Professional Legal Education (CPLED), *CPLED Competency Framework* (Framework, 2019) <<https://cpled.ca/about-cpled/competency-framework/>> (‘*CPLED Framework*’).

123 Canadian Centre for Professional Legal Education (CPLED), ‘Practice Readiness Education Program (PREP)’ (Web Page) <<https://cpled.ca/students/cpled-prep/>> (‘Practice Readiness’).

124 Specified as: *Technology skills for practicing lawyers* (Standard office applications; Law practice applications; Security and privacy risks pertaining to data and information technology) and *Technology trends and potential impact on the practice and business of law*.

Conflict management

Relationship management

Self-management

Professional Ethics and Character: Who a Lawyer is and How they Behave

Knowledge of the Code of Conduct

Decision-making regarding ethical issues

Complying with fiduciary duties and professional conduct

Protecting confidences

Avoiding conflicts of interest

Professional development

Ethical, courteous and honest

Non-discriminatory, principled and respectable

Honest, trustworthy and honourable.¹²⁵

The first phase of the PREP consists of online modules with interactive assessments to provide a foundation in all the CPLED competencies. Interestingly, though it does not appear to be captured in the detail under any of the competency heads set out above, a PREP Program *Foundations Modules Fact Sheet* specifically identifies training around ‘Indigenous Law, Cultures and People.’¹²⁶

4.5.2.2 Nova Scotia Barristers’ Society

The Nova Scotia Barristers’ Society developed a Competency Framework (2019)¹²⁷ for the Articling and Admission Process, specified as ‘The newly called lawyer must ...’, which sets out performance criteria for each identified skill, behaviour and attitude listed under the following areas:

- **Practice Skills.** Problem-Solving, Legal Research, Writing, Legal Drafting, Interviewing and Advising, and Advocacy and Dispute Resolution, which an Articled Clerk must be able to use in the contexts of (1) transactions and (2) resolving disputes, acquired through broad exposure to a wide range of substantive law areas or detailed exposure to a narrower area of law.
- **Personal Practice and Office Management.** Understand the importance of: managing time, managing files, billings and client relations; appropriate communications with clients, staff and others.

125 CPLED Framework (n 122).

126 CPLED, ‘Practice Readiness Education Program (PREP) Foundations Modules Fact Sheet’ (Fact Sheet, 2019) <<https://cpled.ca/wp-content/uploads/2019/12/PREP-Program-Foundation-Modules-Fact-Sheet.pdf>>: ‘**Indigenous Law, Cultures and People** In order to represent and work with Indigenous peoples, it is important for lawyers to understand their worldview, culture and history. Indigenous peoples represent a vast range of cultures and perspectives and this module aims to pique your interest to learn more as you represent an Indigenous client, on Indigenous land claims, or with Indigenous colleagues. Perhaps, even more, it will give you some insight regarding your Indigenous neighbours, family, or fellow citizens, making it easier to work with you on their legal matters.’

127 Nova Scotia Barristers’ Society, *Competency Framework* (Report, 2019) <<https://nsbs.org/wp-content/uploads/2019/12/NSBSCompetencyFramework.pdf>>. The Framework has been adapted from the Competency Framework developed by the Law Society of Alberta and used with permission.

- **Ethics and Professional Responsibility.** Understand a lawyer’s duty to the courts, clients, the public, other members of the profession; recognise circumstances that give rise to ethical problems and the benefit of attending to them promptly, seriously and with guidance from others; demonstrate an appreciation of the lawyer’s duty to maintain and enhance the reputation of the profession, including acting in a respectful, non-discriminatory manner, protecting all client confidences and discharging undertakings; demonstrate an understanding of the need for continuing professional development and the limits of professional competency.

4.5.2.3 Law Society of Alberta: Furlong review

Furlong was commissioned by the Law Society of Alberta to examine *Lawyer Licensing and Competence in Alberta* and reported in November 2020 (*Furlong Report*).¹²⁸ Furlong notes that law school legal education was out of scope for his review,¹²⁹ but says that many of his recommendations were necessitated by the ‘failure of law schools’ to lay proper foundations for lawyer identity formation, due particularly in his view to the separation of legal knowledge from legal practice. He observes that:

The legal education system is outside the scope of this report, but its longstanding and well-documented failure to adequately prepare aspiring lawyers for legal careers should not be allowed to continue and requires urgent law society attention.¹³⁰

As other reports have done, Furlong calls attention to the urgent need for cooperative and collaborative, not siloed, reform and action pursued in concert by all actors with an interest in lawyer formation, with the lawyer firmly as ‘the object, not the subject, of the process’ for:

... a unified system of lawyer formation — one that starts even before a person applies to law school and continues even after that person becomes an independent and autonomous lawyer. Lawyer formation is about producing and maintaining a healthy, proficient, ethical lawyer with a strong professional identity who helps clients and serves the public interest. Lawyer formation is the lens through which all the issues addressed in this report — licensing, first years, competence — should properly be viewed.¹³¹

The Furlong Report conceptualises three broad categories of lawyer licensing as follows:

¹²⁸ *Furlong Report* (n 9).

¹²⁹ *Ibid*, Furlong considered this appropriate given the regulatory imperative for Law Schools to meet the National Requirements (see *National Requirements for Canadian Common Law Degree Programs* (Requirements, January 2018) <<https://flsc.ca/wp-content/uploads/2018/01/National-Requirement-Jan-2018-FIN.pdf>>).

¹³⁰ *Furlong Report* (n 9) 4. At 13–14 Furlong goes on to say (references omitted): ‘It is trite to observe that the state of legal education is deeply dissatisfying to the legal profession in most jurisdictions worldwide. The disconnect between law school curricula and lawyers’ practical knowledge needs, the longstanding misalignment of professional development priorities between the academy and the bar, the ten-fold increase in law school tuition over the past two decades, the consequent heavy burden of post-graduate law student debt, and the increasing number of law school graduates who cannot find work as lawyers, are just some of the problems plaguing legal education in Canada and elsewhere. Ask most lawyers whether they feel law school prepared them adequately for their legal career, and the response will be in the negative, often resoundingly.’

¹³¹ *Ibid* 69.

1. Lawyer licensing (law degree (out of scope for his report); bar admission administered by the CPLED; articling, which he said needs considerable improvement)
2. Lawyer development in the first 3 years of practice
3. Continuing lawyer learning.

As regards the pre-admission supervised practice experience, Furlong found that the quality of articling required considerable improvement, especially following recent reports of discrimination and harassment in Alberta, Saskatchewan and Manitoba,¹³² and that consideration should also be given to the development of alternatives (such as a training-intensive Law Practice Program, an integrated practice curriculum in law schools, and the development of a teaching law firm) to provide a consistent, supervised practice experience for all intending lawyers. Improvements suggested to articling's quality and validity include, for example: setting baseline criteria; training and approving supervisors; requiring the joint (supervisor-student) development of a customised learning outcomes plan for the articling year that is progressively reviewed (three times) with actionable feedback provided to guide the experiential learning experience; and permitting the supervision role to count for CPD.

As regards CPD, Furlong recommended that the Law Society should not revert to the input measure of setting minimum CPD hours (that assumed a causal connection between hours of learning activity and actual learning). Rather, he recommended the Law Society continue with its self-assessment and learning outcomes plan system, which he considered to be educationally sound, in alignment with the LETR's recommendations¹³³ and current practice now in England and Wales. Three specific enhancements were recommended in his report:

- Online training to improve understanding of learning self-assessment as a process and the rationale for it
- Conducting random audit 'learning check-ups' to assure compliance, moving from coaching in the first instance to punitive measures later on
- Provision of periodic supplemental CPD in competence areas of universal importance and relevance (for example, health and wellness, cultural competence, access to justice and professional conduct).¹³⁴

It was also suggested that CPD be better tailored for different cohorts; for example, senior lawyers with more than 20 years' experience and lawyers in smaller firms, especially sole practitioners, the latter group for whom CPD on sole practice lawyering should be mandatory. Equally, Furlong also recommended enhancements to new lawyer supervision, support and education, to provide continuing learning assistance and opt-out mentoring in the first three years of practice, including "formative" mentoring and learning facilitation and "restorative" support to process the cognitive and emotional impact of the transition to

¹³² Ibid 22-23.

¹³³ *LETR Report* (n 3) 197.

¹³⁴ *Furlong Report* (n 9) 57-58. Furlong provided examples as follows: Health and wellness – Ontario Bar Association's Mindful Lawyer series; Cultural competence – complete The Path (Law Society of Alberta); Access to justice – a requirement to complete 20 hours of pro bono activity for low-income or marginalised communities over two years; Professional conduct – an interactive online 'Ethics Refresher'.

practice'.¹³⁵ Furlong, citing Australian colleague Dr Michael McNamara,¹³⁶ recommended that such a mandatory program, delivered online and priced affordably, would complete the initial stage of lawyer development that began in law school and PLT but did not end on admission. He specifically recommended, under the heading 'New Lawyer Development Recommendations', that:

B1. The law society should require lawyers in each of their first three years in practice to complete a professional development program through which they strengthen certain core competencies and achieve specified learning outcomes essential to their growth as lawyers.¹³⁷

Furlong suggested that the type of subjects and skills covered in such a 'new lawyer' course would include:

- Business development and marketing
- Client intake and retainer protocols
- Communication best practices
- Conflict of interest rules and tools
- Cultural fluency and diversity training
- Leadership and character-building
- Office management and organization
- Workload management and mental health.¹³⁸

Though not requested to do so, Furlong also considered the Law Society's six core lawyer competencies that are required both for admission and ongoing practice and which are based on the FLSC *National Entry to Practice Competency Profile for Lawyers and Quebec Notaries*.¹³⁹ He found them to be generally sound, though suggested they would benefit nevertheless from some revision and re-ordering. Furlong particularly identified the addition of 'cultural competence' and a general shift towards more 'client-centric' standards. The Law Society's existing competencies and Furlong's proposed amendments to them are set out side by side in **Table 9** (below, author generated).

¹³⁵ Ibid 6.

¹³⁶ Michael McNamara, *Supervision in the Legal Profession: New Lawyer Development Recommendations* (Palgrave Macmillan, 2020).

¹³⁷ *Furlong Report* (n 9) 47.

¹³⁸ Ibid.

¹³⁹ Federation of Law Societies of Canada (FLSC), *National Entry to Practice Competency Profile for Lawyers and Quebec Notaries* (Report, 2012) <<https://flsc.ca/wp-content/uploads/2014/10/admission4.pdf>>.

Law Society of Alberta Competencies ¹⁴⁰ [Headings only, more detail at source]	Furlong's suggested reordering and amendments ¹⁴¹
<i>Ethics and Professionalism</i>	<i>Client Relationships</i> . Reframe from notion that are 'risky' and to be 'managed' to opportunities for healthy and resilient exchanges as equal partners in pursuit of client's goals and priorities.
<i>Substantive Legal Knowledge</i>	<i>Cultural Competence</i> . NEW (see Report section 5).
<i>Client Relationship Management</i>	<i>Law Business Management</i> . Renamed to reflect the importance of private-practice lawyers operating effective and profitable businesses, in which management of people, projects, procedures, and technology enables effective service delivery, high levels of client satisfaction, and a healthy workplace.
<i>Practice Management</i>	<i>Professional Conduct</i> . Renamed, includes 'Ethics & Professionalism' but now with a focus on what matters to clients – the lawyer's actual behaviour. 'Ethics' can be a narrowing concept about obeying rules and avoiding illicit activities, while 'Professional Conduct' speaks to larger issues of lawyer actions and demeanour.
<i>Oral and Written Communication, Analytical and Research Skills</i>	<i>Substantive Law</i> . Renamed and reordered to ensure no over-emphasis on black-letter-law elements of substantive law at the expense of 'experiential' aspects of substantive law competence (that is, the skills, systems, and solutions in any given practice area that can help bring the client to their desired goal).
<i>Wellness</i>	<i>Wellness</i> . Unchanged.
Other	

Table 9. Comparison of Law Society of Alberta Competencies with Furlong Review Proposed Amendments

Furlong observes in his report that the review was taking place at a time that demanded focus on racial justice and social equity, referencing the killing of George Floyd, the Black Lives Matter movement and the disproportionate impact of COVID-19 on less advantaged communities. In this context, it was his view that a focus on licensing and competence systems' improvement should particularly take account of the additional challenges faced by Black, Indigenous, and people-of-colour lawyers, and the many internationally trained lawyers who wished to practise in Alberta.¹⁴²

Many of the comments and recommendations in the *Furlong Review* were echoed in the *VLSB+C CPD Review (Section 3.2.6)*, especially as regards the support for new lawyers.¹⁴³ Relevantly also for the Australian context, the Law Society of Alberta has recently introduced a mandatory educational requirement (approved 1 October 2020) for 'Indigenous Cultural Competency Education called *The Path (Law Society of Alberta) – Your Journey Through*

140 Law Society of Alberta, 'Competencies' (Web Page) <<https://www.lawsociety.ab.ca/lawyers-and-students/continuing-professional-development/background/cpd-competencies/>>.

141 *Furlong Report* (n 9) 15-16.

142 *Ibid* 17-19.

143 *Getting the Point?* (n 118).

Indigenous Canada.¹⁴⁴ The Path (Law Society of Alberta) has five modules and takes approximately five hours to complete. All active lawyers have 18 months to complete the education (or certify eligibility for an exemption).

4.5.2.4 Law Society of New Brunswick

The Law Society of New Brunswick (LSNB) published its Competency Profile in 2021,¹⁴⁵ which sets out the Profile's purpose and extensive development process. In January 2019, the LSNB validated the core competencies for safe and effective practice via a large-scale survey of all New Brunswick lawyers, with external oversight. An interim competency review was conducted in May 2021, and the updated, bilingual-format version was published in June 2021. The LSNB has identified the following key competencies 'as important to safe, effective, and sustainable practice', with further detail regarding each also provided:

1. As a **professional**, a lawyer can:
 - A. Make ethical decisions
 - B. Act professionally
 - C. Self-manage
 - D. Foster well-being
2. As a **problem-solver**, a lawyer can:
 - A. Engage in legal research and reasoning
 - B. Apply client-centred legal thinking
 - C. Work efficiently and effectively
3. As a **communicator**, a lawyer can:
 - A. Communicate effectively
 - B. Communicate in a professional legal context
4. As a **collaborator**, a lawyer can:
 - A. Work with others
 - B. Maintain professional relationships
 - C. Work with diverse people
5. As a **manager**, a lawyer can:
 - A. Manage work activities
 - B. Manage a professional practice
 - C. Leverage systems and technology
6. As a **leader**, a lawyer can:
 - A. Engage in lifelong, self-directed learning
 - B. Engage with the community
 - C. Lead and inspire change
7. As a **practitioner**, a lawyer can:
 - A. Demonstrate general understanding of core legal concepts

¹⁴⁴ Law Society of Alberta, 'The Path (Law Society of Alberta) – Your Journey Through Indigenous Canada' (Web Page) <<https://www.lawsociety.ab.ca/the-path-law-society-of-alberta-education-update/>>.

¹⁴⁵ Law Society of New Brunswick, *Competency Profile* (Report, June 2, 2021) <https://lawsociety-barreau.nb.ca/uploads/LSNB_BNB_Compentency_Profile_Profil_de_comp%C3%A9tences_2021_BIL.pdf>.

- B. Integrate knowledge and skills to perform legal tasks
- C. Develop qualities associated with safe, effective, and sustainable practice.¹⁴⁶

According to its website, the LSNB is developing three tests, each designed to evaluate a specific group of competencies as follows:

- **Legal Knowledge Examination:** This multiple-choice test helps ensure candidates have a general understanding of core legal concepts.
- **Professional Skills Examination:** This multi-part skills-based test (including a written test, a task-based technology simulation, and live performance testing) helps ensure candidates have basic professional skills.
- **Legal Practice Evaluation:** This multi-day, simulation-based evaluation includes a mix of practical, task-based activities from client meetings to drafting documents. It helps ensure candidates can integrate knowledge and skills to perform important tasks.¹⁴⁷

The Law Society also expects to assess some competencies by reference to an approved law degree (or equivalent).

4.5.2.5 Law Society of Ontario's Competence Task Force

In June 2021, the Law Society of Ontario's (LSO) Competence Task Force released a consultation paper — *Renewing the Law Society's Continuing Competence Framework*¹⁴⁸ — to inform the renewal of its 2001 *Professional Development Model of Competence* for lawyers and paralegals by seeking member feedback. The LSO Task Force has identified five principles to guide the development and design phases of its post-licensure competence framework renewal: Risk-based; Flexible; Feasible; Forward-looking; and Client-centred. In addition, the Task Force has identified seven key themes that have the potential to inform the regulatory approach for new competence programs and requirements as follows:

- Peer Support and Assessment
- Adjustments to CPD Requirement
- Guided Learning and Development
- Baseline Competence and Beyond
- Importance of Practice Reviews
- Enhanced Support for Soles and Small
- Technological Competence.

¹⁴⁶ Ibid 5.

¹⁴⁷ Law Society of New Brunswick, 'Bar Admission Program Development Project: Frequently Asked Questions' (Web Page) <<https://lawsociety-barreau.nb.ca/en/for-lawyers/bac-program-development-project>>.

¹⁴⁸ Law Society of Ontario's Competence Task Force, *Renewing the Law Society's Continuing Competence Framework* (Report, June 2021) <<https://lawsocietyontario.azureedge.net/media/lso/media/about/convocation/2021/convocation-june-2021-competence-taskforce-report.pdf>>.

The Task Force developed a very comprehensive ‘working definition’ of competence on which it is seeking feedback as follows:

- Competence is composed of knowledge, skills, abilities, behaviours, judgement and values. Competent performance requires the habitual and simultaneous application of many of these attributes.
- Competence, and the attributes that comprise it, is developmental. Methods of acquisition include:
 - education,
 - training,
 - practical experience,
 - remedial training prompted by the regulator or insurer,
 - peer observation and evaluation, and
 - mentorship and coaching.
- The practices and habits that define competence should be instilled at the beginning of one’s career and must be continually maintained and improved throughout one’s career.
- Competence requires self-awareness, self-reflection, and a growth mindset.
- Competence is dynamic and adaptive. It varies and evolves according to factors such as:
 - one’s level of experience, the nature and complexity of one’s work, including one’s level of specialization,
 - one’s practice circumstances,
 - one’s clients’ needs and circumstances, and
 - changes in the legal landscape.
- The manner in which clients experience legal services provided by a lawyer or paralegal is a critical dimension of competence. The notion of competence is informed by a consumer perspective.¹⁴⁹
- Recognizing that competence is dynamic and context-dependent, any lawyer or paralegal will experience varying levels of competence according to the particular circumstances, and may find their professional knowledge, skills, and/or judgement challenged in some situations. Transitions to a new practice area, a long absence from practice, or working on unfamiliar issues or with an unfamiliar client are examples of such situations.
- Concepts of competence evolve with societal changes. For example, the pandemic has emphasized a facility with technology as a key element of competence.¹⁵⁰

In response to this formulation by the LSO’s Competence Task Force, legal commentator Jordan Furlong, who is a member of the LSO and also conducted the Law Society of Alberta review (**Section 4.5.2.3**), suggested his own framing of lawyer competence ‘in both principle and practicality’ in his blog.¹⁵¹ Furlong first distinguishes between:

149 Ibid 9 footnote reference to: Logan Cornett, ‘Think Like a Client’ (2019) Institute for the Advancement of the American Legal System at 17 <https://iaals.du.edu/sites/default/files/documents/publications/think_like_a_client.pdf>.

150 Ibid 8-9.

151 Jordan Furlong, ‘Defining Lawyer Competence’, *LAW21* (Blog Post, 13 August 2021) <<https://www.law21.ca/2021/08/defining-lawyer-competence/>>. This blog post was subsequent to his completion of the Law Society of Alberta Review (**Section 4.5.2.4**).

- ‘Specific competence ... the ability of a [particular] lawyer to effectively carry out a particular client engagement’
- ‘General competence’, which is the ‘the role of the regulator, acting on behalf of clients and the public, to determine whether a person is fit to begin acting (upon admission to the bar) or continue acting (as a licensed professional) as a lawyer’.

In the context of the regulatory role for ‘general competence’, Furlong’s definition of lawyer competence is as follows (and in his blog, he elaborates on each of these five elements):

Lawyer competence is the demonstrated ability of a lawyer to meet high standards of integrity, proficiency, client service, civility, and wellness in the delivery of legal services. A competent lawyer:

1. *is ethical, honest, and trustworthy, [integrity]*¹⁵²
2. *knows and applies the law accurately and effectively, [proficiency]*¹⁵³
3. *advances clients’ goals, interests, and peace of mind, [client service]*¹⁵⁴
4. *acts in a courteous and professional manner, [civility]*¹⁵⁵ *and*
5. *safeguards their own well-being. [wellness]*¹⁵⁶

Furlong also makes some general observations about his definition:

- The order is specific: the first and last are bookends, framing the lawyer as a human being; the middle three describe the impact of the lawyer’s actions on others.
- These five aspects of competence apply equally to a day-one lawyer and to ongoing competence, across a unified lawyer development continuum.
- ‘Demonstrated’ competence should use *output*-based competence measures assessed by a qualified third party (rather than input-based measures such as a degree, a score on the bar exam or time in apprenticeship).
- ‘High’ standards seek to ensure the threshold standard to become and remain a lawyer is demanding.

152 Ibid. ‘Integrity is inseparably associated with ‘character,’ a cardinal personal attribute essential to a lawyer’s ability to successfully fulfill all five of these elements of competence.’

153 Ibid. ‘Proficient’ is a term positioned halfway along what you might call the ‘spectrum of effectiveness,’ between ‘adequate’ at one end and ‘expert’ at the other ... Competence is not a guarantee of perfection...’

154 Ibid. ‘“Peace of mind’ ... refers to not just the satisfactory completion of a retainer, but also the conscientious performance of it. Competent lawyers communicate regularly and proactively with their clients, connect with them in culturally appropriate ways, and display empathy as a matter of course. Competent lawyers are mindful of and attentive to their clients’ human needs.’

155 Ibid. ‘It’s the mark of a truly civil individual that they can rise above unreasonable demands, difficult personalities, challenging situations, and ad hominem attacks ... ‘Professionalism,’ ... can be taken here to reflect a person’s equanimity, patience, and fortitude.’

156 Ibid. ‘A legal professional who is unwell struggles to display integrity, be proficient, serve others, and be civil. Physical, mental, and emotional well-being are not merely aspects of competence, but collectively form the foundation of a [lawyer’s] capacity to do their job ... ‘To be a good lawyer, one has to be a healthy lawyer.’

- Continuing competence is directed to becoming *and remaining* a lawyer, noting the reform agenda in the UK under the LSB that has public/consumer backing for considering a ‘requalification’ requirement for ongoing competence.¹⁵⁷

4.5.3 Competency frameworks: United States – IAALS, *Building a Better Bar*

In 2020, in the United States, the IAALS¹⁵⁸ published the results of empirical research it had undertaken to develop an evidence-based definition of ‘minimum competence to practice law’. The IAALS Report – *Building a Better Bar* – argues that it is impossible to know whether the US bar exam is a valid assessment of minimum competence in the absence of a definition or conceptualisation of competence. Between August 2019 and May 2020, the research team conducted 50 focus groups of practising attorneys (41 with new lawyers (up to three years out)) and nine with supervisors of new lawyers). Focus group lawyers were asked about: the knowledge and skills utilised in the first year of practice; mistakes made during that first year; what knowledge, skills or supervision would have helped those mistakes to be avoided; and the ‘degree to which subjects and skills tested on the bar exam tracked competencies participants needed’.¹⁵⁹

Focus group data was analysed to suggest that minimum competence consists of 12 interlocking components, which were called ‘building blocks’, as follows:

- The ability to act professionally and in accordance with the rules of professional conduct
- An understanding of legal processes and sources of law
- An understanding of threshold concepts in many subjects
- The ability to interpret legal materials
- The ability to interact effectively with clients
- The ability to identify legal issues
- The ability to conduct research
- The ability to communicate as a lawyer
- The ability to see the “big picture” of client matters
- The ability to manage a law-related workload responsibly
- The ability to cope with the stresses of legal practice
- The ability to pursue self-directed learning.¹⁶⁰

157 Ibid. For example, Nick Hilborne ‘Lawyers Should Have to Take Competence Tests Every 10 Years’, *Legal Futures* (Blog Post, 30 June 2021) <<https://www.legalfutures.co.uk/latest-news/lawyers-should-have-to-take-competence-tests-every-10-years>> referencing the community research commissioned by the UK LSB, *Ongoing Competence in Legal Services: Research into Public Attitudes* (Report, July 2021) <<https://legalservicesboard.org.uk/research/ongoing-competence-in-legal-services-research-into-public-attitudes>>.

158 According to its website, the IAALS is ‘a national, independent research centre dedicated to facilitating continuous improvement and advancing excellence in the American legal system’ <<https://iaals.du.edu/about>>.

159 The IAALS, *Building a Better Bar: The Twelve Building Blocks of Minimum Competence* (Report, 2020) 20 <<https://iaals.du.edu/publications/building-better-bar>> (‘*Building a Better Bar*’).

160 Ibid 20.

Five insights regarding assessment of minimum competence were also identified:

- Closed-book exams offer a poor measure of minimum competence to practice law;
- Time constraints on exams similarly distort assessment of minimum competence;
- Multiple choice questions bear little resemblance to the cognitive skills lawyers use;
- Written performance tests, in contrast, resemble many of the tasks that new lawyers perform;
- Practice-based assessments, such as ones based on clinical performance, offer promising avenues for evaluating minimum competence.¹⁶¹

The *Building a Better Bar Report* concludes with a focus on good practice assessment strategies for assessing these competencies. Focus group members identified *valid and authentic* assessments – ones that replicated their work as first-year lawyers – as including written performance tests and supervised practice experiences. On the other hand, *invalid* assessment practice was identified as: closed book and time-pressured exams and multiple choice questions. The IAALS went on to make ten recommendations for courts, law schools, bar associations and examiners, and other stakeholders to consider in their efforts to move towards evidence-based lawyer licensing. In doing so, they organised their recommendations by assessment method rather than by building block, given that assessment practice could be validly and reliably deployed in more than one context. The ten assessment recommendations in the *Building a Better Bar Report* are as follows:

1. Written exams are not well suited to assessing all aspects of minimum competence. Where written exams are used, they should be complemented by other forms of assessment.
2. Multiple choice exams should be used sparingly, if at all.
3. Eliminate essay questions from written exams and substitute more performance tests.
4. If jurisdictions retain essay and/or multiple choice questions, those questions should be open book.
5. Where written exams are used, provide more time for all components.
6. Candidates for licensure should be required to complete coursework that develops their ability to interact effectively with clients.
7. Candidates for licensure should be required to complete coursework that develops their ability to negotiate.
8. Candidates for licensure should be required to complete coursework that focuses on the lawyer's responsibility to promote and protect the quality of justice.
9. Candidates for licensure should be required to complete closely supervised clinical and/or externship work.
10. A standing working group made up of legal educators, judges, practitioners, law students, and clients should be formed to review the 12 building blocks and design an evidence-based licensing system that is valid, reliable, and fair to all candidates.¹⁶²

¹⁶¹ Ibid 4.

