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By email: submissions@legalservicescouncil.org.au

Law Society of Tasmania - Response to Review of Practical Legal Training Consultation Paper

Thank you for the opportunity to provide submissions.

Form of response

The consultation paper poses a number of questions. Those questions are predicated on an assumption that the model proposed by the NSWLPAB is the preferred vehicle for delivering PLT reform. There appears to be an acceptance by the LSC/LACC of the NSW model without any apparent critical review of the various alternatives with respect to PLT reform that the NSW paper details.

As a result, what has been disseminated for national consultation is the seeking of views on a model which itself has been decided upon without consultation.

Because of the nature of the Society's concerns, these submissions outline its concerns, rather than answering the consultation questions.

Empirical evidence

The Society has been unable to find any or any substantive evidence or research that supports the model that has been chosen and which in turn would support a degree of confidence that it will lead to positive outcomes for the profession.

Cost

The consultation paper makes the point that the cost of PLT is likely to be less. Even if that is the case, any real cost savings are likely to be illusory. What the consultation paper proposes is cost shifting rather than cost saving; with costs shifting to the higher education sector and to the legal regulation sector.

It may be true to say that PLT will be shorter and less expensive, however the proposed model

necessitates the creation of an entirely new legal regulatory sector, being PALT.

Practising certificate (PC) regulators becoming PALT regulators

As a general rule, organisations that are responsible for PC regulation have little or no knowledge or expertise with respect to establishing frameworks for conducting higher education, nor licensing organisations that wish to provide such education or assessing their performance. The Society certainly does not possess the necessary resources, knowledge or expertise to oversee, licence, assess and generally regulate PALT; nor should it be expected to gain such knowledge and expertise. It performs its statutory and other functions well with its six full-time equivalent staff and simply has no capacity to take on further, onerous regulatory functions without significant additional resources.

The above begs the question as to how the proposed PALT is to be financed. The above paragraph raises a question with respect to the resources of legal regulators. The second part of the equation is who is to pay for the 30 hours of PALT post admission? Whether it is law firm employers or graduate employees, the proposed system is likely to be a significant disincentive to the employment of graduate lawyers by small law firms, unable to absorb further costs to the business of operating a legal practice. The alternative is to have graduate employees pay for PALT themselves, making small practices unattractive employers.

There is also a legal issue in that there is a real question as to whether the Legal Profession Act provides the Society with the power to accredit and assess PALT providers.

Regulatory issues

It is proposed to begin the new regime in 2028. The Society states categorically that it will not be in a position to regulate PALT by January 2028.

There appears a very real risk, particularly if the proposed timetable is followed, that the proposed changes to PLT will be actioned in some states and territories and not others. This will create significant regulatory issues. For example, a NSW graduate who completes the PLT requirements for NSW is unlikely to be eligible for admission in other, non-PALT states. Similarly, a NSW graduate who has not completed the two years PALT requirements, may find it difficult to be granted a PC in another state.

The above begs the question, 'why the rush?'

Access to justice

A four week PLT course will not qualify for fee help financial assistance. This may have a significant impact on a graduate's ability to undertake the course. The course may therefore be limited to those who can afford to pay up-front.

There appears to be little thought given to rural, regional and remote graduates with delivery proposed to be on a face-to-face basis and exemptions given on a case-by-case basis. This is likely to have a significant impact on rural, regional and remote graduates who, it seems, are expected to travel to and from and find accommodation for a four week period on top of the cost of any PLT course.

Clinical Legal Practice

Given the very significant financial and other issues raised above, the suggestion that the introduction of clinical legal practice be seriously considered calls into question the awareness

level that the LSC and LACC have as to the gravity of the changes recommended and the likely time and resources required to effect them.

The current PLT system as a barrier to enter the profession

This possibility is asserted in the discussion paper. To the Society's knowledge, this has not been seriously raised as an issue in the past and no evidence has been provided to substantiate this suggestion. With respect, it is not a contention that should be given any weight. Rather, it is the proposed changes identified in these submissions that are likely to impose barriers to entry rather than the maintenance of the status quo.

PLT courses continuing in their current form

It is suggested at page 44 that some courses may wish to continue as they currently operate. The Tasmanian legal practice course is given as an example. The suggestion is fanciful. No graduate is going to choose a 6 month course while also still having to complete PALT when the alternative is to complete a 4 week course and PALT.

Local considerations

In Tasmania, a not insignificant number of practitioners are taken to hold practising certificates. This includes practitioners employed under the State Service Act, which captures the DPP, the State Litigator's Office, the Crown Solicitor and Tasmania Legal Aid. Under the current regime graduate practitioners in these roles have no PC to which any restricted PC conditions can be attached.

Insofar as barristers are concerned, the basic prerequisite for the granting of a barrister's PC is to have undergone two years supervised legal practice.

Conclusion

The need for PLT reform is obvious. However, the rushed, exclusive and overbearing manner in which the current reform process has taken place is a disappointment to the Society and to many others working in PLT. The proposed model has fundamental, significant issues and does not enjoy the support of the Law Society of Tasmania. The current reform process needs to pause and consider a reform model that is inclusive and has at its core an acknowledgement that any reform needs to be approached on a national, collaborative basis.

Yours faithfully



Amelia Higgs
President