

The Role of Practice in Legal Education: National Report for Australia
by
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National Report for AUSTRALIA
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Guidelines for National Reporters

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I. Major Aims of the Session

The major aims of this session on the role of practice in legal education are:

1. To obtain a broad profile of national legal education,
2. To determine the extent to which law schools provide curricular offerings, through courses or components of courses, with a primary focus on the practice of law,
3. To assess what practice skills, ethics and values are taught within the law school,
4. To determine if, prior to licensure as a practicing attorney, students or law school graduates must complete a period of apprenticeship or other practical training,
5. To assess whether legal education should take a greater or lesser role in offering practice-related courses or course components as a formal part of legal education

II. Questions to be addressed by the national reporters

In your report, please address each of the following questions, related to the above objectives.

INTRODUCTION

The legal profession in Australia, including legal education, is not regulated by a single national body but by various State- and Territory-based bodies. Thus, the answers to these questions will vary slightly based on the different legislative frameworks and practices of the regulatory bodies in each State. The answers below focus on the nature of legal education in New South Wales (NSW, the most populous state), with some references to legal education in other jurisdictions.

Overall, legal education and entry to the legal profession can usefully be analysed by comparing who acts as “gatekeepers” to the profession (Anderson & Ryan, forthcoming). One possible gatekeeper is the legal profession itself. Traditionally, in England, this comprises solicitors and barristers, who administer qualification examinations. This system has also been influential in former British colonies like Australia (Antons, 2001).

However, an alternative gatekeeper is the university system. Countries like Australia (and New Zealand) have moved mainly to this model since around the 1960s, by basically requiring all lawyers to have passed an LLB or similar (undergraduate or initial) law degree. (NSW is unusual in retaining an alternative, perhaps reflecting the strength of the profession vis-à-vis universities in that state. The Legal Profession Admission Board allows students instead to study for its exams, mostly in evening classes, preparing students for the Diploma in Law - treated as equivalent to an LLB for qualifying as a lawyer in NSW. This program is nominally affiliated with the University of Sydney, but instructors and course content are quite separate from its Law School: compare www.usyd.edu.au/lec/ with www.law.usyd.edu.au.) It is true that throughout Australia there are now-short programs for Practical Legal Training (PLT) necessary in addition to an LLB for admission as lawyers, and these administered eg in NSW primarily by the “College of Law”, but some law schools sometimes administer those too (eg the University of Technology in Sydney).

Nonetheless, Australia also has affinities with a model centred on a third possible gatekeeper: the market (for law graduates). The US epitomizes this model because basically anyone can pass even the hardest state bar examination – but if only after multiple attempts or with poor results, that person will not be able to compete in the market and get a good job as a lawyer (especially if also a graduate from a less well-regarded law school or with poor university grades). Australia is similar because the proliferation of law schools particularly since the late 1980s allows basically everyone to get some form of LLB, and basically everyone can pass the short PLT programs if they can afford them. But if their university grades are underwhelming, they will find it very difficult to actually practice as lawyers.

Australia also shows some influence from a model centred on a fourth gatekeeper: the state. This arises because the government funds universities, especially through limited numbers of Commonwealth Supported Places (CSP) for many students undertaking LLB degrees – whereby students pay lower fees to the law schools, and the government pays them a subsidy per student. Yet, as explained below, Australia has witnessed not only the emergence of a few private law schools since the late 1980s. There is also a growing tendency for public law schools to seek full-fee-paying LLB students (as well as international students, and LLM or other similar postgraduate students, who are always full-fee-paying – note however that an LLM or such qualification does not allow admission to the legal profession). Still, this situation remains very different from (more “civil law tradition”) countries like Germany or Japan (Abe & Nottage 2008), where the state – with more or less consultation with the legal profession – sets a national legal examination. (Usually the latter also opens up careers in the judiciary or procuracy, not just as lawyers, and often therefore it is accompanied by some post-exam training at state rather than private expense.)

Australia’s legacy of the legal profession itself as a gatekeeper is reflected not only in the NSW LPAB exams alternative to the LLB, but also more generally in the profession’s broad control over what must

be taught in the LLB (the “Priestley 11”, named after a committee chaired by a then-Judge, described further below). Combined with a (possibly accelerating) shift towards the market as major gatekeeper to the profession, this generates strong pressures to make legal education “practice-oriented” even in universities. However, their law schools are increasingly integrated in wider academic communities, nationally and internationally, and the government also has interests in law students graduating with a broader perspective (as well as incentivising law schools in other ways by offering funding for research, not necessarily linked to teaching). The net effect since the 1970s, at least until recently, has been for law school education to become less practice-oriented and more interdisciplinary and theoretical – although less so, for example, compared to the top US law schools (see eg Coper 2007-8 and Nottage 2008, both containing further references). Whether this balance is optimal or sustainable is difficult to assess, but hopefully we can explore this in broader comparative and theoretical perspective in Washington DC in August 2010.