¹⁶² Ibid 4.

4.6 An Australian ‘Competence Framework’

Having canvassed a range of approaches, conceptualisations and existing examples in this report of possible formulations for competence frameworks, competence statements, outcomes-based statements and the like, this last part draws out particular issues for consideration in the development of a ‘Competence Framework’ in an Australian context. Given their importance to modern practice, included in this discussion is a specific examination of both ‘Ethics and Professional Conduct’ and ‘Technological Competence and Regulation’ from the regulatory perspective.

The first observation is that it is clear that experts have in mind an integrated suite of documentation when they discuss the development of a competence framework (**Sections 4.3–4.5**), at least: a ‘Competence Statement’; one or more ‘Threshold Standard(s)’; statement(s) of underlying knowledge, skills and values; and a mechanism for assessment and assurance of the relevant standard. The discussion of ‘Ethics and Professional Conduct’ and ‘Technological Competence and Regulation’ goes to each of these components, and particularly to the content of the statement(s) of knowledge, skills and values.

4.6.1 A ‘Competence Statement’

As regards the formulation of a Competence Statement, Professor Julian Webb, who was a member of both the *LETR* and the *Hong Kong Review* panels, advised the *VLSB+C CPD Review* that the *Hong Kong Review* was ‘anxious to avoid the traps of over-specifying competencies while providing enough detail to be useful and relevant. The review thought that the high level statements could be supplemented by guidance and exemplars’.

Focusing in the first instance on the Competence Statement component of the competence framework, four specific examples are drawn out and provided to found this final discussion for the consideration of options in **Section 5**: two from Australia and two international.

Example 1: LACC.¹⁶³ LACC’s *Assuring Professional Competence* program of work, which ultimately did not proceed, discussed the possibility of framing a Competence Statement around what a practising lawyer needs to be able to do, in broad terms, in each of the following areas:

- (i) ethics, professionalism and judgement
- (ii) technical aspects of legal practice
- (iii) working with others, and
- (iv) managing people and work.¹⁶⁴

¹⁶³ Assuring Professional Competence Committee, ‘What We Need to Do’ (Discussion Paper) 9 (emphasis added) <<https://www.lawcouncil.asn.au/docs/490542a9-1665-e711-93fb-005056be13b5/Assuring%20Professional%20Competence%20-%20What%20we%20need%20to%20do.pdf>> (‘What to Do’).

¹⁶⁴ Ibid 7-8.

These four domains have been taken from the SRA Competence Statement and, as expected, a level of detail sits underneath each of them.¹⁶⁵

In its Discussion Paper, LACC observed that the expectation was that the Competence Statement would be:

... expressed in broad terms, comparable perhaps in tenor and scope to the Threshold Learning Outcomes (TLOs) for Australian Law Degrees developed between 2009 and 2011. We hope that the Competence Statement will be equally applicable to barristers and solicitors and that any necessary differentiation between their respective knowledge, skills and values might be dealt with appropriately in other ways.¹⁶⁶

Example 2: VLSB+C. The 2020 *VLSB+C CPD Review* in Victoria recommended the development of a competency framework. It provided advice on how this might be best achieved as follows:

Care should be taken not to over-engineer a framework by making it too detailed or prescriptive. The work should build upon frameworks used in other professions where appropriate, and borrow from frameworks already developed within the profession, e.g. in law firms, government entities and in other jurisdictions. The Admission Rules prescribe standards of competence for a range of subjects and skills that applicants for admission to practice are expected to demonstrate. It would be desirable and logical if the competency framework for newly admitted lawyers was consistent with the standards prescribed by those rules. Many of the generic competencies around client communication, business development, strategic planning, leadership, business and finance could be derived from existing frameworks. Subject matter content should be built upon the competencies articulated by specialisation committees and other groups and associations formed around specific topics. Work could be delegated to those groups for this purpose.¹⁶⁷

In the *VLSB+C CPD Review*, Humphreys identified that ‘An embryonic competency framework can be found in the four subject areas for which Victorian lawyers are required to complete at least one CPD point each year’:

- Substantive Law
- Professional Skills
- Practice Management and Business Skills, and
- Ethics and Professional Responsibilities.¹⁶⁸

Humphreys went on to observe that these four areas are similar to four of the six core competences that the Law Society of Alberta require, not just on entry to the profession but

¹⁶⁵ Solicitors Regulation Authority, ‘Competence Statement’ (Web Page) <<https://www.sra.org.uk/solicitors/resources/cpd/competence-statement/>>.

¹⁶⁶ Assuring Professional Competence Committee, ‘What to Do’ (n 163) 8.

¹⁶⁷ *Getting the Point?* (n 118) 33.

¹⁶⁸ *Ibid* 40.

throughout a career as a lawyer. The additional two from Alberta are: Client Relationship Management; and Wellness. The evidence base set out in previous sections would support both of these additional competences in any Australian formulation. The Australian profession and regulators might well decide also that Furlong's suggested addition to the Alberta six of 'Cultural Competence' or, perhaps more appropriately in the Australian context, 'Indigenous cultural competency' (*Section 2.6.1* above) might be appropriate, acknowledging, as Furlong did, that Alberta has recently mandated 'Indigenous Cultural Competency Education' for all active lawyers (*Section 4.5.2.3*).

The simplicity of the Humphreys conceptualisation, its use of an existing framework already known to the profession, and the way in which it looks immediately possible to map the TLOs and the PLT Competency Standards onto those four (or six) domains, has much to recommend it.

Example 3: The Law Society of Alberta.¹⁶⁹ The Humphreys reference to the Law Society of Alberta, segues nicely into the third example, and the first international one provided in this part. The Law Society of Alberta's competencies approach to CPD supports its regulation for ongoing competence and specifically references complaint history to validate the foci of the framework: 'The complaint history indicates that while substantive areas are important, the biggest risk to lawyers is a weakness in practice management, client relationships and ethics and professionalism.'¹⁷⁰ Alberta goes on to describe up to 12 topic areas within each competency, in addition to the types of CPD activities that might contribute to the achievement of the competencies.

Alberta's six competencies and Furlong's 2020 review of them are discussed in *Section 4.5.2.3*. That detail will not be repeated here. The purpose of the reference to them in this part is to bring to the foreground the possible heads under which an Australian Competence Statement might be organised.

Furlong's tweaking of the six Alberta domains (a re-ordering, some renaming for different emphasis, a general shift towards more 'client-centric' standards and the addition of 'cultural competence') make them a very useful model on which to base an Australian conversation. The *Furlong Report* headings¹⁷¹ are as follows:

- Client Relationships
- Cultural Competence
- Law Business Management
- Professional Conduct
- Substantive Law
- Wellness.

¹⁶⁹ Law Society of Alberta, 'Competencies' (Web Page) <<https://www.lawsociety.ab.ca/lawyers-and-students/continuing-professional-development/background/cpd-competencies/>>.

¹⁷⁰ Ibid.

¹⁷¹ See *Furlong Report* (n 9).

With the addition of ‘Professional Skills’ from the VLSB+C set, this compilation offers a thoughtful and inclusive basis on which an Australian Statement might be founded. Obviously, the inclusion of Cultural Competence in the context of CALD’s and the LCA’s commitment to Indigenous cultural competence in the Australian context is attractive. Again, as mentioned above in the course of the Alberta discussion (and in the context of the VLSB+C CPD Review example in this section), the Law Society of Alberta has recently introduced a mandatory educational requirement (approved 1 October 2020) for Indigenous Cultural Competency Education called *The Path (Law Society of Alberta) – Your Journey Through Indigenous Canada*.¹⁷²

Example 4: IAALS Building a Better Bar. The 2020 report by the IAALS¹⁷³ (*Building a Better Bar* in **Section 4.5.3**) analysed data from 50 focus groups with new lawyers (41 groups) and their supervisors (9 groups) to distil an evidence-based definition of ‘minimum competence to practice law’. The researchers found that minimum competence consists of 12 interlocking components, which they called ‘building blocks’, as follows:

- The ability to act professionally and in accordance with the rules of professional conduct
- An understanding of legal processes and sources of law
- An understanding of threshold concepts in many subjects
- The ability to interpret legal materials
- The ability to interact effectively with clients
- The ability to identify legal issues
- The ability to conduct research
- The ability to communicate as a lawyer
- The ability to see the “big picture” of client matters
- The ability to manage a law-related workload responsibly
- The ability to cope with the stresses of legal practice
- The ability to pursue self-directed learning.¹⁷⁴

These 12 building blocks provide an interesting counterpoint to the *Furlong Report*’s list of domains in the Alberta context. When thinking about how to engage the broad discipline community in a consensus-generating exercise for the development of an Australian Competence Statement, this definition of minimum competence, with its robust evidence base, is bound to generate a grounded discussion of great practical value.

4.6.2 A ‘Threshold Standard’

There are few precedents for the ‘Threshold Standard(s)’ and this aspect will require further careful consideration in its drafting, if a decision is made to pursue the Competence

¹⁷² Law Society of Alberta, ‘The Path (Law Society of Alberta) – Your Journey Through Indigenous Canada’ (Web Page) <<https://www.lawsociety.ab.ca/the-path-law-society-of-alberta-education-update/>>.

¹⁷³ According to its website, the IAALS is ‘a national, independent research centre dedicated to facilitating continuous improvement and advancing excellence in the American legal system’: <<https://iaals.du.edu/about>>.

¹⁷⁴ *Building a Better Bar* (n 159) 20.

Framework and Competence Statement option. The best known example is the SRA's Threshold Standard.¹⁷⁵ The Standard there presented has five levels, level three of which is the required standard for the point of qualification. It is not apparent that the other four levels are utilised and the SRA webpage states there are 'provided for the purpose of context'.

A Threshold Standard is said to be required because, as the Competence Statement is 'generic and applies to all solicitors, a threshold standard was developed to set out the level at which the competences in the competence statement should be performed upon qualification as a solicitor'.¹⁷⁶

Threshold standard

Level	Functioning knowledge	Standard of work	Autonomy	Complexity	Perception of context	Innovation and originality	
3	Identifies the legal principles relevant to the area of practice, and applies them appropriately and effectively to individual cases'.	Acceptable standard achieved routinely for straightforward tasks. Complex tasks may lack refinement.	Achieves most tasks and able to progress legal matters using own judgment, recognising when support is needed.	Able to deal with straightforward transactions, including occasional, unfamiliar tasks which present a range of problems and choices.	Understands the significance of individual actions in the context of the objectives of the transaction/strategy for the case.	Uses experience to check information provided and to form judgments about possible courses of action and ways forward.	Threshold Standard required at qualification

Figure 7. SRA Threshold Standard: Level 3 Threshold Standard required at qualification

4.6.3 Ethics and professional conduct

Professional education is ... inherently ethical education in the deep and broad sense ... Ethics in a professional curriculum ought to provide a context in which students and faculty alike can grasp and discuss, as well as practice, the core commitments that define the profession ... Ethics rightly includes not just understanding and practicing a chosen identity and behaviour but, very importantly, a grasp of the social contexts and cultural expectations that shape practice and careers in the law ... There is evidence that law school typically blares a set of salient, if unintentional, messages that undercut the likely success of efforts to make students more attentive to ethical matters.

(Source: W M Sullivan et al, *Educating Lawyers: Preparation for the Profession of Law (Report, Carnegie Foundation for the Advancement of Teaching, 2007) 30-1*)

¹⁷⁵ Solicitors Regulation Authority, 'Threshold Standard' (Web Page) <<https://www.sra.org.uk/solicitors/resources/cpd/competence-statement/threshold-standard/>>.

¹⁷⁶ Ibid.

This quote from the 2007 US *Carnegie Report* demonstrates well how liberal notions of ethics and professionalism might be conceptualised more broadly and efficaciously for entry-level professional competence across pre-admission curricula, beyond the traditional default to limited consideration of normative ethical rules and standards. Almost every discipline review in recent decades devotes attention to ethical formation and, from the *MacCrate Report* (1992) to the *Hong Kong Review* (2018), suggests that it is at least as important as the acquisition of substantive knowledge. In the UK in 1996, for example, the Lord Chancellor's Advisory Committee (**ACLEC**) demanded that 'students must be made aware of the values that legal solutions carry, and of the ethical and humanitarian dimensions of law as an instrument which affects the quality of life', going on to say specifically:

[t]his requires more than familiarisation with professional codes of conduct but includes advertence to the wider social and political obligations of the profession to society as a whole, its obligation to protect the rights of minorities within society and the welfare of the disadvantaged.¹⁷⁷

In Australia in 2000, the ALRC spoke of the necessity for the profession to develop a 'healthy' legal culture: 'the maintenance of high standards of performance also require a healthy professional culture — one that values lifelong learning, takes ethical concerns seriously, and embraces a "service ideal"'.¹⁷⁸ The links between a healthy legal culture and the mental health and well-being of the profession and its professionals-in-training have also been observed.

The *LETR* and *Hong Kong Review* underscored the centrality of professionalism and ethics to practise: 'one of the clearest conclusions to be drawn from the LETR research', with a majority of survey respondents of the view that 'an understanding of legal values, ethics and professionalism needs to be developed throughout legal services education and training'.¹⁷⁹ In the US, the IAALS *Foundations for Practice* survey work also emphasised 'professionalism', with over 95% of practitioner respondents saying that key aspects of this characteristic are essential for graduates to develop in the short term once in practice.¹⁸⁰ This echoes the findings of the Law Discipline Scholars in the LTAS consensus-generating exercise in Australia in 2010 that led to the development of 'TLO 2: Ethics and Professional Responsibility' (see **Appendix I**). TLO 2(b) explicitly references law graduates' 'ability to recognise and reflect upon, and a *developing* ability to respond to, ethical issues likely to arise in professional contexts'. TLO 2(d) refers to graduates demonstrating a '*developing* ability to exercise professional judgement'. When the Law TLOs were being developed, the practising profession made

177 Advisory Committee on Legal Education and Conduct ('ACLEC'), *First Report on Legal Education and Training* (Report, 1996) 19 ('ACLEC Report'). For example, the Law Council of Australia, has recently released its Climate Change Policy (December 2021) and makes specific reference to 'Professional ethical obligations: Questions may arise about how lawyers should comply with their ethical obligations under professional conduct rules and common law principles in the context of climate change'. Law Council of Australia, 'Climate Change Policy to Guide Legal Evolution' (Web Page) Clause 39 <<https://www.lawcouncil.asn.au/media/media-releases/climate-change-policy-to-guide-legal-evolution>>.

178 ALRC *Managing Justice Report* (n 75) 10. See also Law Council of Australia, *The Lawyer Project Report* (Report, September 2021) <<https://www.lawcouncil.asn.au/policy-agenda/access-to-justice/the-lawyer-project-report>> ('*Lawyer Project Report*'). Australian Pro Bono Centre, *14th Annual Performance Report of the National Pro Bono Target* (Report, September 2021) <<https://www.probonocentre.org.au/provide-pro-bono/target/>> ('*National Pro Bono Target Report*').

179 *LETR Report* (n 3) 274.

180 Institute for the Advancement of the American Legal System ('IAALS'), *Foundations for Practice: The Whole Lawyer and the Character Quotient* (Report, 2016) <<https://iaals.du.edu/publications/foundations-practice-whole-lawyer-and-character-quotient>>.

it clear that, *pre-PLT*, the relevant competence level was a ‘developing ability’ because in ‘CALD’s and LACC’s view ... law graduates need the support of a ... PLT program and professional practice in order to develop further their ability to address ethical issues in professional context and exercise professional judgement’.¹⁸¹

TLO 2 also points to the professional responsibilities of lawyers to act in their public role to ‘promot[e] justice and the values of fairness, legitimacy, efficacy, and equity in the legal system’.¹⁸² The skilled and attitudinal dimensions of ethical reasoning and legal professionalism in TLO 2 are complemented by, and integrate with, the knowledge components in TLO 1 as regards ‘(c) the principles and values of justice and of ethical practice in lawyers’ roles’. As the notes to the TLOs set out:

*The “justice” component of this TLO [1] refers to the relationship between law and justice and the significance of each for the rule of law. As Sir Gerard Brennan has said: ‘We know, of course, that law and justice are not synonymous. Law is a social regulator, justice is a moral value ... It is only when the law works no injustice to individuals that we can proclaim our adherence to the rule of law.’*¹⁸³

In a similar vein, the *MacCrate Report* argued in 1992 that law teachers should be concerned:

*... to convey to students that the professional value of the need to ‘promote justice, fairness and morality’ is an essential ingredient of the legal profession; the practising [profession] should be concerned to impress on students that success in the practice of law is not measured by financial rewards alone, but by a lawyer’s commitment to a just, fair and moral society.*¹⁸⁴

The *Good Practice Guide*, developed for TLO 2 to assist with its implementation, suggests a number of curricular initiatives, including: a vertical and pervasive approach;¹⁸⁵ clinical legal education; and other experiential instruction. The professional values of the lawyering commitment to the promotion of justice, the ethics of professional service and a community service orientation are particularly emphasised.¹⁸⁶ As the notes to the TLOs record, the drafting of TLO 2 was influenced by the US *MacCrate Report’s*¹⁸⁷ statement of fundamental ‘professional values’ and also by the two subsequent reports in that jurisdiction, the

181 Sally Kift, Mark Israel and Rachael Field, *Bachelor of Laws Learning and Teaching Academic Standards Statement* (Australian Learning and Teaching Council, Learning and Teaching Academic Standards Project, 2010) 15 <<http://disciplinestandards.pbworks.com/w/page/52746378/Law>> (‘LLB TLOs’).

182 Ibid. See also *Lawyer Project Report* (n 178); *National Pro Bono Target Report* (n 178).

183 LLB TLOs (n 181) 14.

184 American Bar Association, *Legal Education and Professional Development – An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* (1992) (‘MacCrate Report’) 14.

185 See also Michael Robertson, ‘Providing Ethics Learning Opportunities Throughout the Legal Curriculum’ (2009) 12(1) *Legal Ethics* 59.

186 Maxine Evers, Leanne Houston and Paul Redmond, *Good Practice Guide (Bachelor of Laws): Ethics and Professional Responsibility* (Guidelines, 2011) <<http://www.lawteachnetwork.org/resources/gpg-ethics.pdf>>. See also *Lawyer Project Report* (n 178); *National Pro Bono Target Report* (n 178).

187 *MacCrate Report* (n 184).

*Carnegie Report*¹⁸⁸ and *Stuckey Report*¹⁸⁹ (see [Section 3.4.6](#)). Picking up on the themes of professionalism that underpinned those reports, the TLO also includes recognition and reflection of the ‘goal of public service and pro bono legal work as a key incident of professional responsibility and also as a possible “source of meaning and satisfaction in a stressful professional life”’.¹⁹⁰ The LACC PLT *Competency Standards* include the competency value of ‘Ethics and Professional Responsibility’, which, like TLO 2, is broadly framed, encompassing nine constituent elements, the ninth of which is ‘Being aware of the importance of pro bono contributions’.¹⁹¹

Aligned with these Australian competency statements, Corker says that the essence of professionalism is ‘ethics, altruism and public service’,¹⁹² highlighting that ‘professionalism’ for a lawyer includes an ethical duty to the community, ensuring access to justice and undertaking pro bono work. He suggests that law students could develop a ‘pro bono ethos’ on their journey from law school to becoming a lawyer by law schools encouraging greater engagement in volunteer work, clinical legal education programs and experiential learning. In particular, he argues that the PLT *Competency Standards* should be amended to mandate pro bono work as part of the work experience requirements, and/or admitting authorities should amend admission requirements to require a pro bono legal element of PLT as a prerequisite for practice.

Though not raised directly by Corker, perhaps there is a different opportunity now also. Perhaps a response to the myriad of ethical and conduct breaches set out earlier (see [Section 2.5.2](#)) might be to suggest a reset for vulnerable professionalism by a (re)focusing on public service, integrity, moral purpose and altruism to require a mandatory pro bono element for CPD, or at least have a legal pro bono contribution as an option for CPD recognition. The point from the TLO notes is also well made; the meaning-making and intrinsic (rather than extrinsic) ‘satisfaction in a stressful professional life’ could be conducive to the development of the ALRC’s healthy professional culture, while also being of benefit to individual practitioners’ well-being. Corker also makes the point that the LCA’s *Australian Solicitors Conduct Rules*,¹⁹³ in Rule 3 (the solicitor’s duty to the court and the administration of justice) and in Rule 4 (for example, to ethical duties around honesty, courtesy, competence, diligence, integrity and client interests), make no mention of the public professional role of

188 WM Sullivan et al, *Educating Lawyers: Preparation for the Profession of Law* (Report, Carnegie Foundation for the Advancement of Teaching, 2007) (‘*Carnegie Report*’).

189 R Stuckey et al, *Best Practices for Legal Education: A Vision and a Road Map* (Report, Clinical Legal Education Association, 2007) (‘*Stuckey Report*’).

190 LLB TLOs (n 181) 16; *Lawyer Project Report* (n 178); *National Pro Bono Target Report* (n 178).

191 *PLT Competency Standards* (n 41) Item 5.8. The other elements set out in the ‘Ethics and Professional Responsibility’ competency are: Acting ethically; Knowing when to raise problems with others; Discharging the legal duties and obligations of legal practitioners; Complying with professional conduct rules; Complying with fiduciary duties; Avoiding conflicts of interests; Acting courteously; Complying with rules relation to the charging of fees. Corker suggests that, while the pro bono element in Item 5.8 is ‘an important statement’, the focus of the pro bono contribution is more as ‘a practical matter rather than any broader ethical duty of community service’: John Corker, ‘The Importance of Inculcating the ‘Pro Bono Ethics’ in Law Students, and the Opportunities to Do it Better’ (2020) 30 *Legal Education Review* 1, 9. See also *Lawyer Project Report* (n 178); *National Pro Bono Target Report* (n 178).

192 Corker (n 191) 1 citing Gino Dal Pont, *Lawyers’ Professional Responsibility* (Law Book Co, 6th ed, 2016) [1.30].

193 Law Council of Australia, *Australian Solicitors’ Conduct Rules* (Rules, 24 August 2015) <<https://www.lawcouncil.asn.au/policy-agenda/regulation-of-the-profession-and-ethics/australian-solicitors-conduct-rules>>.

public good and/or community service.¹⁹⁴ Corker would argue that such a reference should be included.

The current pre-admission requirements in Australia for ethics and professional conduct, as set out across both the TLOs (which incorporate also the Priestley 11 Academic Requirement ‘Ethics and Professional Responsibility’) and the *PLT Competency Standards*, are quite comprehensive (see also [Sections 1.2](#) and [1.4](#)). While there is always room for improvement, from the *entry-level* competence perspective, the learning outcomes seem well covered in each of their integrated knowledge, skills and values components. The regulation for continuing competence, in the absence of a standard, is not as clear and may account, in some measure, for the current issues being experienced in the profession, perhaps particularly as regards the ‘exercise of professional judgement’ (TLO 2(d)). The 2007 US *Carnegie Report* refers to professional practice as ‘judgment in action’; the lawyer understands the consequences of professional decisions taken in the context of professional practice, that yield outcomes that can either further or subvert the profession’s intended purposes.¹⁹⁵ The SRA Competence Statement includes an expansive standard of ‘Ethics, professionalism and judgment’, which has four elements, each of which has three to five sub-elements.¹⁹⁶

Perhaps a better model for benchmarking might be the Law Society of Scotland’s ‘Professionalism’ requirement across the Professional Education and Training (**PEAT**) Stages 1 and 2, which encompasses a wide lawyering commitment to professionalism under the following elements (with ‘positive indicators’ provided under each element and some suggestions for assurance of learning):

Throughout the PEAT 1 programme the student should understand the importance of:

- the interests of justice and democracy;
- effective and competent legal services on behalf of a client;
- continuing professional education and personal development;
- diversity and public service;
- trust, respect and personal integrity.¹⁹⁷

Inculcating pervasive ethics and professionalism has always been a work in progress in the academy for the pre-admission stage. The imperative now, given the aggregating lapses in professional behaviour, integrity, ethical and moral judgement ([Section 2.5.2](#)), would seem to be a continuing competence focus over the educational continuum. In particular,

¹⁹⁴ Corker (n 191) 4.

¹⁹⁵ *Carnegie Report* (n 188).

¹⁹⁶ Solicitors Regulation Authority, ‘Statement of Solicitor Competence’ (Web Page, 2019) <<https://www.sra.org.uk/solicitors/resources/cpd/competence-statement/>>.

¹⁹⁷ Law Society of Scotland, *PEAT 1 Outcomes* (Statement) <<https://www.lawscot.org.uk/qualifying-and-education/qualifying-as-a-scottish-solicitor/diploma-in-professional-legal-practice/>> (‘*PEAT 1 Outcomes*’). PEAT 1 is also known as the Diploma in Professional Legal Practice (DPLP). Provision is also made for learning outcomes for trainees to achieve over their two-year traineeship; referred to as the Professional Education and Training Stage 2 outcomes (PEAT 2 outcomes): see Law Society of Scotland, *PEAT 2 Outcomes* (Statement) <<https://www.lawscot.org.uk/qualifying-and-education/qualifying-as-a-scottish-solicitor/the-traineeship/information-for-trainees-and-practice-unit/peat-2-outcomes/>> (‘*PEAT 2 Outcomes*’).

it seems imperative to (re)examine the discipline's 'salient, if unintentional, messages' to which Carnegie referred above in the context of law school culture, but now widen the lens to address the salient messages permeating professional culture: the competitive, high-stakes, zero-sum game of law school/professional practice; the ostensible privileging of rational, objective analysis to the exclusion of other desirable lawyering qualities; and the 'values neutral stance' of much lawyering activity as conveyed to students and as adopted in professional practice.¹⁹⁸ As Burridge and Webb have observed, even a 'values neutral' stance does not need to connote a 'values free' professional approach.¹⁹⁹ In these various regards, it is not at all certain that we have attended to the overarching critique, echoing liberal legal education scholarship, that [with the addition of a practice perspective]:

... today's law school experience [and experience of professional practice] is severely unbalanced. The difficulty ... lies in the relentless focus ... on the procedural and formal qualities of legal thinking. This focus is sometimes to the deliberate exclusion of the moral and social dimensions and often abstracted from the fuller contexts of actual [ethical] legal practice [in the promotion of justice, fairness and morality].²⁰⁰

Pervasive professionalism, together with ongoing reflection on the role of law and the public character of lawyering in society, are good examples of elements of lawyer competence that require careful progressive and incremental development over the course of the LE&T continuum, from pre- to post-admission, for new lawyers in the early years of practice and for continuing competence. Though the Victorian *CPD Review* reported that some lawyers found their Ethics CPD 'useful' and 'rewarding', the review received many critical responses regarding this element of CPD training, and it was the most common area in which survey respondents said they had difficulty accessing relevant training, particularly when many expressed the view that Ethics CPD should be contextualised to their area of practice.²⁰¹

The *VLSB+C's CPD Review* made other important recommendations for firms to develop processes for managing ethical issues, to organise ethics CPD activities on a whole-of-firm basis for shared understanding of the firm's approach, and for an appointment in each firm of an Ethics Coordinator.²⁰² Such recommendations speak to Hook Tangaza's competency model (**Section 4.2 Figure 5** above)²⁰³ and underscore the influence a firm's culture – its ethical infrastructure – can have on the individual practitioner's ethical approach.²⁰⁴ In 2014, the Canadian Bar Association (**CBA**) released an *Ethical Practices Self-Evaluation Tool* to assist law firms and lawyers to 'systematically examine the ethical infrastructure that supports their

198 *Carnegie Report* (n 188) 185-189, and see generally chapter 4.

