

The Hon Justice François Kunc
Chair of the Admissions Committee
Chair of the Law Admissions Consultative Committee
PO Box H326
Australia Square NSW 1215

By email: submissions@legalservicescouncil.org.au

Dear Justice Kunc

Re: Consultations on Practical Legal Training Reforms

The Law Institute of Victoria ('LIV') welcomes the opportunity to provide its views to the Legal Services Council's Admissions Committee ('LSC') and the Legal Admissions Consultative Committee ('LACC') in relation to the national review of Practical Legal Training ('PLT'). This letter responds to the LSC LACC Consultation Paper proposals with reference to Interim Report on PLT Reform findings prepared by the Legal Practitioners' Admission Board of New South Wales ('LPAB') which relied on views from the National Practical Legal Training Research Survey Report ('the National Survey').

The proposed reforms would have significant implications for the legal education sector. As such, the LIV consulted widely with Victorian law graduates, law students, law practices, PLT providers, the Victorian Legal Services Board and Commissioner ('VLSB+C'), the Victorian Legal Admissions Board ('VLAB') and law schools to inform our position. The LIV is the peak representative body for the legal profession in Victoria, and as Victoria is the host jurisdiction for the Legal Profession Uniform Law ('LPUL') enabling legislation, we strongly advocate for a national, coordinated approach to PLT reform that promotes professional interoperability through common expectations.

The LIV is also uniquely placed to comment on PLT reform through our partnership with ACAP University College (ACAP) to deliver a Victorian tailored PLT program. The LIV/ACAP PLT program was launched to provide PLT students the opportunity to genuinely connect with the Victorian legal profession, providing valuable networking, mentoring and career opportunities. We understand that ACAP will also provide a its own submission to the LSC separately in its capacity as a provider.

Executive Summary

A national legal education and PLT review is timely and necessary to ensure PLT continues to adapt to meet student and employer contemporary needs, and community expectations. There is broad sector consensus that required legal professional skills have changed significantly since the last PLT review undertaken in 2017. This is underpinned through the National Survey findings which suggest there are identifiable opportunities to improve PLT to achieve a better cost-value ratio.

However, the LIV is concerned about the proposed reforms, including:

- The likely significant impact to working, regional, rural and remote law graduates that can impact broader access to justice.
- The uncertainty around whether the proposed reforms will deliver cost-savings for students, which were a primary driver of the initial review. In particular, the reforms may merely only cost-shift and ultimately meet graduates through either higher university fees and/or lower graduate wages.
- The impact to small law practices, including:
 - The potential loss of staff for weeks at a time to attend face-to-face learning, and
 - Additional regulatory burden to adapt employment practices to meet Post-Admission Legal Training requirements.
- The timing of reforms, in particular, that reforms may be rushed without proper consideration of jurisdiction-specific impacts and thorough interrogation of evidence and assumptions.

Scope of the National Review

1. The LIV agrees with the LSC and LACC that this is a vital opportunity to consider PLT effectiveness as a discrete phase to prepare law students for practice, and consider more broadly how practical knowledge and skills are delivered throughout the legal education spectrum. With this in mind, the LIV considers it is unnecessarily limiting to centre the Review on one proposal modelled on the NSW Interim Report's preferred approach.
2. The LIV understands the desire from some stakeholders to seek swift reform. However, it is critical to first gain consensus around which competencies a contemporary graduate should display upon admission to legal practice. As it stands, the LIV does not assume the issues facing the sector are entirely universal or settled. The results from the National Survey, whilst instructive, are not sufficient to progress a stand-alone model that precludes a discussion of core competencies. The LIV also cautions against drawing conclusions from the National Survey that might suggest the dominance of certain PLT providers in the market reflect the characteristics of all PLT programs. Solutions for the review need to be designed for the entire marketplace before proceeding to impose significant, disruptive requirements on PLT providers and universities.
3. Once consensus around competencies is achieved there is greater scope to consider where, within legal education spectrum, those competencies are best taught to achieve optimum PLT outcomes. The LIV recognises the consultation considers competencies through the proposed new skills schedule (Appendix F). However, proposing the LPAB-preferred solution suggests that these issues are mostly settled and provides no alternatives where they may already exist. For example, the VLSB+C Early Career Lawyer Capability Framework performs a similar function to the skills schedule but presents a less prescriptive, task-based alternative that focuses on outcomes that place greater emphasis on professional judgment, ethical reasoning, communication styles, adaptability and developmental progression.