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MAIN ABBREVIATIONS:

- CLE = Continuing Legal Education.
- CLSO = Community-based Legal Service Organisations (commonly referred to as Community Legal Centres or CLCs).
- CSP = Commonwealth Supported Places (i.e. HECS places).
- LPA = *Legal Profession Act* (NSW).
- LPAR = *Legal Profession Admission Rules* (NSW).
- LPAB = Legal Profession Admissions Board.
- MCLE = Mandatory Continuing Legal Education.
- NSW BA = New South Wales Bar Association.
- LCA = Law Council of Australia.
- PLT = Practical Legal Training.

A. General Structure of Legal Education

1. How many law schools are there in your country, and what are the requirements, if any, for accreditation or licensing of law schools?

There are now 30 law schools in Australia. Traditionally there were six, one in each of the state capitals. A seventh was added in the Canberra in 1960 (at the Australian National University). This prefigured a second wave over the 1960s and 70s, when Sydney and Melbourne (the largest cities) and later Brisbane were exposed to competition from five new law schools. A third wave added 14 more over 1989-1994 (Coper 2007-8: 236). Accreditation, therefore, has been liberalised extensively.

- **NUMBER OF LAW SCHOOLS = 30:**
 - i. SCHOOLS: Australian National University, Bond University, Charles Darwin University, Deakin University, Edith Cowan University, Flinders University, Griffith University, James Cook University, La Trobe University, Macquarie University, Monash University, Murdoch University, Queensland University of Technology, Southern Cross University, University of Adelaide, University of Canberra, University of Melbourne, University of New England, University of New South Wales, University of Newcastle, University of Notre Dame Australia, University of Queensland, University of Sydney, University of Tasmania, University of Technology, Sydney, University of Western Australia, University of Western Sydney, University of Wollongong, Victoria University, University of South Australia.
 - ii. Source: CALD, 'Law Schools', <http://www.cald.asn.au/schools.htm>
 - iii. Note – there are also colleges where students can undertake a Diploma in Law (NSW only).
- **ACCREDITATION OF LAW DEGREES – NSW:**
 - i. See LPAR Pt 6 'Accredited Law Degrees'.
 - ii. Accreditation by LPAB, on advice from the Legal Qualifications Committee, on advice from the Accreditation Sub-Committee – see LPAR reg 43(4)-(6).
 - iii. Process – LPAR regs 43 and 44:
 1. Each year by 30 June, a law school seeking accreditation/renewal must submit documentation to LPAB containing details of subjects proposed to be taught and the requirements of the degree.
 2. Must also notify by 30 June each year of any material alteration to the law degree.
 3. Reviewed by the Accreditation Sub-Committee, which makes a recommendation to the Legal Qualifications Committee, which makes a recommendation to the LPAB.
 - iv. List of NSW accredited law schools – LPAR Sch 2.
 - v. Must comply with requirements in LPAR reg 95.
 - vi. Note – content etc of Diploma in Law specified in LPA and LPAR.
- **ACCREDITATION OF UNIVERSITIES – AUSTRALIA-WIDE:**
 - i. Australian Qualifications Framework – www.aqf.edu.au:
 1. The Framework was developed and is endorsed by all Australian governments through the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA) and therefore an AQF qualification is recognised around Australia and by other countries.
 2. Guidelines regulating inter alia the accreditation of providers of tertiary education.
 3. Maintains AQF National Register of accredited institutions.
 4. Link to NSW Register of Higher Education on NSW Dept of Education & Training Website – <https://www.det.nsw.edu.au/hew/navigator.do?command=goToSearch> (see below also).
 5. AQF Handbook on guidelines etc.
 - ii. *National Guidelines for Higher Education Approval Processes:*
 1. Seek to ensure that nationally consistent processes and criteria for assessing higher education applications are transparent and documented for the information of applicants.
 2. See <https://www.det.nsw.edu.au/communityed/higheredu/registration/guidelines.htm>
 - iii. Department of Education, Employment & Workplace Relations, 'Higher Education' webpage:
 1. http://www.dest.gov.au/sectors/higher_education/
 2. A higher education provider is a body that is established or recognised by or under the law of the Australian Government, a State, the Australian Capital Territory or the Northern Territory. The provider has to be approved by the Australian Government Minister for Education, Science and Training before it can receive grants or its students can receive assistance from the Australian Government under the *Higher Education Support Act 2003* (HESA). Providers are subject to quality and accountability requirements.
 3. A higher education provider is either a: university, self-accrediting provider, or non self-accrediting provider.