199 Roger Burridge and Julian Webb, 'The Values of Common Law Legal Education: Rethinking Rules, Responsibilities, Relationships and Roles in the Law School' (2008) 10(1) *Legal Ethics* 72.

200 *Carnegie Report* (n 188) 145.

201 *Getting the Point?* (n 118).

202 *Ibid.*

203 Hook Tangaza (n 8).

204 Christine Parker et al, 'The Ethical Infrastructure of Legal Practice in Larger Law Firms: Values, Policy and Behaviour' (2008) 31(1) *University of New South Wales Law Journal* 158.

legal practices'.²⁰⁵ The intersection of technology with ethical practice and professionalism has also been identified as an area for competence attention. The CBA has also developed a professional ethics guide, *Practising Ethically with Technology*, for assistance with common ethical challenges such as: 'Confidentiality, Security, Marketing, Providing services electronically, and Accessibility'.²⁰⁶

4.6.4 Technological competence and regulation

Law graduates need to learn to embrace developing technology and to be open to how technology may change in the future. With technological developments influencing so many of the changes in the legal profession, it will be beneficial for law graduates to have this at the forefront of their minds.

(Source: Law Society of Western Australia, The Future of the Legal Profession (Report, December 2017) 1)

Having already addressed some of the considerations around LE&T responses to technological change earlier in this report (**Section 2**), this part takes a regulatory perspective on the need for technological competence, given the magnitude of technology's impact on legal and lawyer work and the obvious role such a competence would play in the articulation of any Australian Competence Framework and Statement. The discussion commences with a brief canvassing of the potential scale and scope of the technological competence issue, and will then move to consider how the sequencing of the potential components of the required competence might be organised across of LE&T continuum. Possible models for this aspect of a lawyer competence will also be identified.

Many reports and commentators reference the impact and transformative potential of technology on law, lawyers and the delivery of legal services. In February 2021, Gartner predicted that legal technology budgets will increase threefold by 2025 and that, by 2024, legal departments will replace 20% of generalist lawyers with nonlawyer staff.²⁰⁷ In Australia, the *FLIP Commission* in particular engaged with the multiple ways in which digitisation, digitalisation, automation, machine learning and AI had disrupted both legal education and legal practice, including reference to dynamic new areas of legal work and the new

205 Canadian Bar Association, *CBA Ethical Practices Self-Evaluation Tool* (Evaluation Tool, 2014) 1 <<https://nsbs.org/wp-content/uploads/2019/12/CBAethicalselfevaluation-e.pdf>>. The Self-Evaluation Tool is supported by a Practical Guide, see Canadian Bar Association, *Assessing Ethical Infrastructure in Your Law Firm* (Guidelines, 2014) <[https://www.cba.org/Publications-Resources/Practice-Tools/Ethics-and-Professional-Responsibility-\(1\)/Ethics-in-Your-Practice](https://www.cba.org/Publications-Resources/Practice-Tools/Ethics-and-Professional-Responsibility-(1)/Ethics-in-Your-Practice)>.

206 Canadian Bar Association, 'Ethics in Your Practice' (Web Page) <[https://www.cba.org/Publications-Resources/Practice-Tools/Ethics-and-Professional-Responsibility-\(1\)/Ethics-in-Your-Practice](https://www.cba.org/Publications-Resources/Practice-Tools/Ethics-and-Professional-Responsibility-(1)/Ethics-in-Your-Practice)>.

207 Gartner, 'Gartner Predicts Legal Technology Budgets Will Increase Threefold by 2025' (Press Release, 10 February 2021) <<https://www.gartner.com/en/newsroom/press-releases/2020-02-10-gartner-predicts-legal-technology-budgets-will-increase-threefold-by-2025>>. The ABA produces an annual *Legal Technology Survey Report* recording legal technology use across a range of tools and applications, together with information on training trends: see also Gabriella Mihm (Ed), *2020 Legal Technology Survey Report: Combined Volumes I-V* (Report, 2020) <<https://www.americanbar.org/products/inv/book/405311991/>>.

and changing lawyering roles likely to emerge.²⁰⁸ The Law Society of Western Australia, thinking through the regulatory implications of technology's impact on lawyers and legal work, also scanned the rapidly evolving legal landscape and identified a range of new technologies impacting on lawyering and legal work, including: cloud computing; electronic document management systems; artificial intelligence; virtual law firms; online dispute resolution; electronic courts and electronic filing of court documents; use of social media; and blockchain. In addition, the Law Society of Western Australia recorded further 'general technological issues ... [of] particular relevance to the legal profession', including: jurisdiction issues; cybercrime and liability issues; and data retention challenges.²⁰⁹

Furlong has discussed the likely effect that technology will have on the traditional work of trainee and entry-level lawyers in the context of pre-admission articling. He observes, as have others (for example, Susskind's 'Provocations and Perspectives' working paper submitted to LETR),²¹⁰ that whereas articling students traditionally carried out 'formative, entry-level tasks within their limited capacity',²¹¹ these entry-level legal tasks are now increasingly being undertaken more cheaply and efficiently by alternative legal services providers (**ALSPs**) and/or by automation tools (for example, for e-discovery, legal research and due diligence).²¹² Nothing is certain in this evolving and dynamic field, and it may be that lawyer oversight will always be required, given even routine issues can give rise to complex legal questions. More recently, Susskind has suggested that the 'carve-up' of legal work horizontally into purely administrative and process work that can be done without lawyers on the one hand and other, more complex work, that does need lawyers on the other:

... has been overstated and in fact 'lawyers are needed for all legal jobs' ... The idea of carving up legal work horizontally in this way should be replaced with a 'vertical view of legal work' where every task requires 'a mix of legal expertise, process and technology'.²¹³

In the *VLSB+C CPD Review*, Humphreys refers to the need for lawyers, from a practice management perspective, to be familiar with common office and business technologies and to have an understanding of cyber risks relevant to practice. From a client-centred perspective, lawyers need to be aware of technologies that could improve client services and access to justice. This analysis is captured in Recommendation 19 of the *CPD Review*, which specifically relates to technological competence.

208 *FLIP Report* (n 30). See also Australasian Legal Practice Management Association (ALPMA) and Centre for Legal Innovation, *Report on the Emerging Legal Professions Survey* (Report, June 2018) <https://www.alpma.com.au/sites/default/files/uploaded-content/website-content/report_on_the_emerging_legal_professions_survey_-_june_2018.pdf>; Katie Miller, *Disruption, Innovation and Change: The Future of the Legal Profession* (Report, Law Institute of Victoria, 2015) <www.liv.asn.au/flipbooks/disruption--innovation-and-change--the-future-of-t.aspx>.

209 Law Society of Western Australia, *The Future of the Legal Profession* (Report, December 2017) 6-11 ('*Future Legal Profession*') <<https://www.lawsocietywa.asn.au/wp-content/uploads/2015/10/2017DEC12-Law-Society-Future-of-the-Legal-Profession.pdf>>.

210 Richard Susskind, 'Provocations and Perspectives' (Working Paper, LETR, October 2012) <<https://letr.org.uk/wp-content/uploads/Susskind-LETR-final-Oct-2012.pdf>>.

211 *Furlong Report* (n 9) 26.

212 *Ibid.*

213 Neil Rose, 'Susskind: "Harder than Expected" to Reduce Legal Work to Lawyer-free Process', *Legal Futures* (Blog Post, 28 June 2021) <<https://www.legalfutures.co.uk/latest-news/susskind-harder-than-expected-to-reduce-legal-work-to-lawyer-free-process>>.

RECOMMENDATION 19

The VLSB+C should actively promote and support programs for lawyers to:

- a) gain an understanding of the technologies commonly used by lawyers, their clients and the courts, the legal frameworks for such technologies, and the risks associated with them; and
- b) broaden lawyers' abilities to recognise, use and develop technologies to improve their services and create new types of services.²¹⁴

As can be seen in the precedents internationally, the development of a competency framework would provide an opportunity to think through and specify the knowledge, skills and values that lawyers require for day-one legal technological competence, and then for continuing competence, across the spectrum of lawyering activity and legal practice areas impacted. The evolving conceptualisation of 'digital literacy', as the AQF Review identified (**Section 3.2.7**), for both individuals *and* entities,²¹⁵ might be a possible starting point for considering threshold competency. Given the pace of change and clear regulatory interest,²¹⁶ a high-level competence statement would seem to be most appropriate to capture a broad range of competency with sufficient flexibility so as to not date too quickly. For example, a competent lawyer would 'be cognisant of technology's capabilities; be able to harness those affordances appropriately; interpret and leverage the outputs delivered; and ... be predisposed and ethically confident enough to challenge the propriety of such outputs.'²¹⁷ The global group *Legal Technology Core Competencies Certification Coalition* has developed a set of legal technology core competencies, learning plans and certification programs, which could be of useful application.²¹⁸

Brannan and Marrs warn that if a competence framework approach is taken and technological capabilities are included, the requirements should 'strike a balance between being basic enough to set a competent standard, without being so specific that they are seen as irrelevant to much of the profession.'²¹⁹ An extremely useful conceptualisation of technological competence over the LE&T continuum is the approach taken by the Law Society of Scotland, which has prescribed basic technological skills in the solicitors' competency framework, supplemented by a post-admission offering of targeted CPD

214 *Getting the Point?* (n 118).

215 For example, Department of Education, Skills and Employment (Cth), *Digital Literacy Skills Framework* (Report, April 2020) ('*Digital Literacy Skills*') <<https://www.dese.gov.au/foundation-skills-your-future-program/resources/digital-literacy-skills-framework>>; Jisc, 'What is Digital Capability?' (Web Page) <<https://digitalcapability.jisc.ac.uk/what-is-digital-capability/>>. Jisc identifies six elements of digital capability:

- ICT Proficiency (functional skills)
- Information, data and media literacies (critical use)
- Digital creation, problem solving and innovation (creative production)
- Digital communication, collaboration and partnership (participation)
- Digital learning and development (development)
- Digital identity and wellbeing (self-actualising).

See also Jantha M Haightt, 'Digital Natives, Techno-Transplants: Framing Minimum Technology Standards for Law School Graduates' (2020) 44(2) *The Journal of the Legal Profession* 175.

216 For example, Legal Services Board, *Striking the Balance: How Legal Services Regulation Can Foster Responsible Technological Innovation* (Report, April 2021) <<https://legalservicesboard.org.uk/news/legal-regulation-should-be-open-for-business-when-it-comes-to-technology-and-innovation-if-the-public-and-consumers-are-to-benefit>>.

217 Sally Kift, 'A Virtuous Journey' (n 26) 178.

218 Legal Technology Core Competencies Certification Coalition (LTC4) (Web Page) <<https://ltc4.org/>>.

219 Julie Brannan and Rob Marrs, 'Paths to Practice: Regulating for Innovation in Legal Education and Training' in Catrina Denvir (Ed), *Modernising Legal Education* (Cambridge University Press, 2020) 221, 230.

opportunities.²²⁰ The Scottish approach also provides a regulatory scheme to accredit lawyers with additional skills in technology for the title of ‘Accredited Legal Technologist’.²²¹ Such a distributed articulation sets out a balanced sequencing across the LE&T continuum, addressing the legitimate expectations of the pre-admission stage, the provision of necessary training opportunities for relevant CPD at the post-admission stage and an opportunity for specialisation for individual practitioners in their practice context.²²²

Looking at the pre-admission PLT stage specifically, in Scotland, the outcomes for the postgraduate vocational qualification taken after the LLB degree (Professional Education and Training stage 1 (**PEAT 1**)) address a range of mandatory and core outcomes that could potentially be incorporated into the Australian *PLT Competency Standards*. They include the following technology aspects:²²³

- **1. Business, Financial & Practice Awareness**

...

7. Demonstrates an understanding of how technology is changing the legal profession

[Positive indicators:]

- Can explain how technology is changing legal businesses.
- Can explain the progression of a legal matter from start to finish and identify how technology may impact upon the delivery of that matter
- Has a developing awareness of how the use of technology can augment legal advice.

- **2. Private Client**

...

9. Has a developing awareness of the importance of technology in relation to private clients including online filing, online personal tax accounts and the process of making tax digital.

- **3. Conveyancing**

...

12. Has a developing awareness of the digital services of Registers of Scotland and is aware of technology developments affecting the conveyancing process.

- **4. Litigation**

4 (i) Civil Litigation – Court of Session and Sheriff Court

1. Demonstrate knowledge and understanding of the institutions, structure and personnel of the Scottish civil justice system; the technology used in the civil justice system; the hierarchy of the courts; the principal grounds of jurisdiction; the competence of the respective courts; and the rights of appeal applying to different actions and forms of procedure.

[Positive Indicator]

220 Law Society of Scotland ‘Legal Technology Online CPD’ (Web Page) <<https://www.lawscot.org.uk/news-and-events/events/legal-technology-online-cpd/>>. CPD offerings include: Artificial Intelligence; Cryptocurrency and Blockchain; Cybercrime; Cybersecurity and Data protection; Fintech series: blockchain; How can the legal profession shape technological change; Leading digital for legal professionals; Supreme Court Justice Lord Briggs on innovation in court practice; The future practice – transforming firms; The futureproof lawyer – developments in the profession.

221 Law Society of Scotland, ‘Accredited Legal Technologist’ (Web Page) <<https://www.lawscot.org.uk/members/career-growth/specialisms/areas-of-specialism/accredited-legal-technologist/>>.

222 Law Society of Scotland, ‘Legal Tech Meets Legal Education’ (online, 9 October 2019) <<https://www.lawscot.org.uk/news-and-events/law-society-news/legal-tech-meets-legal-education/>>.

223 See *PEAT 1 Outcomes* (n 197); *PEAT 2 Outcomes* (n 197).

- ...
- Is aware of the technology currently in use in civil court actions.
- **Professional Communication**

...

USE OF TECHNOLOGY:

Understand how technology is used in legal practice in Scotland:

Positive Indicators:

- Can explain the benefits and risks of relevant legal technology.
- Has a developing awareness of how key features of technology work.

...

Communicate securely via electronic means with clients and others:

Positive Indicators:

- Can use email format efficiently (clear subject line, use of signature -file, appropriate timing of email).
- Understands and uses proper business and professional etiquette within an electronic environment.
- Understands risk management of e-communications.
- Can use technological aids to plan time on task.
- Archives mail safely and accurately.
- Is aware of other forms of electronic communication.

Can use electronic drafting tools to create legal documents:

Positive Indicators:

- Can adapt use of computers to draft appropriate documents.
- Uses electronic bank of styles effectively.
- Is aware of elements of a case management system.
- Is aware of use of electronic dictation to a basic level.
- Is aware of technologies such as speech-to-text.

Develop techniques for appraising and developing their skill at forming and maintaining communicational skills using technological tools

...

Mention has been made above (**Section 4.3**) of the 2012 amendment to the *ABA Model Rules*. In October 2019, the FLSC similarly amended the *Canadian Model Code of Professional Conduct*²²⁴ to add paras [4A] and [4B] to the Commentary under Competence Rule 3.1-2 as follows:

[4A] To maintain the required level of competence, a lawyer should develop an understanding of, and ability to use, technology relevant to the nature and area of the lawyer's practice and responsibilities. A lawyer should understand the benefits and risks associated with relevant technology, recognizing the lawyer's duty to protect confidential information set out in section 3.3.

²²⁴ Federation of Law Societies of Canada, *Model Code of Professional Conduct* (Code, 19 October 2019) <<https://flsc.ca/wp-content/uploads/2019/11/Model-Code-October-2019.pdf>>.

[4B] The required level of technological competence will depend on whether the use or understanding of technology is necessary to the nature and area of the lawyer's practice and responsibilities and whether the relevant technology is reasonably available to the lawyer. In determining whether technology is reasonably available, consideration should be given to factors including:

- (a) The lawyer's or law firm's practice areas;
- (b) The geographic locations of the lawyer's or firm's practice; and
- (c) The requirements of clients.

A final useful conceptualisation of legal technology competence is offered by Salyzyn, who suggests a six-part taxonomy for thinking about technologically competent lawyering – the '6As' – as follows:²²⁵

The first three categories relate to *current technologically competent lawyering*.

1. **Automated Lawyer**, who provides diligent and efficient services to clients, for example, using practice management tools to assist with billing and conflicts checks and automated forms
2. **Alert Lawyer**, who is aware of technology-based risks (for example, regarding protecting confidential client information and trust funds from cyber-ransom or phishing attacks); and is aware of the risk of inadvertent disclosure of metadata and of the need to protect client information when crossing borders with electronic devices (re border searches)
3. **Avatar Lawyer**, who is cognisant of their online presence on social media, but also as regards the digital delivery of legal services (for example, professional practices in relation to virtual court appearances, remote commissioning and notarising, as well as client identification and verification).

The second three categories are *more nascent* and relate to the increasing use of artificial intelligence in legal domain.

4. **Augmented Lawyer**, who understands both the use of and the risk in the lawyer-use of AI-enabled tools that carry out 'judgement-based' tasks previously performed by lawyers (for example, as regards the duty of task supervision or inadvertent disclosure of client information) and is alive to the new ethical questions that might arise in AI lawyering
5. **Acquainted Lawyer**, who is knowledgeable about emerging technologies, including AI, in order to effectively represent their client (for example, the lawyer has adequate baseline knowledge but knows when to bring in experts). Lawyers need to be able to test the reliability of AI tools in meaningful ways (for example, as regards predictive policing, facial recognition, administrative decision-makers)
6. **Attentive Lawyer**, who is aware of how AI is being used in the justice system. Emerging ethical and legal issues regarding the use of AI in legal practice include: (1) issues around systemic bias, discriminatory practice, explainability and the transparency of AI automated

225 Amy Salyzyn, 'A Taxonomy for Lawyer Technological Competence', *Slaw* (online, 18 December 2020) <<https://www.slw.ca/2020/12/18/a-taxonomy-for-lawyer-technological-competence/>>. See also Michael Legg, 'UNSW Law Mini-Curriculum Review Report on Technology and the School Curriculum' [2017] *University of New South Wales Law Research Series 90* <<http://classic.austlii.edu.au/au/journals/UNSWLRS/2017/90.pdf>> and discussion above at [Section 2.6.2](#).

decisions; (2) ethical and beneficial usage of AI; and (3) controls and oversight of AI and the vendors that provide AI.

Salyzyn has also developed a '5A' taxonomy for judicial technological competence, arguing that judges need to be:

- 1) **Alert** to technologically-based risks;
- 2) understand what it means to be an **Avatar** judge (i.e maintain an ethical online presence);
- 3) ensure that they are adequately **Acquainted** with relevant technological tools and issues;
- 4) use technology to **Audit** their judicial patterns and practices; and
- 5) be **Attentive** to how automated decision-making and artificial intelligence are used in the justice system.²²⁶

²²⁶ Amy Salyzyn, 'A Taxonomy of Judicial Technological Competence', *Slaw* (online, June 24 2021) <<https://www.slaw.ca/2021/06/24/a-taxonomy-of-judicial-technological-competence/>>.

5 Reimagining Professional Regulation: Options

The final section of this report will set out options for reimagining the professional regulation of Australian legal education and training (**LE&T**), with a particular focus on the pre-admission stages, but with reference also to the development of a competence framework, in alignment with good regulatory practice internationally. The section will commence with the articulation of a draft set of criteria, against which CALD and other key stakeholders might evaluate the viability of the options presented, following which, five sets of options are set out for consideration.

5.1 Options: Key evaluation criteria

It might be considered useful to identify criteria to assist with its assessment of the suitability and viability of the various options presented and to aid decision-making as to how to proceed next following the conclusion of Stage 1 of this project. The following list of *draft* criteria, posed as questions that might be asked of the several options presented, individually or in some combination, are offered as a basis for critical assessment of the merit, fitness for purpose and potential for future action of the alternatives posed.

SUGGESTED CRITERIA AGAINST WHICH TO CONSIDER OPTIONS PRESENTED

Indicative criteria against which to consider the options presented could include, for example:

- Is it pedagogically sound and appropriately outcomes-focused?
- Does it identify learning outcomes and professional competences that are capable of being validly, reliably, fairly and inclusively assured at the relevant standard/level of achievement?
- Does it allow for appropriate sequencing of professional competences across the legal education continuum from pre- to post-admission and for continuing competence?
- Does it present a response that is fit-for-purpose, relevant and capable of being understood and trusted by all stakeholders, including students and consumers of legal services?
- Does it clearly articulate the entry-level competence requirements of law schools and/or PLT providers as regards their respective accreditation responsibilities for lawyer formation?
- Will it enable a smooth, supported and successful transition to:
 - entry-level legal practice?
 - a period of supported and quality-assured supervised practice?
 - opportunities for meaningful, self-directed learning engagement in ongoing quality assured CPD for continuing competence?
- Is it pragmatic, particularly regarding:
 - the balance to be struck between consistency and flexibility (can it be appropriately (not over- or under-) specified)?
 - considerations around the cost of implementation and scalability of deployment?
- Is it sufficiently flexible to accommodate the uncertain and unpredictable nature of future legal and lawyer work, and not constrain innovation and agility in LE&T?

- Is it capable of assuring the entry-level competence required for attributes of current significance, for example, including: pervasive ethics and legal professionalism; adherence to the rule of law; promotion of the administration of justice and public service; Indigenous cultural competency; technological competence and digital literacy; diversity and inclusion; reflective practice; and other critical foci?
- Is it appropriately professionally focused, given current dynamism in legal services practice and delivery, but also responsibly attuned to the diversity of motivations for, and the graduate destinations of, those law students in the academic stage who may not enter legal practice?
- Is it cognisant of the mental health and well-being of the sector, profession, new lawyers, students and academics?
- Does it seek to harmonise professional and higher education regulation as much as possible?
- Does it reflect national and international good practice?
- While stating appropriate outcomes and standards, does it retain sufficient flexibility for innovation and differentiation for LE&T providers as regards their design and delivery of learning, teaching and assessment for their students?

5.2 Options: Reimagining the professional regulation of Australian LE&T

5.2.1 Option: Develop an Australian Lawyer Competence Framework

(As had been proposed by LACC's *Assuring Professional Competence* project but did not proceed).

'Shared space' approach to collaborative regulation.

Under this option, key stakeholders would advocate for, build consensus on, and work to enable a 'shared space' approach of collaborative inquiry and joint action for the regulation of competence, including continuing competence, via a proposed Competence Framework. The 'shared space' approach is raised as an option in its own right in **Section 5.2.5** below and was discussed in **Section 4.2.1**. As initially advocated for by the 2013 *Legal Education and Training Review (LETR)*, such a collaborative methodology has the potential to transform the regulatory relationship between all legal education and training (LE&T) stakeholders, including regulators, to assure professional competence and the provision of good quality legal services.

The SRA's 2015 'Competence Statement' defines 'competence' as 'the ability to perform the roles and tasks required by one's job to the expected standard.'¹

As set out in **Section 4.6**, a **Competence Framework** would likely consist of four components that would need to be collaboratively conceived and developed:

- The '**Competence Statement**'
- The '**Threshold Standard(s)**' that sets the *level(s) of achievement* or *standard(s) of performance* at which the competences in the Competence Statement should be performed at different stages (thresholds) over the course of an admitted lawyer's career, for example:
 - *Entry-level competence* for day-one practice
 - *New lawyer in supervised practice competence* for the first one to three years
 - *Continuing competence* at which threshold the lawyer continues to meet the requisite standard of performance for a competent professional
 - *Specialist competence* for a practice area of speciality
- The underlying **Statement(s) of Knowledge, Skills and Values**
- A **mechanism for confirming assurance of competence** at the relevant (entry-level) Threshold Standard.

¹ Solicitors Regulation Authority, 'Statement of Solicitor Competence' (Web Page, 2019) <<https://www.sra.org.uk/solicitors/resources/cpd/competence-statement/>>. See also **Section 4.3**.

An Australian Lawyer ‘Competence Statement’ (to be developed and agreed upon in shared space collaboration)

For example, see the UK SRA Competence Statement; four other possible models are provided in [Section 4.6.1](#)

- The proposal is to develop a broadly specified (not overly prescribed) **Competence Statement**.

It is suggested that, as is the precedent elsewhere, the Competence Statement is of generic application to *all* lawyers as regards *what a practising lawyer needs to know, be able to do and the values to which they adhere* to be a competent professional in their legal practice.

Potential advantages of this proposal are that it:

- ✓ Provides a basis for ‘allocating’ and ‘sequencing’ learning across the legal education continuum, from pre- to post-admission, for new lawyer competence and for continuing competence. Learning can be located on the continuum at the point at which the relevant knowledge, skills and values might be best acquired.
This ‘reconceive[s] legal education as a continuum, after law schools and PLT providers have made their initial threshold contributions ... Where can additional knowledge, skills and values best be acquired by entry-level lawyers? When can this realistically occur?’²
- ✓ Provides an opportunity to reset legal education and training (**LE&T**) in the context of current drivers of change, especially as regards fundamental matters such as: pervasive ethics and legal professionalism; adherence to the rule of law; promotion of the administration of justice and public service; technological competence and digital literacy; Indigenous cultural competency; diversity and inclusion; reflective practice; the changing nature of legal work, lawyer work and legal practice; evolving needs of clients; globalisation and other critical foci as identified or as they emerge.
‘This should allow academic and PLT providers to identify what elements they can contribute and how best to organise their programs.’³
- ✓ Will attend finally to 2014 Productivity Commission Recommendation 7.1⁴ as regards examining the efficacy of the three-staged approach to LE&T (the academic, the practical and CPD).
- ✓ Offers the opportunity to consider new conceptualisations for LE&T such as the Institute for the Advancement of the American Legal System (**IAALS**) *Building a Better Bar: The Twelve Building Blocks of Minimum Competence*⁵ ([Section 4.6.1](#)).

² Sandford D Clark, ‘Regulating Admissions: Are We There Yet?’ (2017) 91 *Australian Law Journal* 907, 911.

³ Assuring Professional Competence Committee, ‘What We Need to Do’ (Discussion Paper) 1 <<https://www.lawcouncil.asn.au/docs/490542a9-1665-e711-93fb-005056be13b5/Assuring%20Professional%20Competence%20-%20What%20we%20need%20to%20do.pdf>> (‘What to Do’).

⁴ Productivity Commission, *Access to Justice Arrangements* (Inquiry Report No 72, 5 September 2014) (‘*Access to Justice Report*’) <www.pc.gov.au/inquiries/completed/access-justice/report>.