The LCC/LACC proposal for reforms to PLT ('the Proposal')

4. The LIV previously provided commentary to the LCA on the PLT in response to the LPAB's Discussion Paper on Practical Legal Training Reform. The LSC/LACC Proposal is substantively very similar, and therefore many of the LIV's comments remain relevant here.
5. The LACC proposal recommends a model for reform that reduces the quantity of PLT learning time by moving practical competencies to either law school curriculum or a newly proposed form of continuing professional development (referred as Post Admission Legal Training ('PALT')). The intent seeks to achieve a more cost-effective delivery model and improve PLT quality. This would appear in response to claims that graduates are not sufficiently competent at point of admission.
6. The LIV has serious concerns whether the proposed model will achieve this outcome, including:
 - 6.1. Limiting access to justice:** The LSC, LACC and NSW LPAB acknowledge that the proposal's requirement for all PLT providers to provide four weeks in person face-to-face teaching, with limited exceptions, will make it more difficult for rural, regional and remote (RRR) students, those with disabilities, illness and those who work whilst studying to access PLT. While the justifications for preferencing face-to-face learning are acknowledged, the LIV emphatically doubts that any benefits are proportionate to the impact of introducing greater barriers to accessing legal education.
 - 6.2. Cost-shifting rather than cost-reduction:** The proposal to shorten PLT course duration and work experience requirements may lower PLT student costs. However, this may merely be a cost-shifting exercise where the burden is subsequently placed on universities (through greater requirements to incorporate practical skills into law courses) and law practices (who are responsible for facilitating access to PALT). Ultimately, students may still incur this cost-shift burden as universities and law practices may recover costs via higher university course fees, and/or lower graduate wages. In addition, any cost-reduction measures are not necessarily realised due to fee-help removal and increase in travel and accommodation expenses associated with accessing in-person PLT programs.
 - 6.3. Impact on small firms:** Larger law practices are likely well equipped to integrate PALT outcomes via their existing clerkship programs that likely mirror proposed requirements. However, smaller practices do not have this luxury. The LIV is reluctant to heighten legal training responsibility for small businesses or potentially deprive them of law graduates for four weeks to attend face-to-face sessions. This is particularly true during the current period of heightened administrative regulations such as AML/CTF.
 - 6.4. Creating an anti-competitive environment:** The LIV has heard that Victorian law schools will struggle to incorporate a prescriptive list of practical training and skills in their programs by the start of the 2028 academic year, despite some already incorporating practical content. Smaller law schools are particularly constrained in this context. Similarly, smaller PLT providers lack the financial reserves of larger market providers such as the College of Law, who remain the

primary provider of PLT in all states and territories (excluding Tasmania). The LIV cautions against progressing a model that is tailored towards addressing potential deficiencies in any single provider when the proposal will disrupt smaller providers who have operated fairly based on existing regulatory frameworks and market demand for many years.

- 6.5. Interoperability and uniformity:** The proposed reforms seem to ignore jurisdictional legislative constraint. For example, it is likely that the VLSB+C are unable to impose a novel discretionary condition on practicing certificates without legislative amendment. The LIV maintains that making large-scale PLT reform in isolation from other Australian jurisdictions is undesirable. The LIV favours a national, coordinated solution to PLT reform that promotes professional interoperability.

