

29 January, 2015

Professor Sandford Clark
Chair
Admissions Committee
Legal Services Council
Level 11
170 Phillip Street
SYDNEY

Dear Professor Clark,

SUBMISSION ON DRAFT UNIFORM ADMISSION RULES

As the organisation representing all of the providers of Practical Legal Training (PLT) courses in Australia, APLEC is grateful for the opportunity to make submissions on the Draft Admission Rules recently published by the Legal Services Council.

Each of our member institutions will have their own responses to the Draft Admission Rules and several will make their own submissions. The matters raised in this submission are matters of common concern to all our Australian members.

1. The different treatment of PLT undertaken via an accredited PLT provider compared to PLT undertaken via Supervised Legal Training (SLT)

APLEC accepts that the PLT prerequisite can be satisfied by completion of either a PLT course or SLT. However, in our submission, both pathways to admission should be required to demonstrate achievement of the same or similar outcomes and should be subject to the same or similar standards of regulation and oversight by the local regulatory authority. The Draft Rules are unsatisfactory in that they do not provide for such parity of treatment.

Under the Draft Rules PLT providers:

- must be accredited by the Board - Rule 5(2)(a)
- are subject to reaccreditation on nationally referenced criteria and subject to any conditions the Board may impose – Rule 6(1)(2)(3)
- may have their accreditation withdrawn and conditions varied or imposed – Rule 6 (7)
- are subject to mandatory monitoring and discretionary periodic review by the Board – Rule 7(1)(2)(3)

Where, as is the case with almost all Australian PLT providers, the PLT course is offered as a Graduate Diploma or Certificate the provider is also subject to the rigorous quality and standards requirements of the Tertiary Education Quality and Standards Agency (TEQSA).

Since 2012 APLEC members have also participated in our own benchmarking scheme designed to monitor and improve the quality and standards of participating courses.

In contrast, under the Draft Rules the situation with SLT is:

- training must take place under a training plan that the Board has determined adequately provides for the trainee to acquire and demonstrate the competency standards – Rule 5(2)(b)
- at the time of approving the training plan the Board must be satisfied that the employer is able to provide the training – Schedule 3, clause 11(a)
- the trainee must give an undertaking to perform consistently with the training plan – Schedule 3, clause 9 (f)
- however, in all three cases above the Board’s determinations and requirements are prospective only and there is no provision for monitoring or evaluating the quality of the training or reviewing whether the training plan is being adequately implemented.
- the trainee must meet the requirements of Rule 5(1) but there is no mechanism prescribed as to how the trainee will demonstrate the competencies or how their achievement of the competency standards will be assessed (apart from the standards in Ethics, Lawyers’ Skills and Risk Management where formal training and assessment is mandated) – Schedule 3, clause 6(1)(b)(c)
- the trainee is required to keep a work diary but there is no requirement for this to be reviewed or assessed by anyone – Schedule 3, clause 6(2)
- determination as to whether the trainee has met the requirements of the training plan seems to rest entirely with the supervising employer
- there is a provision for the Board to terminate a training plan if the Board considers that the training plan is not being complied with but there is no mechanism prescribed by which the Board might become aware of such non-compliance – Schedule 3, clause 12(1)(e).

Recommendation

- (i) That the Draft Rules be amended to provide for:
- mandatory monitoring by the Board of the satisfactory implementation of training plans, perhaps on the basis of random sampling
 - prescription as to how a trainee’s achievement of the competency standards is to be demonstrated and assessed as satisfactory
 - a requirement that the work diary be reviewed by the Board.

2. The operation of the accreditation and reaccreditation provisions in Rule 6

Rule 6(2) – APLEC is unclear as to the intention behind this Rule. Does the Board use the term ‘criteria’ to mean ‘standards’ for courses? Or is the reference to the actual conduct of the process of accreditation and re-accreditation? The accreditation and re-accreditation process must of course be transparent. Standards or criteria should be developed and agreed as most suitable for ensuring that the purposes of the respective law courses and practical legal training courses are achieved. APLEC notes that the Victorian Council of Legal Education consulted widely and nationally during 2011 in developing its ‘Standards for PLT Providers and Courses’ and these have been applied in the review process. If the Board wishes to incorporate the views of local admitting authorities into its proposed accreditation and re-accreditation processes, then APLEC submits that a national set of standards be adopted and published. This would give certainty to all providers and ensure a clear and transparent process.

Rule 6(7) - APLEC submits that in conformity with principles of natural justice and transparency, the Board should be required to give substantial notice to a provider that the Board is considering withdrawing accreditation or amending any condition of the accreditation. The Rules should include a provision that where the Board considers that a provider’s accreditation or a condition of that accreditation should be withdrawn or amended, the Board notifies the provider that its accreditation is under consideration, give reasons for the consideration and invite the provider to make submissions and address the reasons. The Rules should either themselves set out in detail the process available for submission and appeal against decision, or provide that the Board may make and publish policies and procedures.

Recommendations

- (ii) That a national set of criteria or standards for accreditation of PLT providers be developed in consultation with all Australian admitting authorities, APLEC and other stakeholders.
- (iii) That Draft Rule 6 be amended to provide for reasonable notice of withdrawal of accreditation or amendment of conditions and the reasons for such withdrawal or amendment, a process for submissions by the PLT provider in response and a process for appeal.

3. The requirement to provide information to the Board or a reviewer at the provider’s own cost [Rule 7(4)]

Recommendation

- (iv) That the word “reasonable” be inserted prior to the word “information” in Rule 7 (4).

4. The administrative burden on PLT providers of the requirement to provide student conduct reports on every student [Rule 18]

The current requirement in Victoria that an academic conduct report be provided in respect of every applicant for admission imposes a substantial administrative burden on PLT providers. APLEC is unaware of any evidence to suggest that the Victorian requirement is any more effective in ensuring that persons admitted to practice are fit and proper than the disclosure requirements that apply elsewhere. Rule 18 is particularly problematic where substantial time has elapsed between completion of a PLT course and application for admission, as the report must be prepared within 6 months prior to the application being made. This presents potential problems in retrieving the student's records and ensuring the accuracy of the report. It is submitted that the requirement in Rule 18 is unnecessary and that clear disclosure guidelines would be adequate to deal with the issue of adverse matters in a student's academic record.

Recommendation

- (v) That Rule 18 be deleted from the Draft Rules or, if this is not accepted, that a student conduct report should only be required to be provided where the applicant has been the subject of any disciplinary action.

5. Potential inequity or unreasonableness in the application of Rules 22 and 23

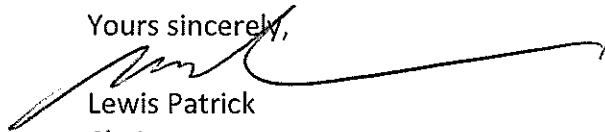
We submit that clear guidelines are needed to ensure the fair, equitable and reasonable application of the requirements for health assessments and health assessment reports, preferably only requiring disclosure where the applicant's condition is not being managed in a way that enables them to satisfactorily carry out the inherent requirements of practice as an Australian lawyer. APLEC would be happy to contribute its experience and expertise and to be involved in the development of such guidelines.

Recommendation

- (vi) That guidelines for disclosure of matters relating to the health of an applicant be developed, with the involvement of APLEC and other stakeholders.

APLEC strongly supports the development and implementation of Uniform Admission Rules and makes these submissions and recommendations with the intention of improving the Rules to ensure their effective implementation and consistent regulation of the practical legal training prerequisite.

Yours sincerely,



Lewis Patrick
Chair