⁵ The Institute for the Advancement of the American Legal System (IAALS), *Building a Better Bar: The Twelve Building Blocks of Minimum Competence* (Report, 2020) 20 <<https://iaals.du.edu/publications/building-better-bar>>.

COMMENT: It may be the case that the Competence Statement itself could serve as the necessary 'Statement of Knowledge, Skills and Values', if it were possible to draft a meaningful, integrative Competence Statement at an appropriate level of abstraction but with sufficient detail incorporated, to obviate the need to develop a subordinate/secondary statement of knowledge, skills and values.

Australian 'Threshold Standard(s)' (to be developed and agreed upon in shared space collaboration)

The Competence Statement would be supported by the **Threshold Standard(s)** (for example, the **SRA Threshold Standard**) that sits with the Competence Statement and sets out, for example, the:

- 'Entry-level' standard required to be demonstrated of the competencies at day-one admission
- 'New lawyer in supervised practice level' standard to enable and support supervised practice post-admission (supporting both the new lawyer and their supervisor as regards the standard that is required). The competence level set would also guide the provision of mandatory and/or optional new lawyer CPD learning on an assessed needs basis.
NOTE: 'New lawyer in supervised practice' is a practitioner who requires greater support and guidance and also a more targeted approach to CPD. This cohort of lawyers (in practice for a period of 1–3 yrs only) has been identified as deserving of dedicated attention in a number of recent international reviews and also in the Victorian Legal Services Board and Commissioner (**VLSB+C**) 2020 Review of CPD.⁶ For example: The State Bar Association of California has a 'New Attorney Training Program', a dedicated online program of CPD to be undertaken by new attorneys within the first year of their admission to practise.⁷
- 'Continuing competence level' standard for all lawyers post supervised practice to assure the lawyer continues to meet the requisite standard of performance for a competent professional, and is provided access to self-directed, ongoing professional learning (**CPD**), including for iterative up- and re-skilling.
- 'Specialist competence level' standard for a practitioner who has attained specialisation accreditation as an expert in a particular practice area.

COMMENT: Higher-level competent performance may be expected as an individual lawyer progresses further in their career and becomes more skilful in their particular practice area(s).

⁶ For example, Chris Humphreys, *Getting the Point?: Review of the Continuing Professional Development for Victorian Lawyers* (Report, Victorian Legal Services Board and Commissioner, November 2020) ('*Getting the Point?*') <https://lsbc.vic.gov.au/sites/default/files/2020-11/CPD_Report_Final_0.pdf>; Jordan Furlong, *Lawyer Licensing and Competence in Alberta: Analysis and Recommendations* (Report, Law Society of Alberta, November 2020) <https://documents.lawsociety.ab.ca/wp-content/uploads/2020/12/08212906/LawyerLicensingandCompetenceinAlbertaReport_Designed.pdf> ('*Furlong Report*'); Hook Tangaza, *International Approaches to Ongoing Competence: A report for the LSB* (Report, March 2021) <<https://legalservicesboard.org.uk/wp-content/uploads/2021/05/International-approaches-to-Ongoing-Competence.pdf>>.

⁷ State Bar Association of California, 'New Attorney Training Program' (Web Page) <<https://www.calbar.ca.gov/Attorneys/MCLE-CLE/New-Attorney-Training-Program>>. The online training includes: 4 hours of legal ethics; 3 hours of basic skills; 1.5 hours on competency (substance abuse, mental health issues); 1.5 hours on recognition and elimination of bias in the legal profession.

Australian ‘Statement(s) of Knowledge, Skills and Values’ (to be developed and agreed upon in shared space collaboration)

The ‘**Statement(s) of Knowledge, Skills and Values**’ (or similar) would set out, without over-specifying, the ‘substantive law’ (cf ‘legal knowledge’),⁸ legal skills and values⁹ that a competent lawyer will need to have acquired to meet the Threshold Standard for their level of performance.

- The Statement(s) of Knowledge, Skills and Values is applied across the legal education continuum to state *what* is required for the Threshold Standard(s) or levels of performance (*from* foundational entry level, to new lawyer in supervised practice, to continuing more senior lawyer competence to specialist practitioner).
- The Statement(s) allows for the fact that some elements of law, skills and values ‘required by a competent practitioner in the future will probably need to be *acquired after the academic and PLT stages*’.¹⁰
 - ✓ This may present a better and ‘clean-slate’ opportunity to recast the existing Priestley 11 *Academic Requirements* in the following ways:
 - In *less prescriptive* terms and as *foundational* to entry-level lawyer formation for day-one competence, before the new lawyer commences practising in their specific practice area(s) post-admission.
 - In a *more integrated* way that explicitly acknowledges skills and values acquisition at the LLB/LLB (Hons)/JD stage (in accordance with AQF requirements and good pedagogical practice).

COMMENT: The Threshold Learning Outcomes (TLOs) were drafted to perform this integrative function by a process of harmonising the regulatory requirements of LACC, the HE Standards Framework, the Australian Qualifications Framework, the CALD Standards, international benchmarks and university graduate attribute statements. It is possible that the TLOs (or some version of them), together with the PLT Competency Standards, could provide the basis for the Statement(s) of Knowledge Skills and Values.

Once a Competence Statement, Threshold Standard(s) and a Statement of Knowledge Skills and Values have been developed, the **question arises as to how the achievement of the entry-level, day-one threshold standard will be assured**. This is the next step, with a range of options available.

8 The distinction, as explained in *Furlong Report* (n 6) 16, is that ‘substantive law competence’ (cf, ‘substantive legal *knowledge*’) can be considered to include more than (only) the black-letter law aspects and, according to Furlong, should also include ‘experiential’ aspects of ‘substantive law competence’; that is, ‘the skills, systems, and solutions in any given practice area that can help bring the client to their desired goal’.

9 Law Admissions Consultative Committee, *Practical Legal Training Competency Standards for Entry-Level Lawyers* (Standards, October 2017) (*PLT Competency Standards*) <<https://www.legalservicescouncil.org.au/Pages/about-us/law-admissions-consultative-committee.aspx>> uses the term ‘values’.

10 Assuring Professional Competence Committee, ‘What to Do’ (n 3) 8 (emphasis added).

Not addressed in the options presented at this time is the related issue of assurance competence of subsequent thresholds beyond day one (that is, assuring competence of new lawyer, continuing lawyer, specialist lawyer ...).

Assurance of competence at entry-level (to be developed and agreed upon)

The profession has frequently expressed concern at this point about:

- The assurance of consistent standards, given the number LE&T providers
- The validity and consistency of the range of different types of assessment utilised by LE&T providers.

Another issue raised by the LACC Assuring Professional Competence Committee (**APCC**) was *when* the assurance of competence should be assessed. The APCC saw the benchmarking work commissioned by the UK Solicitors Regulation Authority (**SRA**) and expressed concern about how little workplace experience Australian lawyers complete comparatively. The issue is:

... whether [competence] should be [assessed] before or after an intending practitioner has **acquired substantial experience in a legal workplace**. Of the 18 jurisdictions studied by the SRA [in the UK in commissioned research], 15 require between 6 and 24 months' workplace experience before "qualification" as a solicitor. Only 3 require 6 months or less. Under the present PLT *Competencies for Entry Level Lawyers* some Australian applicants for admission need to complete only 15 days of legal workplace experience, which may be accumulated at a rate of 2 half-days per week.¹¹

Options for entry-level competence assurance include:

- **Defer admission to practise and the assurance of entry-level competence to a point in time after an additional period of supervised training/practice has been undertaken**
Currently, admission to practice occurs *after* PLT training but *before* (commonly) two years of supervised practice. Suggestions have been made over the years to shift admission to *after* supervised practice.
- **Assess competence by a common, national entry-level assessment post-PLT**
Develop an Australian equivalent of the Uniform Bar Exam (**UBE**) or the recently introduced SRA Solicitors Qualifying Exam (SQE1 and SQE2, which is required *in addition to two years' Qualifying Work Experience*).
✗ As discussed in **Section 3.4.5.1**, the Canadian experience of attempting to develop a national assessment tool proceeded quite some way before it was ultimately abandoned due to issues of relevance also to any Australian exercise, including: the cost; the differences in provincial and territory law not being accommodated; perceived duplication with law school curricula and PLT programs; the format of

¹¹ Ibid 8.

the test (in particular, the use of multiple choice questions). The *Canadian National Entry to Practice Competency Profile for Lawyers and Quebec Notaries* that was developed as the precursor to the national assessment is being utilised regardless.

- ✘ As discussed in **Section 3.4.8.2**, the Uniform Bar Exam (**UBE**) has been severely stress-tested over the pandemic (for example: cancelled, moved online with teething problems, delays in marking), which has accelerated longstanding calls for it to be replaced,¹² or at least for the UBE to be offered as only one of a number of alternative pathways to licensure (and no longer as the sole pathway).
- ✘ In 2015, the Victorian Council of Legal Education commissioned Maharg to consider whether mandatory professional assessment could assist Australian admitting authorities to assess overseas applications for admission. Maharg's Report was received, however, LACC decided not to pursue the initiative because of the costs of developing, maintaining and administering such a test.¹³
- ✘ As discussed in **Section 3.2.5**, in 2017, the LACC Assuring Professional Competence program of work, which would have examined this option, did not proceed due to a number of reasons, including cost.

- **Assess competence by a portfolio or capstone assessment of entry-level competence pre-admission**

As has been proposed in some reviews (for example, Hong Kong and Furlong's Review for the Law Society of Alberta), an option could be to require an additional provider assessment or an independent examiner assessment of the threshold standard of competence by way of a portfolio of evidence collected over the PLT component (but to cover both academic and PLT stages for assurance of both LE&T stages) *and/or*

Require some additional reflection by portfolio as against the Competence Statement itself, assessed by the provider or assessed independently. The Competence Statement is envisaged as an integrated gestalt of knowledge, skills and values. A reflection, with supporting evidence, against that Statement could be an assurance that integrated learning has been acquired over the pre-admission phases.

In 2017, in the course of its early deliberations for the *Assuring Professional Competence* work, LACC's APCC proposed that a portfolio of evidence might be worthy of consideration for assurance purposes: 'for example, require applicants to prepare and maintain a portfolio which charts their development and provides sufficient evidence of the level of their achievements to an admitting authority'.¹⁴

- **Maintain the status quo**

Assume threshold competence has been achieved by virtue of the ('historic') inputs of LLB/LLB(Hons)/JD completion and PLT course completion (as at present).

12 The UBE has been long criticised on a number of grounds, particularly as regards its assessment validity for certification of entry level competence and also because of its effect on diversity and equity in the profession due to its disadvantaging of women and racial and ethnic groups.

13 Sandford D Clark, 'Regulating Admissions: Are We There Yet?' in Kevin Lindgren, François Kunc and Michael Coper, *The Future of Australian Legal Education* (Thomson Reuters, 2018) 69 ('Regulating Admissions') 94-5.

14 Assuring Professional Competence Committee, 'What to Do' (n 3) 9.

Once a lawyer has been admitted and has been deemed competent at the entry-level threshold, the issue of assuring **continuing competence** arises. This is now squarely in the post-admission phase of the LE&T continuum. The judiciary, profession and regulators would have to agree that regulating for continuing competency should be pursued. CALD could assume an advocacy role in this regard, working for shared space consensus.

‘Shared space’ consensus for regulation of competence, including continuing competence, via the proposed Competence Framework

Assuring **continuing competence** is becoming recognised as an integral aspect of the Competence Framework approach and is now being routinely discussed internationally. For example, the Legal Services Board (LSB) for England and Wales identified ongoing competence as one of its five-year priority policy objectives in September 2018, as being central to its March 2021 *Reshaping Legal Services: A sector-wide strategy*. The LSB is currently consulting on a draft statutory statement of policy on ongoing competence.¹⁵

Continuing competence requires regulatory attention be directed to:

- **Regulation of the quality of supervised practice**

Good practice suggests that quality-assured, structured and supported supervision over the period of supervised practice requires closer regulation in a manner similar to the requirements demanded of PLT providers for supervision and training plans for Supervised Legal Training under the LACC *Standards for PLT Workplace Experience*.¹⁶ The supervised practice period remains relatively unregulated, and has been criticised on that basis. McNamara recently examined all aspects and types of supervision in the Australian legal profession and made the following overall finding:

The legal profession’s current conception of, and approach to, supervision is characterised by deficiencies, and the immediate implication of this is that novice lawyers are at a high risk of not receiving the necessary training and support needed to transition to competent, autonomous practitioners.¹⁷

- **Providing targeted CPD to support new lawyers**

Humphreys, in his 2020 report for the Victorian Legal Services Board and Commissioner (VLSB+C) on Victorian CPD, echoed concerns about the quality of supervision for new lawyers and recommended targeted CPD be provided to this cohort in their first three years of practice.

15 Legal Services Board, *Reshaping Legal Services: A Sector-wide Strategy* (Strategy, March 2021) <https://legalservicesboard.org.uk/wp-content/uploads/2021/03/Strategy_FINAL-For-Web2.pdf>; Legal Services Board, ‘Draft Statement of Policy on Ongoing Competence’ (Consultation Paper, December 2021) <<https://legalservicesboard.org.uk/wp-content/uploads/2021/12/Ongoing-competence-consultation-paper-December-2021.pdf>>.

16 Law Admissions Consultative Committee, *Standards for PLT Workplace Experience* (Standards) <<https://www.legalservicescouncil.org.au/Documents/standards-for-PLT-workplace-experience.pdf>>.

17 Michael McNamara, *Supervision in the Legal Profession* (Palgrave Macmillian, 2020) 199. See also *Furlong Report* (n 6); Hook Tangaza (n 6).

The concerns that used to be expressed about the inconsistent nature of supervision for articled clerks who were training to be solicitors are now expressed about the supervision of newly admitted solicitors. The VLSB+C is concerned that poor behaviours and substandard competence may be attributable in part to inadequate training and supervision at the outset of a lawyer's career.¹⁸

- **Regulating for quality-assured and meaningful CPD for continuing competence for all lawyers**

More broadly as regards regulating for continuing competency, and again in accord with international good practice, Humphreys also recommended in his VLSB+C *CPD Review* that the VLSB+C develop a competence statement(s) to support the quality assurance of CPD provision in the state (see [Section 3.2.6](#)). The development of a competency framework for all Victorian lawyers provides the basis for re-focusing CPD on self-directed learning outcomes (for continuing competence) rather than measuring compliance-based activity inputs. It should be noted that all of the recommendations of the *VLSB+C CPD Review* have been accepted by the VLSB+C. This is a big professional culture shift that would benefit from the Academy's support.

5.2.2 Options: Pre-admission academic requirements

Maintain the status quo

Replace the academic requirements with the TLOs, which subsume them in any event.

The TLOs, together with the *PLT Competency Standards*, or some combination or distillation of them both, could provide much of the substantive content for any Competence Statement and/or the supporting 'Statement of Law, Legal Skills and Values', with amendment/additions as suggested in this report.¹⁹

There is some objective support for such an approach internationally. In 2017, the Hong Kong Review observed, in the context of moving that jurisdiction's law degree to an outcomes-based framework, that a critical issue is the level 'level of specificity desired' for a competency framework. The Hong Kong Review noted that while the:

... SRA Day One outcomes and associated standards are now quite highly prescriptive; by comparison, *broad benchmarks such as the English and Scottish QAA Benchmarks, or the Australian TLOs create a framework, not a straightjacket.*²⁰

¹⁸ *Getting the Point?* (n 6) 23.

¹⁹ Standing Committee on Legal Education and Training, *Comprehensive Review of Legal Education and Training in Hong Kong* (Report, April 2018) 75 ('*Hong Kong Review*') <<https://www.scler.gov.hk/eng/pub.htm>>.

²⁰ *Ibid* 75 (emphasis added).

Revisit the Priestley 11 academic requirements

- **Seek to enlarge or reduce the academic requirements**

There have been many suggestions over the years for additions to and deletions from the Priestley 11 list, and there is no attempt to collate here (see, for example, Priestly 11 discussion at [Section 1.2](#)).

NOTE 1: A persistent tension evident in reports such as the 2017 NSW Law Society *FLIP Report* is that, as Furlong explains,²¹ ‘substantive law competence’ (cf ‘substantive legal *knowledge*’) can be considered to include more than (solely) the black-letter law aspects and, according to Furlong, should also include ‘experiential’ aspects of ‘substantive law competence’; that is, ‘the skills, systems, and solutions in any given practice area that can help bring the client to their desired goal.’²²

NOTE 2: With the HE Standards Framework regulatory imperative for course design to satisfy the relevant qualification and level descriptors of the Australian Qualifications Framework (AQF), Australian pre-PLT legal education (LLB/LLB(Hons)/JD) already does, to some extent, what Furlong suggests as regards ‘substantive law competence’ and situates law school legal knowledge in its broader skills, values and (emerging) practice context.

Highlighted considerations under this head include:

- **The NSW Law Society FLIP Commission Report**

The *FLIP Commission* identified a mix of ‘skills and areas of knowledge’ (and values), without specification as to their categorisation (evidencing Furlong’s point), to be ‘taught within existing curricula’, including:

... technology; practice-related skills (eg collaboration, advocacy/negotiation skills); business skills/ basic accounting and finance; project management; international and cross-border law; interdisciplinary experience; resilience, flexibility and ability to adapt to change.²³

The 2018 *Hong Kong Review* commented on these *FLIP Commission* recommendations quite pragmatically:

Meeting all of the FLIP requirements (or some equivalent) over and above the existing curriculum would be an impossible task. Some of these skills, in any event, may be better developed at the vocational stage.²⁴

21 *Furlong Report* (n 6) 16.

22 *Ibid.*

23 Law Society of New South Wales, *The Future of Law and Innovation in the Profession* (Report, 2017) (*‘FLIP Report’*) 6 <<https://www.lawsociety.com.au/sites/default/files/2018-03/1272952.pdf>>.

24 *Hong Kong Review* (n 19) 74.

Taking this further, rather than crowding more into an already overcrowded curriculum, the *Hong Kong Review* specifically recommended in the context of that review that:

... significant steps are taken to reduce the scope of the compulsory academic curriculum in order to create greater room for choice and innovative offerings. Consideration also needs to be given to how, within the compulsory curriculum (however defined), law degrees can better prepare students to understand and engage with law and legal practice in a rapidly changing, globalised, and technologically-enabled world ...²⁵

- **Technological competence and digital literacy**

Perhaps one could consider an alternate conceptualisation to FLIP for 'technological competence' (for example, as per the Canadian FLSC *Model Code* requirement, and see discussion at [Section 4.6.4](#)), potentially in combination with a 'digital literacy' requirement (as recommended by the AQF Review).²⁶

- **Professional conduct, ethics and professional responsibility**

Given recent high-profile ethical lapses, perhaps consideration might be given to mapping assurance of the broader aspects of this specific domain for day-one entry-level competence, and think through what the next stage of competence development for the new lawyer in supervised practice might look like for this domain. The mapping to entry-level competence would presumably take TLO 2 'Ethics and Professional Responsibility' and the relevant requirements of *PLT Competency Standards* in Standard 5.8 as its starting point.

- **Argue for a reduced core to support innovation and specialisation**

There is some support for this, for example, as discussed in [Section 1.3.2](#).

✗ It has proved difficult to reach agreement on *any* modifications to the Priestly 11, despite several attempts by LACC to broker consensus over a number of years.

- **Seek to 'generalise the degree' and/or provide options for limited licences**

Options for this change to the academic requirements include:

- **Generalist and specialist pathways**

Reopen Priestly 11 and argue for fewer prescribed areas of academic knowledge for a more generalist degree and instead re-imagine the continuum as one where specialisation occurs post-admission (similar to the medical degree). Steel suggests that, once students enter their post-admission supervised practice, they could be required to undertake ongoing part-time study at specialised colleges; for example,

²⁵ Ibid Recommendation 4.2.

²⁶ See [Section 4.6.4](#).

in criminal practice, family practice, commercial practice.²⁷ The consequence would be that the required doctrinal learning in the law degree is greatly reduced to a general overview of law, in a similar manner to business degrees, which would also better accommodate students who do not wish to enter legal practice on degree completion. The Productivity Commission also recommended this ‘tiered’ approach.²⁸

Given the tendency towards more ‘generalist’ undergraduate law degrees a tiered approach to education might be appropriate, with strengthened postgraduate or practical legal training for those who intend to practice.

There has always been the option to offer a general law degree as a ‘secondary degree’, or an earlier exit point degree — potentially a ‘Bachelor of Legal Studies’ — that could also accommodate students who did not intend to practise. Such a qualification would sit outside accreditation requirements.²⁹

- **Step outside the Priestly 11: Degrees for new legal workers and new systems of licensing**

- **Education for the diversity of legal workers**

In Canada, Arthurs argues for a system that accommodates a diversity of legal workers whose scope to practise is limited to the areas in which they receive their (limited) training. Categories of such professionals might include, for example: paralegals; general practitioners; and/or specialist practitioners. Arthurs suggests that different categories of professional licences could be mirrored by different lengths of degrees, for example: one year qualification for a paralegal; two years for a generalist legal practitioner; four years for a specialist practitioner.³⁰

- **Productivity Commission’s consideration of limited licences**

The introduction of limited licences in the legal profession in Australia was considered with some enthusiasm by the Productivity Commission in its 2014 report on *Access to Justice Arrangements*.³¹ Particular interest was expressed for limited licences in priority, underserved areas of law (such as family law, consumer credit, housing and elder care), to supplement existing legal services and for a limited range of tasks only, within a limited and specific scope of practice. The Productivity Commission gave consideration to the type of training necessary as follows:

27 Alex Steel, ‘Reflections on Approaches to Drafting Regulatory Standards: Finding Ways to Quicken, Not Deadend, the Spirit of Legal Education’ in Kevin Lindgren, François Kunc and Michael Coper, *The Future of Australian Legal Education* (Thomson Reuters, 2018) 99, 112.

28 Productivity Commission, *Access to Justice Report* (n 4) 252.

29 Martha C Nussbaum et al, ‘Four Perspectives on the Future of Australian Legal Education’ in Kevin Lindgren, François Kunc and Michael Coper, *The Future of Australian Legal Education* (Thomson Reuters, 2018) 497. For example, the University of Tasmania will offer a new one year Diploma of Paralegal Practice as from 2022: University of Tasmania, ‘New Diploma Expanding Access to Legal Studies in Tasmania’ (Web Page, 21 December 2021) <<https://www.utas.edu.au/communications/general-news/all-news/new-diploma-expanding-access-to-legal-studies-in-tasmania>>.

30 Harry W Arthurs, ‘The Future of Law School: Three Visions and a Prediction’ (2014) 51(4) *Alberta Law Review* 705. Also, University of Tasmania (n 29). See also Productivity Commission, *Access to Justice Report* (n 4).

31 Productivity Commission, *Access to Justice Report* (n 4) 7.4

In addition to the relevant area of law, tailored education might involve: core skills necessary for delivering legal advice, including general civil procedure, basic contract law; ethics; ADR techniques and skills required for dealing with clients and running a legal practice.³²

The Productivity Commission recommended that a task force be established, including representation from CALD. The Chair of LACC noted that regulatory oversight would be necessary for limited licences, particularly to ensure that these professionals uphold comparable ethical obligations in terms of their clients, to the Court and to other law professionals, and for an adequate disciplinary framework to apply if their duties are breached.³³

- **Redraft the Priestley 11 as learning outcomes statements**

This work was undertaken over 2019 in a collaboration between LACC and CALD. Learning outcomes statements were drafted by academic experts,³⁴ the proposed revisions went out to consultation, the consultation was reported on³⁵ and a final version prepared for LACC's approval. In September 2020, LACC resolved to 'defer indefinitely the adoption of the Prescribed Areas of Knowledge that were to be implemented on 1 January 2021 in this regard'.³⁶ CALD might wish to pursue this again (see *Section 1.3*).

- **Redraft the Priestley 11 for short-form descriptors only**

Given the commentary and advice that has been emerging more recently about the risk of over-specifying outcomes-based approaches, another possible option might be to advocate for a redrafting of the Priestley 11 as short-form descriptors only.³⁷ Such descriptors could emphasise the 'threshold concepts'³⁸ and other fundamental principles of each of the academic areas, which are considered to be foundational for entry-level competence in times of rapid discipline change. Such an approach would be with a view to not (re)producing long lists of over-specified dot points.

32 Ibid 279.

33 See Clark, 'Regulating Admissions' (n 13) 91.

34 Law Admissions Consultative Committee, 'Redrafting the Academic Requirements for Admission' (Discussion Paper, 2019) <<https://www.legalservicescouncil.org.au/Documents/redrafting-the-academic-requirements-for-admission.pdf>>.

35 Law Admissions Consultative Committee, *Redrafting Academic Requirements: Report on Submissions* (Report, March 2019) <<https://www.legalservicescouncil.org.au/Documents/report-submissions-on-revised-draft-of-academic-requirements.pdf>>.

36 Legal Services Council, 'Law Admissions Consultative Committee (LACC)' (Web Page) <<https://www.legalservicescouncil.org.au/Pages/about-us/law-admissions-consultative-committee.aspx>>.

37 See for example, Law Admissions Consultative Committee, 'Reconciling Academic Requirements and Threshold Learning Outcomes' (Discussion Paper, June 2011) <<https://cald.asn.au/wp-content/uploads/2011/07/6.3-LACC-discussion-paper.pdf>>.

38 Rachael Field and Jan Meyer, 'Threshold Concepts in Law: Intentional Curriculum Reform to Support Law Student Learning Success and Well-being' in Emma Jones and Fiona Cownie (eds), *Key Directions in Legal Education: National and International Perspectives* (Routledge, 2020) 142.

Think differently about how to satisfy the Priestley 11 in re-design of pre-PLT curriculum

Examples include:

- **‘Vertical subjects’**

This would involve adopting a cross-cutting, vertical slice of the curriculum to assure acquisition of degree-level learning outcomes as has been recommended, for example, for the pervasive embedding of Ethics and Professional Responsibility.³⁹ For example, a ‘vertical ethics subject’ would run from first year to final year and engage students in an ongoing ethical dialogue across a range of different level subjects in a variety of substantive law contexts.

- **Reconceive the curriculum with a skills focus**

In an approach that pushes skills embedding just that bit further to take the emphasis off doctrinal law, Huxley-Binns advocates for a focus on ‘skills first’, developed through knowledge.⁴⁰ Huxley-Binns identifies eight skills, which are developed over curriculum in the way illustrated in the example extracted next (one of three examples provided). The skills are: (1) Cases (2) Legislation (3) Legal theory (4) Critical legal reasoning (5) Ethics (6) Legal writing (7) Legal commerciality (8) Dispute resolution and litigation.