Response to the consultation paper

Reflections on Victoria and the National Survey

7. Victorians were underrepresented in the National Survey as a proportion of legal graduates nationwide despite having the largest proportion of respondents. Even so, the National Survey provides some key learnings that can inform an understanding of PLT in Victoria.
 - 7.1. Among respondents, the two largest PLT providers were the College of Law (58 per cent) and Leo Cussen (28 per cent). As already acknowledged, the LIV remains sensitive to the fact that the National Survey's findings are more likely to be representative of the College of Law PLT product than the market more broadly.
 - 7.2. A significant proportion of respondents work in small-to-medium firms and must remain at the forefront of reform design noting the financial and capacity constraints facing small businesses:
 - 7.2.1. Twenty-five per cent of respondents worked in a law practice/company/department with less than five other legal practitioners.
 - 7.2.2. Forty-nine per cent of respondents worked in a practice with less than 20 other practitioners.
 - 7.3. Among respondents, 60 per cent completed PLT full time, but 77 per cent were also working in the legal profession while completing their course work. If this is representative, then the proposed reforms would prevent over three quarters of Victoria's legal graduates from working while undertaking PLT. This is a significant change, particularly given that 41 per cent of respondents in Victoria relied on HECS-HELP/FEE-HELP.
 - 7.4. The majority of respondents were either satisfied (50 per cent) or ambivalent (22 per cent) towards the PLT coursework delivery methods, despite the reported evidence of graduates favouring face-to-face learning. The LIV cautions against removing hybrid delivery flexibility in Victoria on the basis of the reported dissatisfaction of the remaining 28 per cent of respondents.
8. Ultimately, while Victorian respondents displayed a comparatively positive sentiment about the work experience components of PLT, the LIV recognises that the majority were notably dissatisfied with

the value for money proposition of PLT and the extent to which it prepares early career lawyers for engagement in the profession.

Law Courses (Questions 1.1-1.3)

9. For the majority of Victorian law schools, practical knowledge and skills are already incorporated into compulsory and elective courses as a fundamental component to achieve Graduate Learning Outcomes. The benefits of the status quo are that universities are afforded the flexibility to determine which skills are most complementary to the course content and material being explored without compromising their theoretical focus. By way of example, the LIV has heard that many law schools are successfully integrating court and client communication-based skills into their courses by requiring viva-style assessments that utilise mock trial settings, oral presentations or require client-specific communications. In the context of growing complaints relating to communication with clients to the VLSB+C, law schools in Victoria appear to be adapting their curricula to build the skills required of modern lawyers.
10. The reforms, if implemented, would essentially formalise existing practice. To this extent, the LIV supports the proposal insofar as it encourages the uptake of practical skills and knowledge among law schools that may not yet have considered this. However, the LIV maintains concerns that imposing an overly prescriptive list (such as the skills in the Appendix F Schedule) unilaterally may disrupt existing Graduate Learning Outcomes and be difficult to integrate into a crowded curriculum. Further, there should be consideration about whether, in some circumstances, academia is the appropriate forum to teach and deliver practical legal employment skills. For example, some academics may have spent significant time out of legal practice and not necessarily be up to date with how to deliver client-based legal services.
11. Incidentally, the Schedule is currently designed to define the skills needed at the point of admission - describing the skills that PLT already builds as opposed to prescribing exactly how they must be learned. If the intent is to evaluate the continuum of skills and competencies, the LSC and LACC should ensure that the Schedule first builds on existing law school Graduate Learning Outcomes as well as existing PLT standards, before supporting a post admission capability framework (see reference below to VLSB+C framework).

Reform of PLT – Practical knowledge and skills (Questions 2.1-2.6)

12. In reviewing the Skills Schedule in Appendix F, the LIV has considered the VLSB+C's Early Career Lawyer Capability Framework ('Framework'), which was developed in response to feedback from supervisees and supervisors who wanted greater guidance about the capabilities lawyers should develop during supervised legal practice ('SLP').
13. The LIV strongly prefers the Skills Schedule at Appendix F over the current PLT Competency Schedule as it broadly aligns with the capability areas articulated by the VLSB+C. However, the Skills Schedule presents those capabilities in a more prescriptive, task-based form. In comparison,

the LIV prefers how the Framework places greater emphasis on professional judgment, ethical reasoning, adaptability and developmental progression.

14. The LIV prefers the VLSB+C approach as it places focus on 'capability domains' and 'performance indicators'. This places emphasis on the outcomes sought through SLP, rather than the exhaustive list of skills necessary to prove competency. This provides a more comprehensive picture of a competent early-career lawyer. The LIV would support closer alignment between the Skills Schedule and the approach taken within the Framework.
15. The LIV also supports maintaining the option for graduates to undertake Supervised Workplace Training as a way to complete PLT. Although only approximately 7 per cent of newly admitted Victorians choose to pursue this method, the LIV believes it only adds benefit to afford graduates and firms the additional choice of an alternative admission pathway with robust regulatory oversight.