- **ACCREDITATION OF UNIVERSITIES – NSW:**
 - i. Higher education approval processes in NSW are aligned with the *National Protocols for Higher Education Approvals Processes* and regulated through the *NSW Higher Education Act 2001*.
 - ii. Under the Act, the Minister for Education and Training can approve the establishment of new universities, the recognition of interstate universities and the registration of overseas universities in NSW.
 - iii. **THREE REQUIREMENTS:**
 1. **Registration** is required before an institution can provide a higher education course or courses. An institution can only be registered if it has obtained accreditation for at least one higher education course.
 2. **Accreditation** of a course is required before an institution can provide that course to students in NSW.
 3. **Approval** of a higher education institution (interstate university or registered non self-accrediting higher education institution) and its courses is required before that institution and its courses can be included on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS). Inclusion on CRICOS allows an institution to deliver the courses to overseas students in NSW.
 - iv. NSW Register of Higher Education on NSW Dept of Education & Training Website – <https://www.det.nsw.edu.au/hew/navigator.do?command=goToSearch>

2. What are the approximate costs of legal education in your country, estimated either by year or across the course of law school study? If costs differ significantly between public and private law schools, please indicate how.

There are 28 public universities and 2 private universities offering law degrees. In public universities, costs are about one-third lower for CSP students (A\$26-27,000 total) than full-fee-paying students (\$85-89,000). In the two private universities, the costs vary – Bond Law School has significantly higher fees.

For the CSP cohort, the government provides law schools with a subsidy per student (albeit significantly less than the difference between the fees paid by CSP students and full-fee-paying students), and the CSP students are divided into two groups:

- (a) students straight out of High School (at Sydney Law School these represent about 75% of LLB students and we call them “Combined Law” students because we also require these students over 5 years to complete in parallel a non-law undergraduate degree, eg Commerce or Arts);
- (b) students who have already completed a non-law undergraduate degree (which usually takes 3 years when done alone), and then embark on the LLB law degree (Sydney Law School calls them “Graduate Law” students, and this degree usually requires another 3 years of study).

There is a tendency now for Australian law schools to re-brand the degree offered to group (b) as a “JD”. This in itself could represent example of some “Americanisation” of legal education, but it also has further financial implications. In group (b), but no longer in group (a), law schools can charge students full fees as well as having CSP students. Law schools are therefore tempted now to expand the “JD” program for group (b), marketing this particularly to attract full-fee-paying students. Indeed, some law schools have raised fees further for such students (to more over A\$100,000 in total), in exchange for features like the ability to compress this degree down from 3 to 2 years (eg by offering more Summer School courses). These tendencies can also be seen as “Americanisation”, as law school education in the US is mostly privately funded and receives comparatively little government support.

Melbourne Law School has now gone the next step. From 2009 it has abolished its group (a), as part of a broader initiative at the University of Melbourne to move from undergraduate to postgraduate education, boosting research potential (and funding opportunities) in parallel. This means that Melbourne Law School only has a “JD” program, like a US law school. Other Australian law schools have not yet followed this path, because it means eg forgoing CSP students (with the fees they pay, plus the government subsidy) in the larger group (a).

- Law degree:

- i. University of Sydney (public):
 1. Note – for law degrees only – cost of other combined degree/first degree not included.
 2. CSP students (domestic students only) = \$8 677 p/a = \$26 031 in total.
 3. International Fee-Paying students = \$28 504 p/a = \$85 512 in total.
 4. No longer offers domestic full-fee-paying places in Combined Law, but still offers them in Graduate Law.
 5. Source: USyd Website, 'Bachelor of Laws (Graduate Law)', http://www.usyd.edu.au/courses/?detail=1&course_sef_id=Bachelor_of_Laws_525§ion=apply
 - ii. University of NSW (public):
 1. CSP students (domestic students only) = \$8 677 p/a = \$26 031 in total.
 2. Full Fee-Paying = \$27 120 p/a = \$81 360.
 3. Source: UNSW Website, 'Future Students: UNSWJD – Program Fees', http://www.law.unsw.edu.au/future_students/jd/program-fees.asp
 - iii. University of Melbourne (public):
 1. Undergraduate CSP (domestic students only) = \$8 859 p/a = \$26 577 in total.
 2. Undergraduate Full Fee-Paying (domestic & international) = \$29 700 p/a = \$89 100 in total.
 3. Graduate Full Fee-Paying (JD Law) (domestic & international) = \$29 700 p/a = \$89 100 in total.
 4. Source for CSP fees:
 5. Source: University of Melbourne Website, 'Future Students: Tuition Fees', <http://www.futurestudents.unimelb.edu.au/fees/>
 - iv. Bond University (private):
 1. Approximate cost of total tuition = \$105 600.
 2. Source: 'Bond University, Schedule of Fees 2009', http://www.bond.edu.au/prod_ext/groups/public/@pub-marketing-gen/documents/genericwebdocument/bd3_010154.pdf
 - v. University of Notre Dame Australia (private):
 1. Approximate cost = \$9 600 per year = \$28 800 in total (undergraduate).
 2. Source: 'University of Notre Dame: Indicative Course Fees 2009', http://www.nd.edu.au/downloads/fees/2009_indicative_course_fees.pdf
- **Diploma in Law (NSW only):**
 - i. Fees – LPAR Sch 3.