QLD year	Skill linked to knowledge	Skill achieved
Year 1	Dispute resolution and litigation (negotiation) with contract and employment law	8
	Cases with torts	1
	Critical legal reasoning with media/IP law	4
	Ethics with land law	5
Year 2	Dispute resolution and litigation (mooting) with criminal law	8
	Legal theory with jurisprudence	3
	Legal writing (drafting) with the law of landlord and tenant	6
	Professional skills, including commerciality, with the legal services sector	7
Year 3	Research project	–
	Cases with medical law	1
	Legislation and critical legal reasoning with company law	2 and 4
	Cases and legislation with banking law	1 and 2

Figure 8. Huxley-Binns, Curriculum design with skill linked to knowledge (2011, 294)⁴¹

³⁹ For example, Maxine Evers, Leanne Houston and Paul Redmond, *Good Practice Guide (Bachelor of Laws): Ethics and Professional Responsibility* (Guide, 2011) <<http://www.lawteachnetwork.org/resources/gpg-ethics.pdf>>; Michael Robertson, ‘Providing Ethics Learning Opportunities Throughout the Legal Curriculum’ (2009) 12(1) *Legal Ethics* 59.

⁴⁰ Rebecca Huxley-Binns, ‘What is the “Q” for?’ (2011) 45(3) *The Law Teacher* 294.

⁴¹ Ibid 306.

In a similar way, Galloway et al,⁴² in the context of equipping students with the mindset to embrace technological change, advocate for a narrative of ‘flexible and adaptive professionalism’ as a means for students to access curriculum in a more expansive way, through broad principles and outcomes rather than a reductive and constraining siloed subject and doctrine focus.

Identify additional skills and values for embedding and/or increased focus

(Noting again the integrative potential across skills, systems, and solutions of a ‘substantive law’ vs ‘legal *knowledge*’ approach.)

- Technological competence and digital literacy,⁴³ as discussed above in this part
- Professional conduct, ethics and professional responsibility,⁴⁴ as discussed above in this part
- Indigenous cultural competency (ICC)⁴⁵
- Reflective practice:⁴⁶ The capability for reflective practice has been highlighted extensively in the literature in the context of CPD self-directed learning for all lawyers. It could be explicitly developed over the pre-PLT stage
- Diversity, sensitivity and awareness (including, family violence training)⁴⁷
- Evaluative judgement: ‘Evaluative judgement is the capability to make decisions about the quality of work of self and others’⁴⁸
- Mental health and well-being⁴⁹
- Career development learning.⁵⁰

42 Kate Galloway et al, ‘The Legal Academy’s Engagements with Lawtech: Technology Narratives and Archetypes as Drivers of Change’ (2019) 1(1) *Law, Technology and Humans* 27, 40.

43 See [Section 4.6.4](#).

44 See [Section 4.6.3](#).

45 See [Section 2.6.1](#).

46 For example, Law Society of Alberta, ‘Reflective Practice’ (Web Page) <<https://www.lawsociety.ab.ca/lawyers-and-students/continuing-professional-development/background/cpd-reflective-practice/>>; R Stuckey et al, *Best Practices for Legal Education: A Vision and a Road Map* (Report, Clinical Legal Education Association, 2007) (‘Stuckey Report’); *Getting the Point?* (n 6); Michele M Leering, ‘Integrated Reflective Practice: A Critical Imperative for Enhancing Legal Education and Professionalism’ (2017) 95(1) *Canadian Bar Review* 47 <<https://canlii.ca/t/735/>>; Judith McNamara, Tina Cockburn and Catherine Campbell, *Good Practice Guide (Bachelor of Laws): Reflective Practice* (Guide, 2013) <<http://www.lawteachnetwork.org/resources/gpg-reflection.pdf>>; See generally: Donald Schön, *The Reflective Practitioner* (Basic Books, 1983); Donald Schön, *Educating the Reflective Practitioner: Toward a New Design for Teaching and Learning in the Professions*. (Jossey-Bass, 1987); Donald Schön, *The Reflective Practitioner: How Professionals Think in Action* (Routledge, 1992); Mary Ryan and Michael Ryan, *Developing a Systematic, Cross-Faculty Approach to Teaching and Assessing Reflection in Higher Education* (Final Report, 2012) <https://ltr.edu.au/resources/PP9_1327_Ryan_report_2012.pdf>.

47 See [Section 2.5.2.5](#) and [Section 2.5.2.6](#).

48 Joanna Tai et al, ‘Developing Evaluative Judgement: Enabling Students to Make Decisions about the Quality of Work’ (2018) 76(3) *High Education* 467, 467 <<https://link.springer.com/journal/10734/76/3/page/1>>; See also David Boud et al (eds), *Developing Evaluative Judgement in Higher Education: Assessment for Knowing and Producing Quality Work* (Routledge, 2018).

49 See [Section 2.6.4](#).

50 For example, Ruth Bridgstock, Michelle Grant-Iramu and Alan McAlpine, ‘Integrating Career Development Learning into the Curriculum: Collaboration with the Careers Service for Employability’ (2019) 10(1) *Journal of Teaching and Learning for Graduate Employability* 56; Sally Kift, ‘A Virtuous Journey through the Regulation Minefield: Reflections on Two Decades of Australian Legal Education Scholarship’ in Ben Golder et al (eds), *Imperatives for Legal Education Research: Then, Now and Tomorrow* (Routledge, 2019); Sally Kift, ‘Employability and Higher Education: Keeping Calm in the Face of Disruptive Innovation’ in Joy Higgs et al (eds), *Education for Employability (Volume I): The Employability Agenda* (Brill Sense, 2019) 49; Sally Kift, ‘Holistic Curriculum Design for Employability’ in Joy Higgs et al (eds), *Education for Employability (Volume I): The Employability Agenda* (Brill Sense, 2019) 155.

Embed First Nations' perspectives on, and intersections with, the law

In 2020, CALD amended its *Australian Law School Standards* to include a specific additional area of curriculum content in Standard 2.3.3.a encouraging course design that develops 'knowledge and understanding of ... Aboriginal and Torres Strait Islander perspectives on, and intersections with, the law'.⁵¹ In the CALD *Law School Standards*, this includes the development of Indigenous cultural competency.

Embed a requirement for Clinical Legal Education (CLE) or experiential learning opportunities

- A pre-PLT response to the profession's demands for 'practice-ready' graduates might be for law schools to adopt an approach similar to the ABA's Accreditation Standards requirement that assures opportunities for experiential learning.⁵² This is a mechanism also for (further) development of a 'reflective practice' capability.
- ✘ This is a resource-intensive option and many law schools already offer a range of CLE opportunities, including virtual options (of value to assure equitable opportunity for all students). It is noted that the CALD *Law School Standards* already include an aspirational requirement that law schools '[endeavour] to provide, so far as is practicable, experiential learning opportunities for its students, including, but not limited to, clinical programs, internships, workplace experience, and pro bono community service'.⁵³

5.2.3 Options: Pre-admission PLT requirements

Maintain the status quo

Revisit the PLT requirements

Consideration might be given to seeking to enlarge or reduce the *PLT Competency Standards* requirements and/or the level of their specification and the guidance provided in the LACC Standards.

Many of the matters that are identified next are repeated from the above consideration of options in this regard for the Priestley 11 *academic requirements*. As for the Priestley dot points, these are generally aspects of knowledge, skills and values that have gained prominence or have languished until recently.

⁵¹ See [Section 2.6.1](#).

⁵² American Bar Association, *Standards 2021-2022 Standards and Rules of Procedure for Approval of Law Schools* (Standards, 2021-22) Standards 303-304

⁵³ https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2021-2022/2021-2022-aba-standards-and-rules-of-procedure-chapter-3.pdf. The ABA Standards were amended to include the experiential course requirements as a consequence of the 1992 *MacCrate Report*: American Bar Association, *Legal Education and Admissions to the Bar, Legal Education and Professional Development – An Educational Continuum* (Report, 1992) 234-5.

⁵³ Council of Australian Law Deans, *Australian Law School Standards with Guidance Notes* (Standards, 30 July 2020) 4, Standard 2.2.4.

- **Refresh *PLT Competency Standards (Revised: October 2017) & Standards for PLT Workplace Experience***

Based on the observations of McNamara,⁵⁴ it might be considered worthwhile attending to some specific matters around: definitions; regulatory guidance as to nature, quality and content of supervision; and precision around the form of restricted legal practice rights accorded.

- **Identify additional skills and values for embedding and/or increased focus**

Many of the potential additional matters identified here are raised based on the intent to enable a taxonomical development of knowledge, skills and values from the LLB/LLB(Hons)/JD stage, through to the PLT requirements, and then onto the post-admission stage in any Competence Statement that might be developed (with associated Threshold Standard(s) and aligned Statement(s) of Knowledge, Skills and Values). In that regard, an explicit reference in the *PLT Competency Standards* to a number of the contemporary domains demanding attention (such as technological competence, collaboration skills, reflective practice, digital literacy, and First Nations perspectives and intersections with the law) would aid transparency and mapping. It is entirely possible that a number of these following skills and values are actually already covered in the PLT courses, and may well only require explicit naming. The references for many of these matters, largely replicated from above, are not repeated in this part.

Options for possible inclusions and/or increased focus include (references omitted):

- Technological competence and digital literacy
(Noting that online searches and legal databases are referred to in PLT Competency Standard 5.12)
- Refreshing professional conduct, ethics and professional responsibility
- Collaboration
- Reflective practice
- Evaluative judgement
- Indigenous cultural competency (ICC)
(Noting that cross-cultural awareness is referenced under lawyer skills in PLT Competency Standard 5.10)
- Diversity, sensitivity and awareness (including, family violence training)
- Sexual harassment training⁵⁵
- Mental health and well-being
The existing provision in the *PLT Competency Standards* is noted but some enhancement might be possible (for example, re-curricular embedding and other educational opportunities beyond information provision)
- Career development learning.

⁵⁴ McNamara (n 17) 26-27.

⁵⁵ See [Section 2.5.2.4](#).

Embed First Nations' perspectives on, and intersections with, the law

In 2020, CALD amended its Australian Law School Standards to include a specific additional area of curriculum content in Standard 2.3.3.a encouraging course design that develops 'knowledge and understanding of ... Aboriginal and Torres Strait Islander perspectives on, and intersections with, the law'.⁵⁶ How this knowledge and understanding of perspectives and intersections, including the explicit development of ICC, might be deployed across the PLT competencies would be worthy of investigation.

Establishing an evidence base as to efficacy of the duration of PLT workplace experience

In its Discussion Paper, the LACC Assuring Professional Competence Committee (**APCC**) queried whether the amount of mandated work experience before qualification in Australia is sufficiently 'substantial', referencing international benchmarking suggesting that it was very much at the lower end of the international range.⁵⁷ If possible, it would be helpful to assure the validity of the current duration, by way of an evidence base established (or in some other way).

This matter is obviously related to the issue raised earlier in these options around the regulation of supervised practice for new lawyers, which does not have the same level of regulatory oversight as is required by the LACC *Standards for PLT Workplace Experience*. Thinking about a Competence Statement (and its accompanying documents: the Threshold Standard(s) and the Statement(s) of Knowledge, Skills and Values) and the progression *from pre-admission to entry level to new lawyer in supervised practice especially, the relationship, if any, and transition between, law degree CLE, PLT workplace experience and new lawyer supervised practice would be very helpful to map and analyse for better understanding and potential enhancement opportunities.*

5.2.4 Options: Better facilitate structure of LE&T across the academic & PLT requirements

Integrated academic and PLT courses

Is there an opportunity for and any interest in more providers integrating academic and PLT courses, as per the LACC *Guiding Principles for Integrating Academic and PLT Courses*?⁵⁸ Resourcing aside (and it is a big issue in the current environment), what are the barriers?; what are the opportunities?; and is enhanced collaboration across providers and with the profession an enabler that has been sufficiently explored? There has been some interest in

⁵⁶ See [Section 2.6.1](#).

⁵⁷ Assuring Professional Competence Committee, 'What to Do' (n 3) 8.

⁵⁸ Law Admissions Consultative Committee, *Guiding Principles for Integrating Academic and PLT Courses (Principles)* <<https://www.legalservicescouncil.org.au/Documents/Guiding-principles-for-integrating-academic-and-PLT-courses-revised-Oct-2017.pdf>>.

the US for teaching law firms (like teaching hospitals).⁵⁹ Is there anything to be learnt from such a model or indeed from any of the other models that are coming out of the US now as that jurisdiction diligently explores potential alternative pathways to licensure beyond the Bar Exam?

Explicitly integrated academic and PLT focus on particular key areas (only)?

Given the renewed focus on professional conduct, ethics and professional responsibility, and the increasing focus on technological competence and digital literacy, is there any opportunity or advantage to the pre-admission stages collaborating for holistic responses in these key areas? Smoother transitions between the two stages could be a potential starting point. Presumably, any Competence Statement developed (and associated documentation) would articulate the entry-level threshold standard, but could more be done to leverage the strengths of both the academic and PLT stages?

Undertake preliminary mapping across academic and PLT

Regardless of the outcome of, or the timeline for, the option to develop a Competence Framework, it would be very valuable to attend to the exercise of mapping the Academic Requirements (and/or the TLOs) and the PLT Competencies to and across each other and consider also how they both would map, in turn, to an indicative Competence Statement at the entry-level threshold. This might identify gaps (and opportunities) that have not been previously identified.

5.2.5 Options: Overarching opportunities (other suggestions/enablers)

Shared space regulation and engagement

There would be considerable advantage to pursuing the UK *Legal Education and Training Review (LETR)*'s cooperative, 'shared space' conceptualisation for regulatory reform and continuous LE&T improvement. The 'shared space' notion has already been mentioned in this part and refers to collaborative inquiry and joint action for a transformed regulatory relationship between all legal education stakeholders, including regulators.⁶⁰

⁵⁹ Yosie Saint-Cyr, 'A Teaching Hospital for Law School Graduates', *SLaw* (Blog Post, March 2013) <<http://www.slw.ca/2013/03/14/a-teaching-hospital-for-law-school-graduates/>>; Elie Mystal, 'A Teaching Law Firm' Like a Teaching Hospital? Why the Hell Not?', *Above the Law* (Blog Post, June 2012) <<https://abovethelaw.com/2012/06/a-teaching-law-firm-like-a-teaching-hospital-why-the-hell-not/?rf=1>>.

⁶⁰ See [Section 4.2.1](#).

Options for pursuing such an arrangement include:

Either:

- **Formally.** By seeking to establish a broadly representative, national **Legal Education and Training Council** (or similar)⁶¹ to prosecute regulatory reform and to provide assistance and support to LACC and Admitting Authorities regarding ongoing LE&T oversight, as regards, for example: quality issues and responsiveness to emerging developments; and to assume responsibility for building consensus for the development and content of the Competence Framework.

Or:

- **Informally.** Pursuing informal national leadership of LE&T review and reform for consensus building and awareness raising.

With opportunities for:

- Socialising the case for regulatory change across the legal education continuum
- Overseeing the consultation for, and development of, a Competence Framework incorporating a Competence Statement, Threshold Standard(s) and Statement(s) of Knowledge, Skills and Values to regulate for entry-level, new lawyers in supervised practice, continuing competence and specialised competence, if considered worthwhile
- Seeking changes to accreditation requirements
- Raising awareness of Australian LE&T expertise and the contribution made by the academy (law school and PLT) to entry-level lawyer formation
- Pursuing regulatory harmonisation, particularly as has been **proposed** by the Higher Education Standards Panel in 2017
- Considering the development of a 'Statement of Principles' (or similar) to set the tone for collaborative engagement between the academy, profession and regulators, as did the ABA's *Commission on the Future of Legal Education* in their *Principles for Legal Education and Licensure in the 21st Century*⁶²
- Attending to the development of metrics and an evidence base to inform quality assurance and to support ongoing LE&T and regulatory enhancement
- Exploring opportunities for the entirety of the legal education continuum to be regulated consistently by one body.

Terminology and language shifts

It would be very helpful to either settle terminology via a consensus-generating exercise, or have developed options for choice of terminology on which to invite feedback, for a range of the matters discussed in this report, before proceeding to the next stage. A smorgasbord of language options has been presented throughout this report. Precision of language

⁶¹ Most reviews recommend the establishment of such an entity. See also John Farrar, 'The Future of Australian Legal Education: A Comparative View' in Kevin Lindgren, François Kunc and Michael Coper, *The Future of Australian Legal Education* (Thomson Reuters, 2018) 143

⁶² American Bar Association Commission on the Future of Legal Education, *Principles for Legal Education and Licensure in the 21st Century: Principles and Commentary* (Report, 2020) <https://www.americanbar.org/groups/leadership/office_of_the_president/futureoflegaleducation/>. The developed 'Foundational Principles' and 'Operational Principles'.

matters, and in law probably matters more than usual. It would be unfortunate to proceed to awareness raising and consultation without being clear about the focus of the discussions.

A good example of this is the shift suggested above (citing Furlong) from ‘Substantive legal knowledge’ to ‘Substantive Law’, with a view to ensuring that there is not an over-emphasis on siloed, black-letter law elements in any statements developed, at the expense of more integrative ‘experiential’ aspects of substantive law competence — ‘the skills, systems, and solutions in any given practice area that can help bring the client to their desired goal.’⁶³

Alternative shorter-form credentials, including micro-credentials⁶⁴

It may be advantageous to sit outside formal curricular delivery and develop some alternative shorter-form credentials, including micro-credentials, in some of the areas identified for concerted attention in this section and throughout this report. These small packages of learning could be made available as supplemental offerings to law school and PLT students for competence acquisition as regards, for example: Indigenous cultural competence; diversity, sensitivity and awareness training; mental health first aid for lawyers; aspects of technological competence and digital literacy; career development learning; and the like. Such credentials could also be offered to members of the profession as CPD, potentially free in the first instance to establish proof of concept, and subsequently on a fee basis.

- ✓ The potential advantage to this approach is that it could be a concrete expression of CALD members’ educational expertise and capability in areas of immediate concern to the practising profession *and* an expression of the *academy’s* public professional role for a ‘just, fair and moral society’.⁶⁵ Practising lawyers who undertake one of these carefully chosen taster credentials might also be persuaded to the view that the competence being developed is more appropriately developed in the context of practice, rather than in law school or PLT.

⁶³ *Furlong Report* (n 6) 16.

⁶⁴ See [Section 3.2.7](#) re ‘AQF Review 2019’.

⁶⁵ *MacCrate Report* (n 52) 14.

Appendix A. Academic Requirements for Each State and Territory

Jurisdiction	What is Prescribed?
Australian Capital Territory	<p><i>Court Procedure Rules 2006 (ACT)</i></p> <p>Rule 3605 Admission—approved academic qualifications—Legal Profession Act, s 21(5)</p> <p>(1) The academic qualifications approved for admission to the legal profession are:</p> <p>(a) Successful completion of a course of study approved under rule 3607A, which includes subjects approved under rule 3607B, provided by an institution approved under subdivision 3.11.2.2, which requires a student to <i>acquire and demonstrate appropriate understanding of, and competence in</i>, the following areas of law:</p> <p>(i) criminal law and procedure;</p> <p>(ii) the law of torts;</p> <p>(iii) the law relating to contracts;</p> <p>(iv) the law relating to property, both real (including the law relating to Torrens system land) and personal;</p> <p>(v) equity, including trusts;</p> <p>(vi) company law;</p> <p>(vii) administrative law;</p> <p>(viii) constitutional law of:</p> <p>(A) the Commonwealth; and</p> <p>(B) the Territory, a State or the Northern Territory;</p> <p>(ix) civil procedure;</p> <p>(x) evidence;</p> <p>(xi) ethics and professional responsibility; and</p> <p>(b) that the applicant has a sufficient knowledge of written and spoken English to engage in legal practice in the ACT.</p>
New South Wales	<p><i>Legal Professional Uniform Admission Rules 2015</i></p> <p>Rule 5 Specified academic qualifications prerequisite</p> <p>(1) For the purposes of section 17(1)(a) of the Uniform Law, subject to these Rules, the specified academic qualifications prerequisite is successfully completing a tertiary academic course in Australia, whether or not leading to a degree in law, which:</p> <p>(a) includes the equivalent of at least 3 years of full-time study of law;</p> <p>(b) is accredited by the Board; and</p> <p>(c) the Board determines will provide for a student to <i>acquire and demonstrate appropriate understanding and competence in</i> each element of the academic areas of knowledge set out in Schedule 1, or otherwise determined by the Admissions Committee after consulting each of the Boards.</p> <p>Schedule 1 Academic areas of knowledge</p> <p>Includes the LACC Prescribed Areas of Knowledge which state that knowledge areas can be satisfied by covering either the detailed list of topics or the more general description.</p>

Jurisdiction	What is Prescribed?
Northern Territory	<p><i>Legal Profession Admission Rules 2007 (NT)</i></p> <p>Rule 4 Approved academic qualifications</p> <p>(1) For section 10(1) of the Act, the approved academic qualifications for admission is the completion of a tertiary academic course in Australia, whether or not leading to a degree in law, that:</p> <p>(a) Includes the equivalent of at least 3 years of full-time study of law; and</p> <p>(b) Subject to subrule (2), requires a <i>satisfactory level of knowledge and understanding</i> of the areas of knowledge specified in Schedule 3.</p> <p>(2) If a local applicant has completed a tertiary academic course in Australia that does not include the study of ethics and professional responsibility, the applicant need not acquire a satisfactory level of knowledge and understanding of that area of knowledge but must do so when completing the practical requirement for admission.</p> <p>Schedule 3 Academic Requirement – Areas of Knowledge</p> <p>Includes the LACC Prescribed Areas of Knowledge.</p>
Queensland	<p><i>Supreme Court (Admission) Rules 2004 (Qld)</i></p> <p>Rule 6 Approved academic qualifications—Australian course</p> <p>(1) Academic qualifications attained by the satisfactory completion of a tertiary course approved by the Chief Justice and the Board are approved academic qualifications for admission to the legal profession under the <i>Legal Profession Act 2007</i>.</p> <p>(2) The course must be conducted in Australia.</p> <p>(3) The course must require:</p> <p>(a) the equivalent of at least 3 years of full-time study of law; and</p> <p>(b) a <i>satisfactory level of understanding and competence</i> in the areas of knowledge set out in the admission guidelines for approving academic qualifications.</p> <p>(4) The course does not have to lead to a degree in law.</p> <p>Admission Guidelines for Approving Academic Qualifications Admission Guidelines Number 1 (2019)</p> <p>Includes the LACC Prescribed academic areas of knowledge.</p>
South Australia	<p><i>Rules of the Legal Practitioners Education and Admission Council 2018 (SA)</i></p> <p>Rule 7 Academic requirements</p> <p>(1) The academic requirement for admission is the successful completion of a tertiary academic course in Australia, whether or not leading to a degree in law:</p> <p>(a) which includes the equivalent of at least 3 years of full-time study in law; and</p> <p>(b) which, in the opinion of LPEAC, requires a <i>satisfactory level of understanding and knowledge</i> in the areas of knowledge referred to in Appendix A.</p> <p>(2) The following academic qualifications are taken to satisfy the requirements of this rule:</p> <p>(a) Bachelor of Laws of the University of Adelaide;</p> <p>(b) Bachelor of Laws or Bachelor of Laws and Legal Practice or the Juris Doctor of Flinders University; and</p> <p>(c) Bachelor of Laws of the University of South Australia.</p> <p>Appendix A Synopsis of Areas of Knowledge (revised December 2016)</p> <p>Includes the Prescribed academic areas of knowledge.</p>

Jurisdiction	What is Prescribed?												
Tasmania	<p><i>Legal Profession (Board of Legal Education) Rules 2010 (Tas)</i></p> <p>Rule 4 Approved academic qualifications</p> <p>(1) For the purposes of section 25 of the Act, the academic qualification approved for admission to the legal profession in Tasmania is the successful completion of a tertiary course of study (whether or not leading to a qualification in law):–</p> <ul style="list-style-type: none"> (a) which is provided by an approved academic institution; and (b) includes the equivalent of at least 3 years of full-time study of law; and (c) requires a student to acquire and demonstrate a satisfactory level of understanding and competence in the areas of knowledge set out in Schedule 1. <p>Schedule 1 Academic areas of knowledge</p> <p>Includes the LACC Prescribed Areas of Knowledge, however, mandates the coverage of the general description for each substantive area and then indicates that without limiting the general description, the subjects <i>may</i> cover the detailed list for each substantive area.</p>												
Victoria	<p><i>Legal Professional Uniform Admission Rules 2015</i></p> <p>Rule 5 Specified academic qualifications prerequisite</p> <p>(1) For the purposes of section 17(1)(a) of the Uniform Law, subject to these Rules, the specified academic qualifications prerequisite is successfully completing a tertiary academic course in Australia, whether or not leading to a degree in law, which:</p> <ul style="list-style-type: none"> (a) includes the equivalent of at least 3 years of full-time study of law; (b) is accredited by the Board; and (c) the Board determines will provide for a student to <i>acquire and demonstrate appropriate understanding and competence in each element of the academic areas of knowledge set out in Schedule 1, or otherwise determined by the Admissions Committee after consulting each of the Boards.</i> <p>Schedule 1 Academic areas of knowledge</p> <p>Includes the LACC Prescribed Areas of Knowledge that state that knowledge areas can be satisfied by covering either the detailed list of topics or the more general description.</p>												
Western Australia	<p><i>Legal Profession (Admission) Rules 2009 (WA)</i></p> <p>Rule 5 Approved academic qualifications—institutions (s. 21)</p> <p>(1) An academic qualification is an approved academic qualification for an individual's admission to the legal profession in this jurisdiction, subject to subrule (2), if:</p> <ul style="list-style-type: none"> (a) the qualification is set out in the Table; and (b) the Board is satisfied that in attaining the qualification the individual completed coursework covering all the areas of knowledge described in the Model Admission Rules 2015 Schedule 1. <p>Table</p> <table border="1"> <thead> <tr> <th>University</th> <th>Qualification</th> </tr> </thead> <tbody> <tr> <td>1. Curtin University</td> <td>Bachelor of Laws</td> </tr> <tr> <td>2. Edith Cowan University</td> <td>Bachelor of Laws</td> </tr> <tr> <td>3. Murdoch University</td> <td>Bachelor of Laws Juris Doctor</td> </tr> <tr> <td>4. The University of Notre Dame Australia</td> <td>Bachelor of Laws Juris Doctor</td> </tr> <tr> <td>5. The University of Western Australia</td> <td>Bachelor of Laws Juris Doctor</td> </tr> </tbody> </table> <p>Model Admission Rules 2015 Schedule 1</p> <p>Includes LACC Prescribed Areas of Knowledge.</p>	University	Qualification	1. Curtin University	Bachelor of Laws	2. Edith Cowan University	Bachelor of Laws	3. Murdoch University	Bachelor of Laws Juris Doctor	4. The University of Notre Dame Australia	Bachelor of Laws Juris Doctor	5. The University of Western Australia	Bachelor of Laws Juris Doctor
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5. The University of Western Australia	Bachelor of Laws Juris Doctor												

Appendix B. Practical Legal Training Requirements for Each State and Territory

Jurisdiction	What is Prescribed?
Australian Capital Territory	<p><i>Court Procedure Rules 2006 (ACT)</i></p> <p>Rule 3607D Practical legal training</p> <p>(1) The practical legal training approved for admission to the legal profession in the ACT is:</p> <ul style="list-style-type: none"> (a) successful completion of an approved PLT course conducted by an approved PLT provider, in accordance with subdivision 3.11.2.5; and (b) the demonstration to the satisfaction of the admission board of the competency standards for practical legal training approved by the LACC in consultation with the APLEC.
New South Wales	<p><i>Legal Profession Uniform Admission Rules 2015</i></p> <p>Rule 6 Specified practical legal training prerequisite</p> <p>(1) For the purposes of section 17(1)(b) of the Uniform Law, subject to these Rules, the specified practical legal training prerequisite is <i>acquiring and demonstrating an appropriate understanding and competence in each element of the skills, values and practice areas</i>:</p> <ul style="list-style-type: none"> (a) set out in Schedule 2; or (b) otherwise determined by the Admissions Committee after consulting each of the Boards. <p>(2) The requirement may be satisfied by successfully completing either:</p> <ul style="list-style-type: none"> (a) a practical legal training course conducted by a practical legal training provider accredited by the Board; or (b) supervised legal training in a workplace for a period of not less than 12 months, under a training plan approved by the Board, which the Board determines adequately provides the trainee to satisfy requirements of subrule (1). <p>Schedule 2 Practical legal training competencies for entry-level lawyers</p> <p>Includes the LACC PLT Competency Standards for Entry-level Lawyers.</p>
Northern Territory	<p><i>Legal Profession Admission Rules 2007 (NT)</i></p> <p>Rule 5 Approved practical legal training requirements</p> <p>(1) For section 10(2) of the Act, the approved practical legal training requirements for admission is the completion, at the level of competence required by the competency standards:</p> <ul style="list-style-type: none"> (a) of a course approved by the Board; or (b) of: <ul style="list-style-type: none"> (i) at least one year of articles; and (ii) if required under rule 28, a supplementary course approved by the Board.