Reform of PLT – Delivery of PLT (Questions 3.1-6.2)

Face-to-face requirement

16. Concerning face-to-face learning requirements, the LIV understands that:
 - 16.1. The LACC is aware that the measure will reduce the flexibility with which students can decide how to undertake their PLT training (even with the proposed exemptions for those with a disability, illness, living in RRR areas, or those with financial disadvantage) and that,
 - 16.2. This is justified due to face-to-face learning's observable benefits over online or hybrid delivery models (confirmed by a majority of respondents in the National Survey).
17. The LIV believes that the best learning is rooted in human interaction. However, the LIV is concerned that there is not sufficient evidence to justify the proposed limitation on access to education. While the LIV believes that graduates should be incentivised to self-select a course delivery model that prioritises in-person classes, the LSC and LACC must not underestimate the financial burden created by having to travel from a RRR area to complete a course, nor for those who are working full or part time, and who may struggle to obtain extended leave from work. With current inflationary pressures some graduates may face a choice of groceries or rent, or face-to-face education. This a choice that a law graduate should not have to make, particularly if they can get largely the same outcome from online delivery. Further, law graduates already take on more HECS debt than any generation prior, and will potentially lose access to FEE-HELP due to the proposed reforms.
18. From a business perspective, the proposed reforms would mean that businesses who employ paralegals or staff undertaking PLT are deprived of those employees for weeks at a time. In turn, this would limit capacity to deliver legal services to the community and impact access to justice.
19. The proposal also relies on an assumption that providers are willing or able to provide remote or online opportunities in addition to the costs of face-to-face learning for the minority of students who obtain an exemption from the face-to-face requirement.

Duration of course

20. The LIV also queries whether PLT quality is improved by condensing course timeframes from 450 hours to four weeks. The LIV understands PLT content scope will decrease. However, it is difficult to conceptualise how a four-week course (including assessments) will ensure graduates are better equipped with the skills for entering legal practice than the product delivered in a diploma-level course. In particular, the LIV cautions against assuming that a condensed delivery model will ensure that information will be reinforced or retained better than in a spaced-out course.

Workplace Experience (Questions 7.1-12.1)

21. The LIV notes that the proposed retrospective recognition of work experience requirements to recognise work experience undertaken during law school is already adopted by some providers. For example, the College of Law, permits a student to count up to 60 days of pre-course work experience in addition to 15 days of post-course work experience.
22. The LIV would raise that there are practical limitations on a provider's ability to certify work experience that has occurred in the distance past. It may be preferable for the LSC/LACC to only permit work experience that has occurred in the two years prior to commencing PLT course work. This would also prevent graduates from counting work experience that might have occurred early on in their degree, prior to them having received the practical understanding of the law from their university study necessary to practice certain skills.

Post-Admission Legal Training (PALT) (Questions 13.1-16.1)

23. The introduction of PALT will require employers and supervisors to take on additional responsibilities in the PLT process. This will include steering the direction of post-admission learning outcomes by helping to choose the subject and provider delivering the PALT course. The LIV notes the following issues with the proposal.
- 23.1. As previously noted, the LIV has heard that incorporating PALT requirements will not be disruptive or dissimilar in practice to the current clerkship processes led by larger firms. Representatives from those same firms did however express serious concerns about the capacity of smaller firms to find, fund and facilitate access to PALT.
- 23.2. PALT is expected to substitute training in the three mandatory and two elective practice areas currently taught in PLT, narrowing the scope of subject areas that graduates are currently exposed to. Although the National Survey reflects that specific practice area knowledge was often viewed by respondents as irrelevant relative to a graduate's expected area of practice, the LIV has also heard from graduates that exposure to broader subject matter in this initial period is critical to ensure graduates do not have siloed knowledge. Shifting all areas of law into sector-specific modules risks narrowing graduates' focus and preventing them from benefitting from the intersectionality of the legal profession.