Jurisdiction	What is Prescribed?
Queensland	<p><i>Supreme Court (Admission) Rules 2004 (Qld)</i></p> <p>Rule 7 Approved practical legal training requirements—Australian course</p> <p>(1) The requirements of a course approved by the Chief Justices and the Board are approved practical legal training requirements for admission to the legal profession under the <i>Legal Profession Act 2007</i>.</p> <p>(2) The course must be conducted in Australia.</p> <p>(3) The course must provide the required understanding and competence.</p> <p>Rule 7A Other approved practical legal training requirements—Australia</p> <p>(1) The requirements of supervised workplace experience that provides the required understanding and competence are also approved practical legal training requirements for admission to the legal profession under the <i>Legal Profession Act 2007</i>.</p> <p>(2) The requirements of supervised workplace experience and approved supplementary training that together provide the required understanding and competence are also approved practical legal training requirements for admission to the legal profession under the <i>Legal Profession Act 2007</i>.</p> <p>Admission Guidelines for Approving Practical Legal Training Requirements Admission Guidelines Number 2 (2019)</p> <p>Includes LACC PLT Competency Standards for Entry-level Lawyers.</p>
South Australia	<p><i>Rules of the Legal Practitioners Education and Admission Council 2018 (SA)</i></p> <p>Rule 8 Practical requirements</p> <p>(1) The practical requirement for admission is:</p> <p>(a) the successful completion of a course of study commenced in accordance with the requirements of Appendix B and which, in the opinion of LPEAC, requires understanding and competence in the knowledge, values and skills, in each of the practice areas set out in that Appendix at the level of proficiency prescribed by that Appendix; or</p> <p>(b) the successful completion of:</p> <p>(i) the course of study leading to the grant of the Graduate Diploma in Legal Practice of the University of Adelaide and the Law Society of South Australia; or</p> <p>(ii) the degree of Bachelor of Laws and Legal Practice of Flinders University; or</p> <p>(iii) the course of study provided by the College of Law Limited known as the South Australian PLT Program; or</p> <p>(iv) the course of study leading to the grant of the Graduate Diploma in Legal Practice of Flinders University;</p> <p>unless the LPEAC determines, in relation to a particular course, that any of the courses referred to in subrule (1) to (iv) hereof no longer requires understanding and competence in the skills, values and practice areas set out in Appendix B at the level of proficiency prescribed by that Appendix.</p> <p>Appendix B Competency Standards for Entry-Level Lawyers</p> <p>Includes LACC PLT Competency Standards for Entry-level Lawyers.</p>

Jurisdiction	What is Prescribed?
<p>Tasmania</p>	<p><i>Legal Profession (Board of Legal Education) Rules 2010 (Tas)</i></p> <p>Rule 7 Approved practical legal training requirement</p> <p>(1) For the purposes of section 25 of the Act, the practical legal training approved for admission to the legal profession in Tasmania is:</p> <ul style="list-style-type: none"> (a) successful completion of a practical legal training course: <ul style="list-style-type: none"> (i) that is conducted by an approved practical legal training provider; and (ii) that, in the opinion of the Board of Legal Education, requires a satisfactory level of understanding of and competence in the skills, values and practice areas set out in Schedule 2; or (b) successful completion of practical legal training: <ul style="list-style-type: none"> (i) that would qualify the person for admission to the legal profession in another Australian jurisdiction; and (ii) that, in the opinion of the Board of Legal Education, requires a satisfactory level of understanding of and competence in the skills, values and practice areas set out in Schedule 2. <p>(2) A person is eligible to undertake approved practical legal training under this Part if the person has the academic qualification approved for admission to the legal profession in Tasmania.</p> <p>Schedule 2 Practical Legal Training Competency Standards</p> <p>Includes LACC's Competency Standards, however, with modifications. For example, the practical legal training course is required to cover the following practice areas:</p> <ul style="list-style-type: none"> (a) civil litigation practice; (b) commercial and corporate law practice; (c) property law practice; (d) at least one of the following areas: <ul style="list-style-type: none"> (i) administrative law practice; (ii) criminal law practice; (iii) family law practice; (e) at least one of the following areas: <ul style="list-style-type: none"> (i) consumer law practice; (ii) employment and industrial relations practice; (iii) planning and environmental law and practice; (iv) wills and estates practice.
<p>Victoria</p>	<p><i>Legal Profession Uniform Admission Rules 2015</i></p> <p>Rule 6 Specified practical legal training prerequisite</p> <p>(1) For the purposes of section 17(1)(b) of the Uniform Law, subject to these Rules, the specified practical legal training prerequisite is <i>acquiring and demonstrating an appropriate understanding and competence in each element of the skills, values and practice areas</i>: set out in Schedule 2; or otherwise determined by the Admissions Committee after consulting each of the Boards.</p> <p>(2) The requirement may be satisfied by successfully completing either:</p> <ul style="list-style-type: none"> (a) a practical legal training course conducted by a practical legal training provider accredited by the Board; or (b) supervised legal training in a workplace for a period of not less than 12 months, under a training plan approved by the Board, which the Board determines adequately provides the trainee to satisfy requirements of subrule (1). <p>Schedule 2 Practical legal training competencies for entry-level lawyers</p> <p>Includes the LACC PLT Competency Standards for Entry-level Lawyers.</p>

Jurisdiction	What is Prescribed?
Western Australia	<p data-bbox="424 206 944 235"><i>Legal Profession (Admission) Rules 2009 (WA)</i></p> <p data-bbox="424 239 1104 268">Rule 7 Approved practical legal training requirements (s. 21)</p> <p data-bbox="424 273 1327 338">(2) Each of the following is approved as practical legal training requirements for admission to the legal profession in this jurisdiction:</p> <p data-bbox="469 342 577 371">(a) Both:</p> <ul style="list-style-type: none"> <li data-bbox="513 376 1417 441">(i) service for the required period as an articled clerk under, and in accordance with, articles of clerkship made and registered under Part 3; and <li data-bbox="513 445 1417 510">(ii) a practical legal training programme for articled clerks approved under rule 20 <p data-bbox="469 515 1129 544">(b) a practical legal training course approved under rule 8;</p> <p data-bbox="469 548 1024 577">(c) practical legal training approved under rule 9.</p> <p data-bbox="424 582 734 611">Part 3—Articles of clerkship</p> <p data-bbox="424 616 1369 645">Outlines the necessary conditions for articles of clerkship for practical legal training.</p> <p data-bbox="424 649 778 678">Rule 20 Articled clerks training</p> <p data-bbox="424 683 1407 748">(1) For the purposes of rule 7(2)(a)(ii), the Board may approve a programme of practical legal training for articled clerks.</p> <p data-bbox="424 752 1359 817">(2) In deciding whether to grant an approval under subrule (1), the Board is to have regard to the Model Admission Rules.</p> <p data-bbox="424 822 1407 887">(3) A programme approved by the Board under subrule (1) may be conducted in whole or in part by the Board.</p>

Appendix C. Pre-Admission Requirements for Each State and Territory

Jurisdiction	What is Prescribed?
Australian Capital Territory	<p><i>Legal Profession Act 2006 (ACT)</i></p> <p>Section 21 Eligibility for admission</p> <p>(1) A person is eligible for admission to the legal profession under this Act only if the person is an individual aged 18 years or over and:</p> <p>(a) the person has attained:</p> <p>(i) approved academic qualifications; or</p> <p>(ii) corresponding academic qualifications; and</p> <p>(b) the person has satisfactorily completed:</p> <p>(i) approved practical legal training requirements; or</p> <p>(ii) corresponding practical legal training requirements.</p> <p>Section 22 Suitability for admission</p> <p>(1) In deciding if a person is a fit and proper person to be admitted to the legal profession under this Act, the Supreme Court or admissions board must consider each of the suitability matters in relation to the person to the extent a suitability matter is appropriate.</p> <p>(2) Subsection (1) does not limit the relevant matters that the Supreme Court or admissions board may consider.</p> <p>(3) However, the Supreme Court or admissions board may decide that a person is a fit and proper person to be admitted to the legal profession under this Act despite a suitability matter because of the circumstances relating to the matter</p>
New South Wales	<p><i>Legal Profession Uniform Law 2014</i></p> <p>Section 16 Admission</p> <p>(1) The Supreme Court of this jurisdiction may admit an individual aged 18 years or over to the Australian legal profession as an Australian lawyer, but only if:</p> <p>(a) the designated local regulatory authority has provided the Supreme Court with a compliance certificate in respect of the person and the certificate is still in force; and</p> <p>(b) the person is not already admitted to the Australian legal profession; and</p> <p>(c) the person takes an oath of office, or makes an affirmation of office, in the form required by the Supreme Court.</p> <p>Section 17 Prerequisites for compliance certificates</p> <p>(1) The prerequisites for the issue of a compliance certificate in respect of a person are that he or she:</p> <p>(a) has attained the academic qualifications specified under the Admission Rules for the purposes of this section (the <i>specified academic qualifications prerequisite</i>); and</p> <p>(b) has satisfactorily completed the practical legal training requirements specified in the Admission Rules for the purposes of this section (the <i>specified practical legal training prerequisite</i>); and</p> <p>(c) is a fit and proper person to be admitted to the Australian legal profession.</p> <p>(2) In considering whether a person is a fit and proper person to be admitted to the Australian legal profession:</p> <p>(a) the designated local regulatory authority may have regard to any matter relevant to the person's eligibility or suitability for admission, however the matter comes to its attention; and</p> <p>(b) the designated local regulatory authority must have regard to the matters specified in the Admission Rules for the purposes of this section.</p>

Jurisdiction	What is Prescribed?
Northern Territory	<p><i>Legal Profession Act 2006 (NT)</i></p> <p>Section 29 Eligibility for admission</p> <p>(1) A person is only eligible for admission to the legal profession under this Act only if:</p> <ul style="list-style-type: none"> (a) the person is an individual aged 18 years or over; and (b) the person has attained: <ul style="list-style-type: none"> (i) approved academic qualifications; or (ii) corresponding academic qualifications; and (c) the person has satisfactorily completed: <ul style="list-style-type: none"> (i) approved practical legal training requirements; or (ii) corresponding practical legal training requirements. <p>Section 30 Suitability for admission</p> <p>(1) The Supreme Court or Admission Board must, in deciding if a person is a fit and proper person to be admitted to the legal profession under this Act, consider:</p> <ul style="list-style-type: none"> (a) each of the suitability matters in relation to the person to the extent a suitability matter is appropriate; and (b) any other matter it considers relevant.
Queensland	<p><i>Legal Profession Act 2007 (Qld)</i></p> <p>Section 30 Eligibility for admission to the legal profession under this Act</p> <p>(1) A person is eligible for admission to the legal profession under this Act only if the person:</p> <ul style="list-style-type: none"> (a) is a natural person aged 18 years or more; and (b) has attained approved academic qualifications or corresponding academic qualifications; and (c) has satisfactorily completed approved practical legal training requirements or corresponding practical legal training requirements. <p>Section 31 Suitability for admission</p> <p>(1) A person is suitable for admission to the legal profession under this Act only if the person is a fit and proper person to be admitted.</p> <p>(2) In deciding if the person is a fit and proper person to be admitted, the Supreme Court must consider:</p> <ul style="list-style-type: none"> (a) each of the suitability matters in relation to the person to the extent a suitability matter is appropriate; and (b) other matters that the Supreme Court considers relevant.
South Australia	<p><i>Legal Practitioners Act 1981 (SA)</i></p> <p>Section 15 Entitlement to admission</p> <p>(1) A person who satisfies the Supreme Court:</p> <ul style="list-style-type: none"> (a) that he or she is a fit and proper person to practise the profession of the law; and (b) that: <ul style="list-style-type: none"> (i) he or she has complied with: <ul style="list-style-type: none"> (A) the rules of the Supreme Court relating to the admission of barrister and solicitors of the Supreme Court; and (B) the rules made by LPEAC under this Act prescribing the qualifications for admission as a barrister and solicitor of the Supreme Court; or (ii) insofar as there has been non-compliance with those rules, he or she should be exempted from such compliance, <p>is entitled to be admitted and enrolled as a barrister and solicitor of the Supreme Court.</p>

Jurisdiction	What is Prescribed?
Tasmania	<p><i>Legal Profession Act 2007 (Tas)</i></p> <p>Section 25 Eligibility for admission</p> <p>(1) A person is eligible for admission to the legal profession only if the person is a natural person aged 18 years or over and:</p> <p>(a) the person has attained:</p> <p>(i) approved academic qualifications; or</p> <p>(ii) corresponding academic qualifications;</p> <p>or is exempted from compliance with this paragraph under subsection (4); and</p> <p>(b) the person has satisfactorily completed:</p> <p>(i) approved practical legal training requirements; or</p> <p>(ii) corresponding practical legal training requirements;</p> <p>or is exempted from compliance with this paragraph under subsection (4).</p> <p>Section 26 Suitability for admission</p> <p>(1) The Supreme Court must, in deciding if a person is a fit and proper person to be admitted to the legal profession under this Act, consider:</p> <p>(a) each of the suitability matters in relation to the person to the extent a suitability matter is appropriate; and</p> <p>(b) any other matter it considers relevant.</p>
Victoria	<p><i>Legal Profession Uniform Law 2014</i></p> <p>Section 16 Admission</p> <p>(1) The Supreme Court of this jurisdiction may admit an individual aged 18 years or over to the Australian legal profession as an Australian lawyer, but only if:</p> <p>(a) the designated local regulatory authority has provided the Supreme Court with a compliance certificate in respect of the person and the certificate is still in force; and</p> <p>(b) the person is not already admitted to the Australian legal profession; and</p> <p>(c) the person takes an oath of office, or makes an affirmation of office, in the form required by the Supreme Court.</p> <p>Section 17 Prerequisites for compliance certificates</p> <p>(1) The prerequisites for the issue of a compliance certificate in respect of a person are that he or she:</p> <p>(a) has attained the academic qualifications specified under the Admission Rules for the purposes of this section (the <i>specified academic qualifications prerequisite</i>); and</p> <p>(b) has satisfactorily completed the practical legal training requirements specified in the Admission Rules for the purposes of this section (the <i>specified practical legal training prerequisite</i>); and</p> <p>(c) is a fit and proper person to be admitted to the Australian legal profession.</p> <p>(2) In considering whether a person is a fit and proper person to be admitted to the Australian legal profession:</p> <p>(a) the designated local regulatory authority may have regard to any matter relevant to the person's eligibility or suitability for admission, however the matter comes to its attention; and</p> <p>(b) the designated local regulatory authority must have regard to the matters specified in the Admission Rules for the purposes of this section.</p>

Jurisdiction	What is Prescribed?
Western Australia	<p data-bbox="424 206 783 235"><i>Legal Profession Act 2008 (WA)</i></p> <p data-bbox="424 239 820 268">Section 21 Eligibility for admission</p> <p data-bbox="424 273 1382 338">(2) A person is eligible for admission to the legal profession under this Act only if the person:</p> <ul style="list-style-type: none"> <li data-bbox="469 342 994 371">(a) is an individual aged 18 years or more; and <li data-bbox="469 376 1362 441">(b) has attained approved academic qualifications or corresponding academic qualifications; and <li data-bbox="469 445 1394 510">(c) has satisfactorily completed approved practical legal training requirements or corresponding practical legal training requirements. <p data-bbox="424 515 831 544">Section 22 Suitability for admission</p> <p data-bbox="424 548 1409 613">(1) The Supreme Court or Board must, in deciding if a person is a fit and proper person to be admitted to the legal profession, consider:</p> <ul style="list-style-type: none"> <li data-bbox="469 618 1353 683">(a) each of the suitability matters in relation to the person to the extent that a suitability matter is appropriate; and <li data-bbox="469 687 943 716">(b) any other matter it considers relevant.

Appendix D. Accreditation of Academic Requirements and Practical Legal Training

Jurisdiction	Accreditation of Academic Requirements	Accreditation of Practical Legal Training
Australian Capital Territory	<p><i>Court Procedure Rules 2006 (ACT)</i></p> <p>Rule 3606 Approved academic institutions</p> <p>(1) Subject to subrule (3)(a), each of the following is an approved academic institution:</p> <ul style="list-style-type: none"> (a) the Australian National University; (b) the University of Canberra; (c) an institution recognised by another Australian jurisdiction as providing a course of study which: <ul style="list-style-type: none"> (i) satisfies the academic requirements for admission in that jurisdiction; and (ii) requires a student to acquire and demonstrate an appropriate understanding of, and competence in, each area of law mentioned in rule 3605(1)(a). <p>(2) The admissions board may only designate an institution under subrule (1)(c) if the admissions board is satisfied that the institution will competently provide an approved course of study in law.</p> <p>Rule 3607 Monitoring and review</p> <p>(1) The admissions board may monitor and, if it considers it reasonable to do so, from time to time, review:</p> <ul style="list-style-type: none"> (a) the performance of, and the resources available to, an approved academic institution, in providing an approved course of study; and (b) the content and conduct of an approved course of study or any approved subject provided by the institution. 	<p><i>Court Procedure Rules 2006 (ACT)</i></p> <p>Rule 3607E Approval of PLT providers</p> <p>(1) Subject to subrule (2)(a), each of the following is an approved PLT provider:</p> <ul style="list-style-type: none"> (a) the School of Legal Practice within the College of Law of the Australian National University; (b) an institution that the admissions board is satisfied will competently conduct an approved PLT course. <p>Rule 3607F Monitoring and review of approved PLT provider</p> <p>(1) The admissions board may monitor, and, if it considers it reasonable to do so, from time to time review:</p> <ul style="list-style-type: none"> (a) the performance of, and the resources available to, an approved PLT provider in providing an approved PLT course; and (b) the content and conduct of an approved PLT course, or any subject in an approved PLT course, provided by the PLT provider.

Jurisdiction	Accreditation of Academic Requirements	Accreditation of Practical Legal Training
Australian Capital Territory	Accreditation of the course	
	<p><i>Court Procedure Rules 2006 (ACT)</i></p> <p>Rule 3607A Approval of course of study</p> <p>(1) Subject to subrule (2)(a), the admissions board may approve a course of study which the admission board considers will give a student <i>an appropriate understanding of, and competence in, each area of law mentioned in rule 3605(1)(a).</i></p> <p>Rule 3607B Approval of subjects</p> <p>(1) The admissions board may approve any subject or part of a subject in either:</p> <ul style="list-style-type: none"> (a) a course of study approved under rule 3607A; or (b) a course of study at any other institution. <p>(2) Before approving a course of study under subrule (1), the admissions board must be satisfied that the course provides a student with appropriate understanding of, and competence in, the whole or any part of an area of law mentioned in rule 3605(1)(a).</p>	<p><i>Court Procedure Rules 2006 (ACT)</i></p> <p>Rule 3607G Approval of training course</p> <p>(1) The admissions board may approve a course which the admissions board considers will demonstrate the competency standards mentioned in rule 3607D(1)(b).</p>

*Legal Profession Uniform Admission Rules 2015***Rule 7 Accrediting law courses and practical legal training providers**

- (1) For the purposes of section 29 of the Uniform Law, the Board may, from time to time in accordance with this rule, accredit either or both of the following:
- (a) A law course for the purpose of providing the academic qualifications prerequisite specified in rule 5(1);
 - (b) A practical legal training provider for the purpose of providing the practical legal training prerequisite specified in rule 6(1).
- (2) In considering whether to accredit a course or provider referred to in subrule (1), the Board:
- (a) Must take into account any appraisal criteria for such courses or providers from time to time endorsed for use in other Australian jurisdictions; and
 - (a1) must take into account any report of a review conducted under rule 8 in relation to the course or provider; and
 - (b) May have regard to any other matter it considers material.
- (4) Unless the Board determines otherwise, any law course or practical legal training provider that is recognised by another Australian jurisdiction as:
- (a) Satisfying either or both the academic requirements and the practical legal training requirements for admission in that jurisdiction; and
 - (b) requiring a student successfully to complete either or both of the academic qualifications prerequisite specified in rule 5(1) and the practical legal training prerequisite specified in rule 6(1),

is deemed respectively to be accredited by the Board under this rule, provided that the Board is also satisfied that:

- (c) the relevant law course is in all significant respects substantially equivalent to law courses accredited under subrule (1)(a) in this jurisdiction; or
- (d) the practical legal training provided by the practical legal training provider is in all significant respects substantially equivalent to practical legal training provided by practical legal training providers accredited under subrule (1)(b) in this jurisdiction,

as the case requires.

Rule 8 Monitoring and reviewing accredited law courses and practical legal training providers

- (1) The Board must monitor and may review any aspect of the performance of:
- (a) an accredited law course in providing the specified academic qualifications prerequisite; and
 - (b) an accredited practical legal training provider in providing the specified practical legal training prerequisite.
- (1A) A Review under subrule(1) may be conducted for the purposes of considering whether:
- (a) to accredit a law course or practical legal training provider; or
 - (b) to impose a condition on, or vary a condition attached to, the accreditation of a law course or practical legal training provider.

A review conducted under subrule (1):

- (a) in the case of a review conducted for the purposes of considering whether to accredit a law course or practical legal training provider—must take into account any appraisal criteria for law courses, practical legal training courses or practical legal training providers from time to time endorsed for use in other Australian jurisdictions; and
- (b) in the case of any review—may have regard to any other matter it considers material.

Jurisdiction	Accreditation of Academic Requirements	Accreditation of Practical Legal Training
New South Wales	<p>Rule 9 Supervised legal training</p> <p>(1) The Board may determine whether supervised legal training may be undertaken for the purposes of rule 6(2)(b) in this jurisdiction.</p> <p>(2) If the Board makes a determination under subrule (1), Schedule 3 applies.</p> <p>Schedule 3 Supervised legal training</p> <p>Outlines the conditions necessary for supervised legal training.</p>	
Northern Territory		<p style="text-align: center;">Accreditation of the course</p> <p><i>Legal Profession Admission Rules 2007</i> (NT)</p> <p>Rule 5 Approved practical legal training requirements</p> <p>(1) Before approving a course or supplementary course for completion by a local applicant, the Board:</p> <p>(1) must have regard to Schedule 4, items 1 to 4; and</p> <p>(2) must be satisfied the course will provide the applicant with the practical legal training required to enable the applicant to achieve the level of competence required by the competency standards; and</p> <p>(3) may take into account that a corresponding authority in another jurisdiction has recognised the particular course as one which will enable an applicant for admission in that jurisdiction to achieve the level of competence required by the competency standards.</p> <p>(2) Before approving a course the employer of an articulated clerk offers the clerk wholly or partly in-house, the Board may require the clerk's employer or principal to provide the Board with the information necessary to satisfy itself as required by subrule (2)(b).</p> <p>Schedule 4 Practical Legal Training Competency Standards for Entry-Level Lawyers</p> <p>Includes LACC competency standards.</p>

Jurisdiction	Accreditation of Academic Requirements	Accreditation of Practical Legal Training
Queensland	Accreditation of the course	
	<p><i>Supreme Court (Admission) Rules 2004 (Qld)</i></p> <p>No specific provisions, it is presumed that the Chief Justice and Board will approve academic qualifications courses if it meets rule 6, which stipulates that the course must require:</p> <ul style="list-style-type: none"> (a) the equivalent of at least 3 years of full-time study of law; and (b) a satisfactory level of understanding and competence in the areas of knowledge set out in the admission guidelines (Priestley 11) for approving academic qualifications. 	<p><i>Supreme Court (Admission) Rules 2004 (Qld)</i></p> <p>No specific provisions, it is presumed that the Chief Justice and Board will approve practical legal training courses if it meets rule 7 which stipulates that the course must provide the required understanding and competence.</p> <p>Part 2A Supervised workplace experience Outlines the necessary conditions for supervised workplace experience.</p>
South Australia	Accreditation of the course	
	<p><i>Rules of the Legal Practitioners Education and Admission Council 2018 (SA)</i></p> <p>No specific provisions, however, rule 7(1)(b) indicates that LPEAC will approve academic courses if in their opinion it 'requires a satisfactory level of understanding and knowledge in the areas of knowledge referred to in Appendix A (Priestley 11).</p>	<p><i>Rules of the Legal Practitioners Education and Admission Council 2018 (SA)</i></p> <p>Rule 8(1)(a) indicates that LPEAC will approve practical legal training courses if in LPEAC's opinion it 'requires understanding and competence in the knowledge, values and skills, in each of the practice areas set out in that Appendix at the level of proficiency prescribed by that Appendix (Competency Standards).</p> <p>Rule 8(2)</p> <p>A course of study must, in order to qualify under subrule (1), include a period of workplace experience at an appropriate workplace, being:</p> <ul style="list-style-type: none"> (a) a workplace in Australia; or (b) a workplace overseas if prior approval has been given by the relevant approving body in respect of the workplace experience.

Jurisdiction	Accreditation of Academic Requirements	Accreditation of Practical Legal Training
Tasmania	<p style="text-align: center;">Accreditation of the provider</p> <p><i>Legal Profession (Board of Legal Education) Rules 2010 (Tas)</i></p> <p>Rule 5 Approved academic institutions</p> <p>(1) Each of the following is approved as an academic institution:</p> <ul style="list-style-type: none"> (a) the University of Tasmania; (b) another tertiary institution designated by the Board of Legal Education as an approved academic institution; (c) an institution recognised by another Australian jurisdiction as providing a course of study which: <ul style="list-style-type: none"> (i) satisfies the academic requirements for admission in that jurisdiction; and (ii) requires a student to acquire and demonstrate a satisfactory level of understanding and competence in the areas of knowledge set out in Schedule 1. <p>Rule 6 Monitoring and review of approved academic institution</p> <p>(1) The Board of Legal Education may monitor and review:</p> <ul style="list-style-type: none"> (a) the performance of, and the resources available to, an approved academic institution in providing a course of study; and (b) the content and conduct of a course of study or a subject provided by the approved academic institution. 	<p><i>Legal Profession (Board of Legal Education) Rules 2010 (Tas)</i></p> <p>Rule 9 Approved practical legal training provider</p> <p>(1) The Board of Legal Education may approve a practical legal training provider if it is satisfied that the proposed practical legal training provider will competently conduct an approved practical legal training course.</p> <p>(2) For the purposes of subrule (1), a course is competently conducted if it provides to its participants a satisfactory level of understanding and competence in the skills, values and practice areas set out in Schedule 2.</p> <p>Rule 10 Monitoring and review of approved practical legal training provider</p> <p>(1) The Board of Legal Education may monitor and review:</p> <ul style="list-style-type: none"> (a) the performance of, and the resources available to, an approved practical legal training provider; and (b) the content and conduct of the practical legal training course, or part of the course, provided by the approved practical legal training provider.
	<p style="text-align: center;">Accreditation of the course</p> <p><i>Legal Profession (Board of Legal Education) Rules 2010 (Tas)</i></p> <p>No specific provision; it is presumed that the board will approve the academic course if it meets the following requirements:</p> <ul style="list-style-type: none"> (a) is provided by an approved academic institution; (b) includes equivalent of at least 3 years of full-time study; and (c) requires a student to acquire and demonstrate a satisfactory level of understanding and competence in the areas of knowledge set out in Schedule 1 (Priestley 11). 	<p><i>Legal Profession (Board of Legal Education) Rules 2010 (Tas)</i></p> <p>No specific provision; it is presumed that the board will approve practical legal training courses if, in the opinion of the board, it requires a satisfactory level of understanding of and competence in the skills, values and practice areas set out in Schedule 2 (Competency Standards).</p>

*Legal Profession Uniform Admission Rules 2015***Rule 7 Accrediting law courses and practical legal training providers**

- (1) For the purposes of section 29 of the Uniform Law, the Board may, from time to time in accordance with this rule, accredit either or both of the following:
- (a) a law course for the purpose of providing the academic qualifications prerequisite specified in rule 5(1);
 - (b) a practical legal training provider for the purpose of providing the practical legal training prerequisite specified in rule 6(1).
- (2) In considering whether to accredit a course or provider referred to in subrule (1), the Board:
- (a) Must take into account any appraisal criteria for such courses or providers from time to time endorsed for use in other Australian jurisdictions; and
 - (a1) must take into account any report of a review conducted under rule 8 in relation to the course or provider; and
 - (b) May have regard to any other matter it considers material.
- (3) Unless the Board determines otherwise, any law course or practical legal training provider that is recognised by another Australian jurisdiction as:
- (a) satisfying either or both the academic requirements and the practical legal training requirements for admission in that jurisdiction; and
 - (b) requiring a student successfully to complete either or both of the academic qualifications prerequisite specified in rule 5(1) and the practical legal training prerequisite specified in rule 6(1),

is deemed respectively to be accredited by the Board under this rule, provided that the Board is also satisfied that:

- (c) the relevant law course is in all significant respects substantially equivalent to law courses accredited under subrule (1)(a) in this jurisdiction; or
- (d) the practical legal training provided by the practical legal training provider is in all significant respects substantially equivalent to practical legal training provided by practical legal training providers accredited under subrule (1)(b) in this jurisdiction,

as the case requires.

Rule 8 Monitoring and reviewing accredited law courses and practical legal training providers

- (1) The Board must monitor and may review any aspect of the performance of:
- (a) an accredited law course in providing the specified academic qualifications prerequisite, and
 - (b) an accredited practical legal training provider in providing the specified practical legal training prerequisite.
- (1A) A Review under subrule(1) may be conducted for the purposes of considering whether:
- (a) to accredit a law course or practical legal training provider; or
 - (b) to impose a condition on, or vary a condition attached to, the accreditation of a law course or practical legal training provider.
- (2) A review conducted under subrule (1):
- (a) in the case of a review conducted for the purposes of considering whether to accredit a law course or practical legal training provider—must take into account any appraisal criteria for law courses, practical legal training courses or practical legal training providers from time to time endorsed for use in other Australian jurisdictions; and
 - (b) in the case of any review—may have regard to any other matter it considers material.

Jurisdiction	Accreditation of Academic Requirements	Accreditation of Practical Legal Training		
Victoria	<p>Rule 9 Supervised legal training</p> <p>(1) The Board may determine whether supervised legal training may be undertaken for the purposes of rule 6(2)(b) in this jurisdiction.</p> <p>(2) If the Board makes a determination under subrule (1), Schedule 3 applies.</p> <p>Schedule 3 Supervised legal training</p> <p>Outlines the conditions necessary for supervised legal training.</p>			
Western Australia	<p style="text-align: center;">Accreditation of course and provider:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;"> <p><i>Legal Profession (Admission) Rules 2009 (WA)</i></p> <p>No specific provision, however, rule 5(1)(b) indicates that a qualification will be approved if the Board is satisfied that in completing that qualification, an individual will complete coursework covering all the areas of knowledge described in the Model Admission Rules 2015 Schedule 1 (Priestley 11)</p> <p>Rule 6(3) also indicates that in deciding whether to approve an academic qualification, the Board is to have regard to the Model Admission Rules (below).</p> </td> <td style="width: 50%; padding: 5px;"> <p><i>Legal Profession (Admission) Rules 2009 (WA)</i></p> <p>Rule 8 Approval of practical legal training requirements—institution (s. 21)</p> <p>(1) The Board may, on the application of a person who provides, or proposes to provide, a legal training course (the course provider), approve the course for the purposes of rule 7(2)(b).</p> <p>(2) An application for approval under subrule (1) is to be made to the Board in accordance with rule 4.</p> <p>(3) The Board may revoke an approval given under subrule (1) at any time.</p> <p>(4) In deciding whether to grant an approval under subrule (1) or to revoke an approval under subrule (3) the Board is to have regard to the Model Admission Rules (below).</p> </td> </tr> </table> <p style="text-align: center;"><i>Model Admission Rules</i></p> <p>4. Approving and Reviewing Courses and Institutions</p> <p>(1) In considering whether to approve a course or institution for the purposes of rule 2(1) or rule 3(2)(a), the Authority must take into account any appraisal criteria for such courses or institutions endorsed by the LACC and may have regard to any other matter it considers material.</p> <p>(2) Despite subrule (1), an Authority may give approval if a course or institution has been approved by an Authority in another State or Territory.</p> <p>(3) The Authority may decide to approve a course or institution subject to such conditions as it may specify.</p> <p>(4) The Authority must monitor and periodically review each course and institution approved by it. <i>Note: The practice in some jurisdictions is to review each approved course and institution at intervals not exceeding 5 years.</i></p> <p>(5) In monitoring or reviewing an approved course or institution, the Authority must take into account any appraisal criteria for such courses or institutions endorsed by the LACC and may have regard to the results of any recent review of the course or institution that might have been undertaken for other purposes, in addition to any other matter it considers material.</p> <p>(6) Following a review, the Authority may decide to approve or withdraw approval from a course or institution and may impose or alter any condition relating to its approval.</p>		<p><i>Legal Profession (Admission) Rules 2009 (WA)</i></p> <p>No specific provision, however, rule 5(1)(b) indicates that a qualification will be approved if the Board is satisfied that in completing that qualification, an individual will complete coursework covering all the areas of knowledge described in the Model Admission Rules 2015 Schedule 1 (Priestley 11)</p> <p>Rule 6(3) also indicates that in deciding whether to approve an academic qualification, the Board is to have regard to the Model Admission Rules (below).</p>	<p><i>Legal Profession (Admission) Rules 2009 (WA)</i></p> <p>Rule 8 Approval of practical legal training requirements—institution (s. 21)</p> <p>(1) The Board may, on the application of a person who provides, or proposes to provide, a legal training course (the course provider), approve the course for the purposes of rule 7(2)(b).</p> <p>(2) An application for approval under subrule (1) is to be made to the Board in accordance with rule 4.</p> <p>(3) The Board may revoke an approval given under subrule (1) at any time.</p> <p>(4) In deciding whether to grant an approval under subrule (1) or to revoke an approval under subrule (3) the Board is to have regard to the Model Admission Rules (below).</p>
<p><i>Legal Profession (Admission) Rules 2009 (WA)</i></p> <p>No specific provision, however, rule 5(1)(b) indicates that a qualification will be approved if the Board is satisfied that in completing that qualification, an individual will complete coursework covering all the areas of knowledge described in the Model Admission Rules 2015 Schedule 1 (Priestley 11)</p> <p>Rule 6(3) also indicates that in deciding whether to approve an academic qualification, the Board is to have regard to the Model Admission Rules (below).</p>	<p><i>Legal Profession (Admission) Rules 2009 (WA)</i></p> <p>Rule 8 Approval of practical legal training requirements—institution (s. 21)</p> <p>(1) The Board may, on the application of a person who provides, or proposes to provide, a legal training course (the course provider), approve the course for the purposes of rule 7(2)(b).</p> <p>(2) An application for approval under subrule (1) is to be made to the Board in accordance with rule 4.</p> <p>(3) The Board may revoke an approval given under subrule (1) at any time.</p> <p>(4) In deciding whether to grant an approval under subrule (1) or to revoke an approval under subrule (3) the Board is to have regard to the Model Admission Rules (below).</p>			

Appendix E. Supervised Legal Training Requirements for Each State and Territory

Jurisdiction	Supervised Legal Training Requirements
Australian Capital Territory	<p><i>Legal Profession Act 2006</i> (ACT)</p> <p>s 50 Statutory condition about practice as a solicitor</p> <p>(1) It is a statutory condition of a local practising certificate that the holder must not engage in unsupervised legal practice as a solicitor until the holder has completed a period of supervised legal practice prescribed by regulation.</p> <p><i>Legal Profession Regulation 2007</i> (ACT)</p> <p>s 13 Period of supervised legal practice—Act, s 50 and s 75</p> <p>(1) For the Act, section 50 (Statutory condition about practice as a solicitor), the period of supervised legal practice is:</p> <p>(a) If the practitioner completed practical legal training principally under the supervision of an Australian lawyer, whether involving articles of clerkship or otherwise, to qualify for admission to the legal profession in the ACT or another jurisdiction—a period or periods equivalent to 18 months, worked out under this section, after the day the practitioner’s first practising certificate was granted; or</p> <p>(b) If the practitioner completed other practical legal training to qualify for admission to the legal profession in the ACT or another jurisdiction—a period or periods equivalent to 2 years, worked out under this section, after the day the practitioner’s first practising certificate was granted.</p>
New South Wales	<p><i>Legal Profession Uniform Law 2014</i></p> <p>s 49 Statutory condition—to engage in supervised legal practice</p> <p>(1) It is a statutory condition of an Australian practising certificate granted in this jurisdiction that the holder must, in this jurisdiction, engage in supervised legal practice only, until the holder has completed:</p> <p>(a) if the holder completed practical legal training principally under the supervision of an Australian lawyer to qualify for admission to the Australian legal profession—a period or periods equivalent to 18 months of supervised legal practice; or</p> <p>(b) if the holder completed other practical legal training to qualify for admission to the Australian legal profession—a period or periods equivalent to 2 years of supervised legal practice.</p>
Northern Territory	<p><i>Legal Profession Act 2006</i> (NT)</p> <p>s 73 Statutory condition regarding practice—general</p> <p>(1) It is a statutory condition of a local practising certificate that the holder must engage in supervised legal practice only until the holder has completed:</p> <p>(a) if the holder completed practical legal training principally under the supervision of an Australian lawyer (whether involving articles of clerkship, graduate clerk or otherwise) to qualify for admission to the legal profession in this or another jurisdiction — a period or periods equivalent to 18 months supervised legal practice after the day the holder’s first practising certificate was granted; or</p> <p>(b) if the holder completed other practical legal training to qualify for admission to the legal profession in this or another jurisdiction — a period or periods equivalent to 2 years of supervised legal practice after the day the holder’s first practising certificate was granted.</p>

<p>Queensland</p>	<p><i>Legal Profession Act 2007 (Qld)</i></p> <p>s 56 Statutory condition regarding practice as solicitor</p> <p>(1) It is a statutory condition of a local practising certificate for a solicitor that the certificate holder must engage in supervised legal practice only, until the certificate holder has completed:</p> <p>(a) if the certificate holder completed supervised legal training to qualify for admission to the legal profession in this or another jurisdiction—a period or periods equivalent to 18 months of supervised legal practice, worked out under a regulation, after the day the holder’s first practising certificate was granted; or</p> <p>(b) if the holder completed other practical legal training to qualify for admission to the legal profession in this or another jurisdiction—a period or periods equivalent to 2 years of supervised legal practice, worked out under a regulation, after the day the holder’s first practising certificate was granted.</p>
<p>South Australia</p>	<p><i>Rules of the Legal Practitioners Education and Admission Council 2018 (SA)</i></p> <p>r 5 Supervised practice</p> <p>(1) For the purposes of these rules, practice by a practitioner qualifies as supervised practice if:</p> <p>(a) the work of the practitioner is controlled or managed by a legal practitioner who has been in practice for at least 5 years preceding the commencement of the proposed supervised practice and who holds a Category A or Category B or unrestricted Category C practising certificate during the period of supervised practice (the supervising practitioner); and</p> <p>(b) during the period of practice:</p> <p>(i) the practitioner is employed or engaged by the supervising practitioner;</p> <p>(ii) the practitioner is employed and the supervising practitioner is employed or engaged by the same person; or</p> <p>(iii) the practitioner is employed and the supervising practitioner is employed or engaged to perform the work of a legal practitioner in the same practice; and</p> <p>(c) during the period of supervised practice the practitioner and the supervising practitioner work, or substantially work, at the same location.</p> <p>(2) During the period of supervision, the practitioner and the supervising practitioner must, insofar as is reasonably practicable, comply with any guidelines issued by LPEAC for the purposes of this rule.</p> <p>(3) If the practitioner is subject to a condition which requires that the practitioner must not practice without supervision, the requirement for supervision will not cease until the Board of Examiners is satisfied that there has been adequate compliance with that condition such that it is appropriate for the person to be permitted to practice without supervision.</p>
<p>Tasmania</p>	<p><i>Legal Profession Act 2007 (Tas)</i></p> <p>s 59 Statutory condition regarding legal practice</p> <p>(1) It is a statutory condition of a local practising certificate that the holder must engage in supervised legal practice only, until the holder has completed:</p> <p>(a) if the holder completed practical legal training principally under the supervision of an Australian lawyer, whether involving articles of clerkship or otherwise, to qualify for admission to the legal profession in this or another jurisdiction, a period or periods equivalent to 18 months of supervised legal practice, worked out under relevant regulations, after the day the holder’s first local practising certificate was granted; or</p> <p>(b) if the holder completed other practical legal training to qualify for admission to the legal profession in this or another jurisdiction, a period or periods equivalent to 2 years of supervised legal practice, worked out under the regulations, after the day the holder’s first local practising certificate was granted.</p>

<p>Victoria</p>	<p><i>Legal Profession Uniform Law 2014</i></p> <p>s 49 Statutory condition—to engage in supervised legal practice</p> <p>(1) It is a statutory condition of an Australian practising certificate granted in this jurisdiction that the holder must, in this jurisdiction, engage in supervised legal practice only, until the holder has completed:</p> <ul style="list-style-type: none"> (a) if the holder completed practical legal training principally under the supervision of an Australian lawyer to qualify for admission to the Australian legal profession—a period or periods equivalent to 18 months of supervised legal practice; or (b) if the holder completed other practical legal training to qualify for admission to the Australian legal profession—a period or periods equivalent to 2 years of supervised legal practice.
<p>Western Australia</p>	<p><i>Legal Profession Act 2008 (WA)</i></p> <p>s 50 Restricted legal practice</p> <p>(1) In this section:</p> <p>required experience means:</p> <ul style="list-style-type: none"> (a) 18 months of supervised legal practice, in the case of a person who, to qualify for admission to the legal profession, completed practical legal training: <ul style="list-style-type: none"> (i) principally under the supervision of an Australian legal practitioner, whether involving articles of clerkship or otherwise; or (ii) involving articles of clerkship principally under the supervision of a person other than an Australian legal practitioner in accordance with the admission rules; <p>or</p> <ul style="list-style-type: none"> (b) 2 years of supervised legal practice, in the case of a person who, to qualify for admission to the legal profession in this or another jurisdiction, completed other practical legal training; <p>restricted legal practice means legal practice by a person who is an Australian legal practitioner:</p> <ul style="list-style-type: none"> (a) as an employee of a law practice if: <ul style="list-style-type: none"> (i) at least one partner, legal practitioner director or other employee of the law practice is an Australian legal practitioner who holds an unrestricted practising certificate; and (ii) the person engages in legal practice under the supervision of an Australian legal practitioner referred to in subparagraph (i); <p>or</p> <ul style="list-style-type: none"> (b) as a partner in a law firm if: <ul style="list-style-type: none"> (i) at least one other partner is an Australian legal practitioner who holds an unrestricted practising certificate; and (ii) the person engages in legal practice under the supervision of an Australian legal practitioner referred to in subparagraph (i); (c) as a WA government lawyer; or (d) as an interstate government lawyer; or (e) as an employee of a body that carries on a business other than the practice of law if the person engages in legal practice under the supervision of an Australian legal practitioner who holds an unrestricted practising certificate; or (f) in a capacity approved for the purposes of this paragraph under a legal profession rule. <p>...</p> <p>(4) A local legal practitioner who does not have the required experience must engage in restricted legal practice only.</p>

Appendix F. Continuing Professional Development Requirements for Each State and Territory¹

Jurisdiction	Governance Model / Responsible Body	Core Requirements	Format Requirements	Practitioner Differentiation	Compliance and Accountability
Victoria	<p>Uniform Law jurisdiction</p> <p>Legislation:</p> <p>Legal Profession Uniform Law Application Act (Vic) 2014</p> <p>Legal Profession Uniform Continuing Professional Development (Solicitors) Rules 2015 (NSW)</p> <p>Legal Profession Uniform Continuing Professional Development (Barristers) Rules 2015 (NSW)</p> <p>Regulatory bodies:</p> <p>Legal Services Council (Uniform Law)</p> <p>Law Council of Australia</p> <p>Australian Bar Association</p> <p>Victorian Legal Services Board and Commissioner</p>	<p>10 mandatory CPD points annually</p> <p>Minimum 1 point in:</p> <ul style="list-style-type: none"> ethics and professional responsibility practice management and business skills substantive law (or substantive law, practice and procedure, and evidence for barristers) professional skills (or barristers' skills for barristers) 	<p>Attendance at seminars, workshops (may be web-based); preparation of articles, CPD or educational materials;</p> <p>professional association committee work; postgraduate studies; private study of audio/visual material designed for updating knowledge/skills</p> <p>Limitations on numbers of hours that can be obtained in certain formats of CPD</p>	<p>Barristers / Solicitors – minor differences in respective rules</p> <p>Lawyers over 40 years' experience may be exempted</p> <p>Other discretionary grounds, e.g. hardship, illness</p>	<p>Compliance is a pre-condition for renewal of annual practising certificate</p> <p>Attendance record and evidence must be kept</p> <p>Annual self-certification with practising certificate application</p> <p>Subject to random audit</p> <p>Exemptions and rectification available</p> <p>A range of disciplinary and licensing sanctions available for non-compliance</p>

¹ This table is copied from Chris Humphreys, *Getting the Point?: Review of the Continuing Professional Development for Victorian Lawyers* (Report, Victorian Legal Services Board and Commissioner, November 2020) 66-71 <https://lsbc.vic.gov.au/sites/default/files/2020-11/CPD_Report_Final_0.pdf>.

Jurisdiction	Governance Model / Responsible Body	Core Requirements	Format Requirements	Practitioner Differentiation	Compliance and Accountability
NSW <i>NSW Law Society – CPD requirements for solicitors</i>	Uniform Law jurisdiction Legislation: Legal Profession Uniform Law Application Act 2014 (NSW) Legal Profession Uniform Continuing Professional Development (Solicitors) Rules 2015 Legal Profession Uniform Continuing Professional Development (Barristers) Rules 2015 Professional bodies Regulatory bodies: Legal Services Council (Uniform Law) Law Council of Australia Australian Bar Association Law Society of New South Wales New South Wales Bar Association	As above	As above	As above	As above

Jurisdiction	Governance Model / Responsible Body	Core Requirements	Format Requirements	Practitioner Differentiation	Compliance and Accountability
Queensland https://www.qls.com.au/For_the_profession/Your_legal_career/Continuing_professional_development_CPD/CPD_rules_policies	<p>Legislation:</p> <p>Legal Profession Act 2007 QLD</p> <p>Queensland Law Society Administration Rules 2005</p> <p>Administration Rules of the Bar Association of Queensland</p> <p>Regulatory bodies:</p> <p>Queensland Law Society</p> <p>The Bar Association of Queensland</p>	<p>10 mandatory points of CPD annually</p> <p>Solicitors</p> <p>Minimum 1 point in each of:</p> <ul style="list-style-type: none"> • Practical legal ethics, • Practice management and business skills • Professional skills (which allows case law and legislative updates) <p>Barristers</p> <p>Minimum 1 point in each of:</p> <ul style="list-style-type: none"> • Ethics and Professional Responsibility • Practice Management and Business Skills • Substantive Law, Practice and Procedure and Evidence; and • Barrister's Skills 	<p>Attendance at seminars, workshops (may be web-based); preparation of articles, CPD or educational materials; professional association committee work; postgraduate studies; private study of audio/visual material designed for updating knowledge/skills</p> <p>Caps on some formats but not on private study of audio visual material and is defined as a recording of an activity that took place in last CPD year</p> <p>Power to accredit CPD providers available but not used</p>	<p>Barristers / Solicitors</p>	<p>Compliance is a pre-condition for renewal of annual practising certificate</p> <p>Attendance record and evidence must be kept</p> <p>Annual self-certification</p> <p>Subject to random audit</p> <p>Extensions and exemptions available</p> <p>A breach of the CPD Rules is not conduct capable of amounting to a disciplinary offence</p>

Jurisdiction	Governance Model / Responsible Body	Core Requirements	Format Requirements	Practitioner Differentiation	Compliance and Accountability
Western Australia https://www.lpbwa.org.au/Legal-Profession/Continuing-Professional-Development	Legislation: Legal Profession Act 2008 The Legal Profession Rules 2009 Regulatory body: Legal Practice Board of Western Australia Note: WA is considering a bill to join Uniform Law scheme but with retention of current accreditation scheme for CPD providers	10 points of mandatory CPD annually Minimum 1 point in: <ul style="list-style-type: none"> Professional skills Ethics and professional responsibility Practice management and Substantive law 	Formats are available in two types: <ul style="list-style-type: none"> Interactive Activities Publication Activities A minimum of 6 points must be gained in either the first category alone or by a combination where publication activities do not exceed 5 points. Mandatory CPD provider accreditation by regulator No committee memberships		Compliance is a pre-condition for renewal of annual practising certificate Attendance record and evidence must be kept Annual self-certification Random audits Rectification and exemptions available Sanctions include licensing and disciplinary action
South Australia https://www.lawsocietysa.asn.au/Public/Lawyers/Professional_Development/Menu.aspx	Legislation: Legal Practitioners Act 1981 The Legal Practitioners Education and Admission Council Rules 2018 Regulatory body: Law Society of South Australia for all legal practitioners	10 mandatory CPD points annually 1 point in each of: <ul style="list-style-type: none"> Practical legal ethics Practice management or business skills and Professional skills Case and legislation updates allowed within professional skills 	Seminars, workshops, online viewing or listening, presenting publishing, committees, discussion groups with some worth 1 point per hour and others two such as publishing and editing a journal Caps imposed on various formats including online activities, publishing, preparation and committee work		Compliance is a pre-condition for renewal of annual practising certificate Attendance record and evidence must be kept Annual self-certification Rectification and exemption available Can impose late fees for lodgement Random audits include quality and value of CPD A range of disciplinary and licensing sanctions available for non-compliance

Jurisdiction	Governance Model / Responsible Body	Core Requirements	Format Requirements	Practitioner Differentiation	Compliance and Accountability
Tasmania https://lst.org.au/professional-development/	Legislation: Legal Profession Act 2007 Law Society of Tasmania Continuing Professional Development Scheme – Practice Guideline No. 4 Regulatory body: Law Society of Tasmania	10 mandatory CPD points annually Minimum 1 point in each of 4 areas of: <ul style="list-style-type: none"> • Practical legal ethics • Practice and business management skills • Professional skills, and • Substantive law 	Broad variety of formats including committee work, publishing and editing, seminar, workshops, courses of study, online viewing or other approved activity Activities conducted internal to a law firm specifically included Exclude reading case law or articles attendance at court, mentoring junior lawyers and repeated teaching Caps on points in different formats and maximum 6 points in one day	Barristers don't have to do any points in practice management and their professional skills point must be in advocacy or ADR	Compliance is a pre-condition for renewal of annual practising certificate Attendance record and evidence must be kept Annual self-certification Exemptions, extension of time and rectification available Random audit of 5% of the profession A range of disciplinary and licensing sanctions available for non-compliance
ACT https://www.actlawsociety.asn.au/practising-law/cpd	Legislation: Legal Profession Act 2006 Council of ACT Law Society imposes CPD condition under s 47 Regulatory body: ACT Law Society	10 mandatory CPD points annually Minimum 1 point in: <ul style="list-style-type: none"> • Legal ethics and professional responsibility • Practice management and business skills • Professional skills • Substantive law, and procedural law Volunteers only require 5 points	Includes workshops, seminars, presentation, discussion groups, publishing and editing, academic courses, online and committees Private study excluded Caps on committee work, writing and editing, preparing and presenting	Lawyers over 40 years' experience can be exempted	Compliance is a pre-condition for renewal of annual practising certificate Attendance record and evidence must be kept Annual self-certification Exemptions, extension of time and rectification available Random audits A range of disciplinary and licensing sanctions available for non-compliance

Jurisdiction	Governance Model / Responsible Body	Core Requirements	Format Requirements	Practitioner Differentiation	Compliance and Accountability
Northern Territory https://lawsocietynt.asn.au/for-the-profession/continuing-professional-development-cpd/professional-development-14.html	Legislation: Legal Profession Regulations 2007 Schedule 2 Regulatory body: NT Law Society	10 mandatory CPD Points annually Minimum 1 point in each of: <ul style="list-style-type: none"> • Professional ethics and responsibility; • Practice management and business skills; and • Professional skills in legal practice 	Preparation and presentation, attendance at seminars or lectures, private study of audio visual, writing and editing for publication or as part of post graduate study, committee participation Caps on all formats except for attendance and presentation at seminars or lectures		Compliance is a pre-condition for renewal of annual practising certificate. Annual self-certification Extensions of time and exemptions Random audits A range of disciplinary and licensing sanctions available for non-compliance

Appendix G. Table of International Pre-admission Academic Area Requirements

Jurisdiction	Subject Area Requirements for Law Curriculum ²	
	Undergraduate	JD
Australia LACC Prescribed Academic Areas of Knowledge	1. Criminal Law and Procedure 2. Torts 3. Contracts 4. Property 5. Equity 6. Company Law 7. Administrative Law 8. Federal and State Constitutional Law 9. Civil Dispute Resolution 10. Evidence 11. Ethics and Professional Responsibility	

² Note: this table includes the list of subjects and does not include a detailed description of the subject areas if there is one prescribed.