- 23.3. The LIV queries whether graduates will have total choice over which PALT courses they may wish to pursue. As courses will likely be funded by employers, there may be pressure placed on a graduate to choose a specialisation that does not align with their interests.
24. A strong consultation theme from the NSW Interim Report and National Survey is that workplace based on-the-job training provides the best practical legal training. The paper relies on this to justify reducing PLT length to facilitate earlier legal profession entry. The LIV cautions that shifting the supervisory burden to law practices to meet PLT training mandates requires sufficient volume of legal practitioners with flexibility and capacity (and the requisite expertise to act as supervisors) to meet market demand.
25. The LIV queries whether Australian law practices can meet this demand, noting that a justification to transition to the current PLT framework was to reduce cost pressure on individual law practices and the profession. The shift may reduce consistency with which practical skills are taught, which is a central issue the current PLT model was introduced to address.

Delivery of PALT (Questions 17.1-19.1)

26. The LIV's views on legal education access also apply in the context of PALT delivery.

Clinical Legal Education (Questions 20.1-20.5)

27. The LIV supports the Committee considering including clinical legal education (CLE) as a PLT component. CLE offers reciprocal benefits for both law students and legal assistance service providers. It provides students with exposure to work that is a fundamental pillar of our justice system and assists meet growing legal assistance demand with enthusiastic and energised young lawyers. For this reason, CLE is often already considered in the context of advanced standing for existing PLT work experience requirements. However, there is limited regulatory evidence about the consistency of delivery practices in CLE programs.
28. The LIV understands that some of the service providers in Victoria's legal assistance sector will provide a direct submission to the LSC and LACC, alongside law schools and PLT providers that operate legal assistance clinics in partnership. In support of these programs, the LIV has heard repeatedly during consultation that CLE clinics are a source of great satisfaction for those who undertake PLT there and help to shape the careers of emerging lawyers who participate and differentiate them as skilled communicators.
29. As such, the LIV considers it vital that regulators and peak bodies advocate and prioritise for delivery and development of CLE programs. However, the LIV recommends caution in mandating CLE as a component of PLT without sufficient resourcing to support the transition. Community Legal Centres (CLCs), Aboriginal and Torres Strait Islander Legal Services (ATSILS), Family Violence Prevention and Legal Services (FVPLS) and Victoria Legal Aid highlight that the growing demand for legal assistance continues to significantly outstrip available resources. The LSC and LACC must ensure

that any reforms do not flood an already overburdened sector with the responsibilities associated with supervising and training short-term employees who may not remain in the sector long-term.

Supervision of early career lawyers (Questions 21.1-21.2)

30. The LIV supports establishing a working group to develop additional guidance and resources for legal supervisors undertaking SPL to assist the profession better understand industry standards and improve consistent PLT delivery across jurisdictions. This would also require a clear definition of competencies expected pre and post-admission. The LIV has contributed to VLSB+C guidance materials, templates and training that may be useful to adapt in other jurisdictions.

Implementation timing (Questions 22.1)

31. As already noted, the LIV considers that the proposal to implement interim changes on a trial basis as early as 2028 is too abrupt and places an unreasonable burden on law schools and PLT providers to rapidly adapt their educational products and business models to incorporate reforms.
32. The legal profession has facilitated private sector involvement as custodians of legal education for the last 50 years and this must continue. Providers, such as ACAP, and law schools have operated fairly and implemented the current regulatory framework to meet market demand. This must be recognised and appreciated by affording providers and universities clear milestones and realistic timeframes to adapt teaching materials and ensure students are not disadvantaged by any potential transitional arrangements.
33. A short implementation timeframe will have an anti-competitive impact on the marketplace for providers in particular, noting the market dominance of the College of Law. Transitional arrangements will be expensive and require providers to operate with higher costs to adapt to any new regulatory requirements, which the LIV experienced firsthand in partnership with ACAP.
34. The LIV also notes that to implement the reform proposals, the VLSB+C will be reliant on legislative amendments to the enabling legislation of the Legal Profession Uniform Law (LPUL), as it is unable to impose a discretionary condition on practising certificates in the same manner as the LPAB. The LIV defers to the VLSB+C's submission to the LSC and LACC which will discuss any required regulatory amendments in more detail and supports a longer implementation schedule to ensure that any necessary changes are not rushed.

Next Steps

The LIV appreciates the opportunity to provide its views to the LSC and LACC on this important subject and will continue to monitor the progress of PLT reforms. Should you wish to discuss any aspect of this submission further, please contact Basil Jones, Legal Policy Officer, at [REDACTED].

Sincerely yours,



Adam Awty
Chief Executive