Jurisdiction	Subject Area Requirements for Law Curriculum ²	
	Undergraduate	JD
England and Wales	Solicitors – Solicitors Regulation Authority Requirements:	
	<p>The SRA requirement now is for a degree in any subject, not necessarily a law degree</p> <p>The SRA's 'Statement of Legal Knowledge' sets out the 'Functioning Legal Knowledge' (FLK) that solicitors are required to demonstrate at the point of qualification, which is examined by the Solicitors Qualifying Examination (SQE) in accordance with the Assessment Specification for SQE1.</p> <p>FLK assessed in the Solicitors Qualifying Examination Part 1:</p> <ol style="list-style-type: none"> 1. Ethical and Professional Conduct 2. Business Law and Practice 3. Dispute Resolution 4. Contract 5. Tort 6. Legal System of England and Wales 7. Constitutional and Administrative Law 8. EU Law and Legal Services 9. Property Practice 10. Wills and the Administration of Estates 11. Solicitors Accounts 12. Land Law 13. Trusts 14. Criminal Law and Practice <p>Principles of taxation area also examined but in the context of:</p> <ul style="list-style-type: none"> • Business law and practice; • Property law and practice; and • Wills and the administration of estates. 	
	Barristers – Bar Standards Board Requirements:	
	<p>Qualified Law Degree requires the curriculum to cover the 'foundations of legal knowledge' which will still be relevant for any wishing to join the Bar. The foundations of legal knowledge include the following:</p> <ol style="list-style-type: none"> 1. Criminal Law 2. Equity and Trusts 3. Law of the European Union (this may change because of Brexit) 4. Obligations 1 (Contract) 5. Obligations 2 (Tort) 6. Property/Land Law 7. Public Law (Constitutional Law, Administrative Law and Human Rights Law) 	<p>JD will only be a Qualified Law Degree for BSB purposes if the curriculum covers the seven foundations of legal knowledge and skills associated with graduate legal work (e.g. legal research):</p> <ul style="list-style-type: none"> • Criminal Law • Equity and Trusts • Law of the European Union (this may change because of Brexit) • Obligations 1 (Contract) • Obligations 2 (Tort) • Property/Land Law • Public Law (Constitutional Law, Administrative Law and Human Rights Law)

Jurisdiction	Subject Area Requirements for Law Curriculum ²	
	Undergraduate	JD
United States American Bar Association Standards for 2021-2022	N/A	<p>ABA Standards for 2020–2021 require at a minimum that the law curriculum offers:</p> <p>Standard 302. LEARNING OUTCOMES A law school should establish learning outcomes that shall, at a minimum, include competency in the following:</p> <ul style="list-style-type: none"> a. Knowledge and understanding of substantive and procedural law; ... <p>Standard 303. CURRICULUM</p> <ul style="list-style-type: none"> a. A law school shall offer a curriculum that requires each student to satisfactorily complete at least the following: <ol style="list-style-type: none"> 1. One course of at least two credit hours in professional responsibility that includes substantial instruction in rules of professional conduct, and the values and responsibilities of the legal profession and its members; 2. One writing experience in the first year and at least one additional writing experience after the first year, both of which are faculty supervised; and 3. One or more experiential courses totalling at least 6 credit hours (and meets Standard 304): <ul style="list-style-type: none"> b. A law school shall provide substantial opportunities for: <ol style="list-style-type: none"> 1. law clinics or field placement(s); and 2. student participation in pro bono legal services, including law-related public service activities.

Jurisdiction	Subject Area Requirements for Law Curriculum ²	
	Undergraduate	JD
Canada National Requirements for Canadian Common Law Degree Programs	<p>Foundations of Law</p> <p>The applicant must have an understanding of the foundations of law, including:</p> <ol style="list-style-type: none"> principles of common law and equity; the process of statutory construction and analysis; and the administration of the law in Canada. <p>Public Law of Canada</p> <p>The applicant must have an understanding of the principles of public law in Canada, including:</p> <ol style="list-style-type: none"> the constitutional law of Canada, including federalism and the distribution of legislative powers, the Charter of Rights and Freedoms, human rights principles and the rights of Aboriginal peoples of Canada; Canadian criminal law; and the principles of Canadian administrative law. <p>Private Law Principles</p> <p>The applicant must demonstrate an understanding of the principles that apply to private relationships, including:</p> <ol style="list-style-type: none"> contracts; torts; and property law. <p>Canadian Ethics and Professionalism</p>	
New Zealand Council of Legal Education Professional Examinations in Law Regulations 2008	<ol style="list-style-type: none"> The Legal System The Law of Contracts The Law of Torts Criminal Law Public Law Property Law (Land Law and Equity and the Law of Succession are treated as equivalents) Legal Ethics 	N/A
Hong Kong Law Society of Hong Kong, Becoming a Solicitor	<ol style="list-style-type: none"> Contract Tort Constitutional Law Land Law Criminal Law Equity Civil Procedure Criminal Procedure Evidence Business Associations Commercial Law <p>For students who did not pass the following three subjects at a Hong Kong university, they must also demonstrate competence in:</p> <ol style="list-style-type: none"> Hong Kong Constitutional Law Hong Kong Land Law Hong Kong Legal System 	

Jurisdiction	Subject Area Requirements for Law Curriculum ²	
	Undergraduate	JD
Scotland Foundation Programme Outcomes (requirements for LLB)	KNOWLEDGE <i>Knowledge and Sources of law</i> <ul style="list-style-type: none"> • Legal Systems and institutions affecting Scotland • Persons • Property • Obligations • Commerce • Crime SKILLS <i>Subject-specific Skills</i> <ul style="list-style-type: none"> • Sources and Research <i>General Transferable Intellectual Skills</i> <ul style="list-style-type: none"> • Analysis, Synthesis, Critical Judgement and Evaluation • Independence and Ability to Learn <i>Key Personal Skills</i> Communication and Literacy <ul style="list-style-type: none"> • Personal Management • Numeracy • Information Technology • Teamwork and Collaboration VALUES AND CONTEXT <i>Subject-specific</i> <ul style="list-style-type: none"> • Values and Context 	

Appendix H. Table of International Pre-admission PLT Requirements

Jurisdictions	Practical Legal Training/Equivalent Requirements
<p>Australia LACC Practical Legal Training Competency Standards for Entry-Level Lawyers</p>	<p style="text-align: right;">Skills</p> <ul style="list-style-type: none"> • Lawyer’s Skills • Problem Solving • Work Management and Business Skills • Trust and Office Accounting <p>Compulsory Practice Areas</p> <ul style="list-style-type: none"> • Civil Litigation Practice • Commercial and Corporate Practice • Property Law Practice <p>And two of the following Optional Practice Areas</p> <ul style="list-style-type: none"> • Administrative Law and Practice • Banking and Finance • Criminal Law Practice • Consumer Law Practice • Employment and Industrial Relations Practice • Family Law and Practice • Planning and Environmental Law Practice • Wills and Estate Practice <p>Values</p> <ul style="list-style-type: none"> • Ethics and Professional Responsibility <p>NB: Tasmania³</p>
<p>New Zealand Council of Legal Education Professional Examinations in Law Regulations 2008</p>	<ul style="list-style-type: none"> • Interviewing • Advising • Fact investigation and analysis • Writing • Drafting • Negotiation • Mediation • Advocacy • Problem solving • Practical legal research and analysis • Office and personal management

³ See **Appendix B**.

Jurisdictions	Practical Legal Training/Equivalent Requirements
England and Wales	<p>Solicitors – Solicitors Regulation Authority: With the SRA's introduction of the SQE, SQE2 is now the mechanism for the 'Legal Skills Assessment'.</p> <p>The legal skills assessments in SQE2 are specified as:</p> <ul style="list-style-type: none"> • Client interview and attendance note/legal analysis • Advocacy • Case and matter analysis • Legal research • Legal writing • Legal drafting • [and at least one assessment involving negotiation] <p>Tested across the Functioning Legal Knowledge (FLK) areas of:</p> <ul style="list-style-type: none"> • Criminal Litigation (including advising clients at the police station) • Dispute Resolution • Property Practice • Wills and Intestacy, Probate Administration and Practice • Business organisations, rules and procedures (including money laundering and financial services) • Questions in these practice areas may draw on underlying black letter law in the Functioning Legal Knowledge (FLK) as follows: <ul style="list-style-type: none"> • Criminal Litigation: Criminal liability • Dispute Resolution: Contract law and tort • Property Practice: Land law • Wills and Intestacy, Probate Administration and Practice: Trusts • Business organisations, rules and procedures: Contract law. • Professionalism and ethics will be core and pervasive throughout. <p>Questions involving taxation may arise in Property Practice; Wills and Intestacy, Probate Administration and Practice; and Business organisations, rules and procedures.</p> <hr/> <p>Barristers – Bar Standards Board's Professional Statement identifies four key 'day-one' competencies in some detail</p> <ul style="list-style-type: none"> • Distinctive characteristics (such as advocacy or relevant legal knowledge); • Personal values and standards (including integrity and self-awareness); • Working with others (colleagues and clients); and • Practice management.

Jurisdictions	Practical Legal Training/Equivalent Requirements
<p>Hong Kong Regulations for the Postgraduate Certificate in Laws ('PCLL')</p>	<p>A person must have successfully completed a Postgraduate Certificate in Laws (PCLL) to enter into a 'trainee solicitor' contract.</p> <p>PCLL must cover:</p> <ul style="list-style-type: none"> • Civil Litigation • Criminal Litigation • Corporate and Commercial Transactions • Property Transactions I • Professional Practice and Management <p>And candidates must choose three of the following subjects:</p> <ul style="list-style-type: none"> • Trial Advocacy • Commercial Dispute Resolution • Personal Injury Litigation • Matrimonial Practice and Procedure • Property Litigation • Drafting Commercial Agreements • Property Transactions II • Listed Companies • China Practice • Wills, Trusts and Estate Planning • Use of Chinese in Legal Practice • Employment Law and Practice
<p>Canada National Requirements for Canadian Common Law Degree Programs</p>	<p style="text-align: center;">Skills Competencies</p> <p>The applicant must have demonstrated the following competencies:</p> <ol style="list-style-type: none"> 1. Problem-Solving In solving legal problems, the applicant must have demonstrated the ability to: <ul style="list-style-type: none"> a. identify relevant facts; b. identify legal, practical, and policy issues and conduct the necessary research arising from those issues; c. analyze the results of research; d. apply the law to the facts; and e. identify and evaluate the appropriateness of alternatives for resolution of the issue or dispute. 2. Legal Research The applicant must have demonstrated the ability to: <ul style="list-style-type: none"> a. identify legal issues; b. select sources and methods and conduct legal research relevant to Canadian law; c. use techniques of legal reasoning and argument, such as case analysis and statutory interpretation, to analyze legal issues; d. identify, interpret and apply results of research; and e. effectively communicate the results of research. 3. Oral and Written Legal Communication The applicant must have demonstrated the ability to: <ul style="list-style-type: none"> a. communicate clearly in the English or French language; b. identify the purpose of the proposed communication; c. use correct grammar, spelling and language suitable to the purpose of the communication and for its intended audience; and d. effectively formulate and present well-reasoned and accurate legal argument, analysis, advice or submissions.

Ethics and Professionalism

The applicant must have demonstrated an awareness and understanding of the ethical dimensions of the practice of law in Canada and an ability to identify and address ethical dilemmas in a legal context, which includes:

1. Knowledge of:
 - a. the relevant legislation, regulations, rules of professional conduct and common or case law and general principles of ethics and professionalism applying to the practice of law in Canada. This includes familiarity with:
 1. circumstances that give rise to ethical problems;
 2. the fiduciary nature of the lawyer's relationship with the client;
 3. conflicts of interest;
 4. the administration of justice;
 5. duties relating to confidentiality, lawyer-client privilege and disclosure;
 6. the importance of professionalism, including civility and integrity, in dealing with clients, other counsel, judges, court staff and members of the public; and
 7. the importance and value of serving and promoting the public interest in the administration of justice.
 2. Skills to:
 - a. identify and make informed and reasoned decisions about ethical problems in practice; and
 - b. identify and engage in critical thinking about ethical issues in legal practice.

Jurisdictions	Practical Legal Training/Equivalent Requirements
<p>Scotland</p>	<p>Diploma in Professional Legal Practice (PEAT 1): PEAT 1: MANDATORY OUTCOMES</p> <ol style="list-style-type: none"> 1. Business, Financial and Practice Awareness 2. Private Client 3. Conveyancing 4. Litigation <p>CORE OUTCOMES</p> <ol style="list-style-type: none"> 1. Professionalism 2. Professionalism Communication (professional relationships and team working; transactional research; interviewing; negotiation; writing and drafting; use of technology; and advocacy) 3. Professional Ethics and Standards (regulatory framework and professional standards; duties to the court; duties to the profession; client-solicitor relationship; conflict of interest; and confidentiality) <p><i>OR</i></p> <p>Traineeship (PEAT 2):</p> <ol style="list-style-type: none"> 1. Professionalism 2. Professional Communication (professional relationships and team working; communication with clients; provide legal advice to clients; legal research; interviewing; negotiation; writing and drafting; use of technology; advocacy; presentation) 3. Professional Ethics and Standards (regulatory framework and professional standards; duties to the court; duties to the profession; client-solicitor relationship; conflict of interest; and confidentiality) 4. Business, Commercial, Financial and Practice Awareness (business, commercial and financial awareness; and practice awareness and work management)
<p>United States American Bar Association Standards for 2021-2022</p>	<p style="text-align: center;">Standard 302. LEARNING OUTCOMES</p> <p>A law school shall establish learning outcomes that shall, at a minimum, include competency in the following:</p> <ol style="list-style-type: none"> (a) Knowledge and understanding of substantive and procedural law; (b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context; (c) Exercise of proper professional and ethical responsibilities to clients and the legal system; and (d) Other professional skills needed for competent and ethical participation as a member of the legal profession.

Appendix I. Threshold Learning Outcomes (TLOs) for LLB/LLB(Hons) and JD

The Threshold Learning Outcomes (TLOs) for the Bachelor of Laws/ Bachelor of Laws (Hons) are as follows⁴

TLO 1: Knowledge

Graduates of the Bachelor of Laws will demonstrate an understanding of a coherent body of knowledge that includes:

- (a) the fundamental areas of legal knowledge, the Australian legal system, and underlying principles and concepts, including international and comparative contexts,
- (b) the broader contexts within which legal issues arise, and
- (c) the principles and values of justice and of ethical practice in lawyers' roles.

TLO 2: Ethics and professional responsibility

Graduates of the Bachelor of Laws will demonstrate:

- (a) an understanding of approaches to ethical decision-making,
- (b) an ability to recognise and reflect upon, and a developing ability to respond to, ethical issues likely to arise in professional contexts,
- (c) an ability to recognise and reflect upon the professional responsibilities of lawyers in promoting justice and in service to the community, and
- (d) a developing ability to exercise professional judgement.

TLO 3: Thinking skills

Graduates of the Bachelor of Laws will be able to:

- (a) identify and articulate legal issues,
- (b) apply legal reasoning and research to generate appropriate responses to legal issues,
- (c) engage in critical analysis and make a reasoned choice amongst alternatives, and
- (d) think creatively in approaching legal issues and generating appropriate responses.

⁴ Sally Kift, Mark Israel and Rachael Field, *Bachelor of Laws Learning and Teaching Academic Standards Statement* (ALTC Learning and Teaching Academic Standards Project, 2010) <<http://disciplinestandards.pbworks.com/w/page/52746378/Law>>.

TLO 4: Research skills

Graduates of the Bachelor of Laws will demonstrate the intellectual and practical skills needed to identify, research, evaluate and synthesise relevant factual, legal and policy issues.

TLO 5: Communication and collaboration

Graduates of the Bachelor of Laws will be able to:

- (a) communicate in ways that are effective, appropriate and persuasive for legal and non-legal audiences, and
- (b) collaborate effectively.

TLO 6: Self-management

Graduates of the Bachelor of Laws will be able to:

- (a) learn and work independently, and
- (b) reflect on and assess their own capabilities and performance, and make use of feedback as appropriate, to support personal and professional development.

The Threshold Learning Outcomes (TLOs) for the Juris Doctor (JD) are as follows⁵

JD TLO 1: Knowledge

Graduates of the Juris Doctor will demonstrate an advanced and integrated understanding of a complex body of knowledge that includes:

- (a) The fundamental areas of legal knowledge, the Australian legal system and underlying principles and concepts, including international and comparative contexts;
- (b) The broader contexts within which legal issues arise;
- (c) The principles and values of justice and of ethical practice in lawyers' roles; and
- (d) Contemporary developments in law, and its professional practice.

JD TLO 2: Ethics and professional responsibility

Graduates of the Juris Doctor will demonstrate:

- (a) An advanced and integrated understanding of approaches to ethical decision making;
- (b) An ability to recognise and reflect upon, and a developing ability to respond to, ethical issues likely to arise in professional contexts;

⁵ *Juris Doctor Threshold Learning Outcomes* (2012) ('JD TLOs') <<http://disciplinestandards.pbworks.com/w/page/52746378/Law>>. The TLOs for the JD are comparable in scope to those for the LLB/LLB(Hons), but pitched at the standard appropriate to AQF Level 9 Master Degree (Extended).

- (c) An ability to recognise and reflect upon the professional responsibilities of lawyers in promoting justice and in service to the community; and
- (d) A developing ability to exercise professional judgment.

JD TLO 3: Thinking skills

Graduates of the Juris Doctor will be able to:

- (a) Identify and articulate complex legal issues;
- (b) Apply legal reasoning and research to generate appropriate jurisprudential and practical responses to legal issues;
- (c) Engage in critical analysis and make reasoned and appropriate choices amongst alternatives; and
- (d) Demonstrate sophisticated cognitive and creative skills in approaching legal issues and generating appropriate responses.

JD TLO 4: Research skills

Graduates of the Juris Doctor will demonstrate the intellectual and practical skills needed to justify and interpret theoretical propositions, legal methodologies, conclusions and professional decisions, as well as to identify, research, evaluate and synthesise relevant factual, legal and policy issues.

JD TLO 5: Communication and collaboration

Graduates of the Juris Doctor will be able to:

- (a) Communicate in ways that are effective, appropriate and persuasive for legal and non-legal audiences; and
- (b) Collaborate effectively.

JD TLO 6: Self-management

Graduates of the Juris Doctor will be able to:

- (a) Learn and work with a high level of autonomy, accountability and professionalism; and
- (b) Reflect on and assess their own capabilities and performance, and make use of feedback as appropriate, to support personal and professional development.

Appendix J. SRA Statement of Solicitor Competence⁶

Statement of solicitor competence

This document takes a broad definition of competence as being ‘the ability to perform the roles and tasks required by one’s job to the expected standard’ (Eraut & du Boulay, 2001).

The advantage of this definition is that it recognises that requirements and expectations change depending on job role and context. It also recognises that competence develops, and that an individual may work ‘competently’ at many different levels, either at different stages of their career, or indeed from one day to the next depending on the nature of their work.

The competence statement should be read holistically. By way of example, the requirement in A1e to respect diversity and act fairly and inclusively pervades all areas of work and underpins all of the competences in the statement.

Solicitors should be able to:

A Ethics, professionalism and judgment

A1 Act honestly and with integrity, in accordance with legal and regulatory requirements and the SRA Standards and Regulations, including:

- a. Recognising ethical issues and exercising effective judgment in addressing them
- b. Understanding and applying the ethical concepts which govern their role and behaviour as a lawyer
- c. Identifying the relevant SRA principles and rules of professional conduct and following them
- d. Resisting pressure to condone, ignore or commit unethical behaviour
- e. Respecting diversity and acting fairly and inclusively

A2 Maintain the level of competence and legal knowledge needed to practise effectively, taking into account changes in their role and/or practice context and developments in the law, including:

- a. Taking responsibility for personal learning and development
- b. Reflecting on and learning from practice and learning from other people

⁶ Solicitors’ Regulation Authority, ‘Competence Statement’ (Web Page) <<https://www.sra.org.uk/solicitors/resources/cpd/competence-statement/>>.

- c. Accurately evaluating their strengths and limitations in relation to the demands of their work
- d. Maintaining an adequate and up-to-date understanding of relevant law, policy and practice
- e. Adapting practice to address developments in the delivery of legal services

A3 Work within the limits of their competence and the supervision which they need, including:

- a. Disclosing when work is beyond their personal capability
- b. Recognising when they have made mistakes or are experiencing difficulties and taking appropriate action
- c. Seeking and making effective use of feedback, guidance and support where needed
- d. Knowing when to seek expert advice

A4 Draw on a sufficient detailed knowledge and understanding of their field(s) of work and role in order to practise effectively, including:

- a. Identifying relevant legal principles
- b. Applying legal principles to factual issues, so as to produce a solution which best addresses a client's needs and reflects the client's commercial or personal circumstances
- c. Spotting issues that are outside their expertise and taking appropriate action, using both an awareness of a broad base of legal knowledge¹ (insofar as relevant to their practice area) and detailed knowledge of their practice area

A5 Apply understanding, critical thinking and analysis to solve problems, including:

- a. Assessing information to identify key issues and risks
- b. Recognising inconsistencies and gaps in information
- c. Evaluating the quality and reliability of information
- d. Using multiple sources of information to make effective judgments
- e. Reaching reasoned decisions supported by relevant evidence

B Technical legal practice

B1 Obtain relevant facts, including:

- a. Obtaining relevant information through effective use of questioning and active listening
- b. Finding, analysing and assessing documents to extract relevant information
- c. Recognising when additional information is needed
- d. Interpreting and evaluating information obtained

- e. Recording and presenting information accurately and clearly.

B2 Undertake legal research, including:

- a. Recognising when legal research is required
- b. Using appropriate methods and resources to undertake the research
- c. Identifying, finding and assessing the relevance of sources of law
- d. Interpreting, evaluating and applying the results of the research
- e. Recording and presenting the findings accurately and clearly.

B3 Develop and advise on relevant options, strategies and solutions, including:

- a. Understanding and assessing a client's commercial and personal circumstances, their needs, objectives, priorities and constraints
- b. Ensuring that advice is informed by appropriate legal and factual analysis and identifies the consequences of different options

B4 Draft documents which are legally effective and accurately reflect the client's instructions including:

- a. Being able to draft documents from scratch as well as making appropriate use of precedents
- b. Addressing all relevant legal and factual issues
- c. Complying with appropriate formalities
- d. Using clear, accurate and succinct language

B5 Undertake effective spoken and written advocacy, including:

- a. Preparing effectively by identifying and mastering relevant facts and legal principles
- b. Organising facts to support the argument or position
- c. Presenting a reasoned argument in a clear, logical, succinct and persuasive way
- d. Making appropriate reference to legal authority
- e. Complying with formalities
- f. Dealing with witnesses appropriately
- g. Responding effectively to questions or opposing arguments
- h. Identifying strengths and weaknesses from different parties' perspectives

B6 Negotiate solutions to clients' issues, including:

- a. Identifying all parties' interests, objectives and limits
- b. Developing and formulating best options for meeting parties' objectives
- c. Presenting options for compromise persuasively
- d. Responding to options presented by the other side
- e. Developing compromises between options or parties

B7 Plan, manage and progress legal cases and transactions, including:

- a. Applying relevant processes and procedures to progress the matter effectively
- b. Assessing, communicating and managing risk
- c. Bringing the transaction or case to a conclusion

C Working with other people

C1 Communicate clearly and effectively, orally and in writing, including:

- a. Ensuring that communication achieves its intended objective
- b. Responding to and addressing individual characteristics effectively and sensitively
- c. Using the most appropriate method and style of communication for the situation and the recipient(s)
- d. Using clear, succinct and accurate language avoiding unnecessary technical terms
- e. Using formalities appropriate to the context and purpose of the communication
- f. Maintaining the confidentiality and security of communications
- g. Imparting any difficult or unwelcome news clearly and sensitively

C2 Establish and maintain effective and professional relations with clients, including:

- a. Treating clients with courtesy and respect
- b. Providing information in a way that clients can understand, taking into account their personal circumstances and any particular vulnerability
- c. Understanding and responding effectively to clients' particular needs, objectives, priorities and constraints
- d. Identifying and taking reasonable steps to meet the particular service needs of all clients including those in vulnerable circumstances
- e. Identifying possible courses of action and their consequences and assisting clients in reaching a decision
- f. Managing clients' expectations regarding options, the range of possible outcomes, risk and timescales
- g. Agreeing the services that are being provided and a clear basis for charging
- h. Explaining the ethical framework within which the solicitor works
- i. Informing clients in a timely way of key facts and issues including risks, progress towards objectives, and costs
- j. Responding appropriately to clients' concerns and complaints

C3 Establish and maintain effective and professional relations with other people, including:

- a. Treating others with courtesy and respect
- b. Delegating tasks when appropriate to do so
- c. Supervising the work of others effectively

- d. Keeping colleagues informed of progress of work, including any risks or problems
- e. Acknowledging and engaging with others' expertise when appropriate
- f. Being supportive of colleagues and offering advice and assistance when required
- g. Being clear about expectations
- h. Identifying, selecting and, where appropriate, managing external experts or consultants

D Managing themselves and their own work

D1 Initiate, plan, prioritise and manage work activities and projects to ensure that they are completed efficiently, on time and to an appropriate standard, both in relation to their own work and work that they lead or supervise, including:

- a. Clarifying instructions so as to agree the scope and objectives of the work
- b. Taking into account the availability of resources in initiating work activities
- c. Meeting timescales, resource requirements and budgets
- d. Monitoring, and keeping other people informed of, progress
- e. Dealing effectively with unforeseen circumstances
- f. Paying appropriate attention to detail

D2 Keep, use and maintain accurate, complete and clear records, including:

- a. Making effective use of information management systems (whether electronic or hard copy), including storing and retrieving information
- b. Complying with confidentiality, security, data protection and file retention and destruction requirements

D3 Apply good business practice, including:

- a. Demonstrating an adequate understanding of the commercial, organisational and financial context in which they work and their role in it
- b. Understanding the contractual basis on which legal services are provided, including where appropriate how to calculate and manage costs and bill clients
- c. Applying the rules of professional conduct to accounting and financial matters
- d. Managing available resources and using them efficiently

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