3. What are the requirements for entry into law school in your country? Is there an entrance exam, either nationally or by certain schools?

Australia's legal profession and legal education are still State- and Territory-based, so requirements vary (although there are recent news reports about having a nation-wide school leaving exam instead of state-based exams like the HSC). Below are the requirements for NSW.

- **Law Degree:**
 - i. Undergraduate – completion of Year 12 HSC or equivalent (usually require certain mark).
 - ii. Graduate – generally combination of tertiary GPA, UAI, relevant work experience.
 - iii. E.g. entry into undergraduate (Combined) Law at the University of Sydney required an HSC UAI of 99.55 in 2009 (ie, students have to be ranked in the top 0.45% of high school leavers). UNSW now has a similarly high threshold. Other (even newer) law schools in Sydney have lower thresholds. (The pattern is similar in other major centres like Melbourne.)
- **Diploma in Law (NSW only):**
 - i. Administered by the LPAB under the LPAR.
 - ii. Not a degree – but for purposes of admission as a lawyer, equivalent to degree.
 - iii. More professionally, practically-oriented course.
 - iv. Register as a 'Student at Law' under LPAR – LPAR Pt 4 'Students-at-Law', Pt 7 'Examinations'.
 - v. Requirements:
 1. Special Tertiary Admissions Test (STAT) with mark of 152 or above.
 2. Hold a Degree from a university.
 3. Secondary qualifications – completed NSW HSC with certain minimum aggregate mark and English levels, or TAFE diploma, or IB, or certain other training requirements.

4. How many students graduate from law schools in your country in any given year, and how many lawyers do you estimate to be licensed to practice law in your country at this time?

- **STUDENTS GRADUATING:**

It is very difficult to find information – no statistics are kept by ABS or LCA. But for example, the Australian Law Students' Association (ALSA) (peak national body representing law students) estimates that it represents about 28,000 law students across Australia – see ALSA website at <http://www.alsa.net.au/about/about>.

- **LICENSED TO PRACTICE:**

In Australia, people are admitted as a 'lawyer' but licensed to practice (i.e. receive Practising Certificate) as either a solicitor or barrister. Thus, references to 'solicitors' or 'barristers' are to lawyers licensed to practise as such.

- Australia-wide:
 - 30 June 2008 – ABS:
 - Note – information provided is very patchy and contains disclaimers re comparing results with previous surveys; also the focus on legal *services* not *practitioners* means this doesn't give a good idea of the number of individual practitioners as opposed to types of legal practices.
 - Barristers – 3 869.
 - Solicitors and barristers employed in 'other legal services' – 34 587.
 - Community legal services – practising barristers or solicitors involved = 1 929 (made up 42.5% (or 1,104) of legal aid commission employment, 33.7% (or 587) of community legal centre employment and 30.9% (or 238) of Aboriginal legal services employment).
 - Government lawyers – nine government solicitors and nine public prosecutors in Australia employed 2 455 practising barristers and solicitors.
 - Source: ABS, '8667.0 Legal Services, Australia 2007-08', [http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/ED9EDC3A4FFBF9BDCA2575DE0019F004/\\$File/86670_2007-08.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/ED9EDC3A4FFBF9BDCA2575DE0019F004/$File/86670_2007-08.pdf)
 - 30 June 2002 – LCA 'Snapshot of the Legal Profession':
 - Solicitors and barristers – 36 124.
 - Solicitors – 32 454.
 - Barristers – 3 670.
 - Source: LCA Website, based on ABS 'Survey of the Legal Profession 2001-02', http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uuid=8B6DE76E-1C23-CACD-220D-D598F65A739A&siteName=lca
- NSW:
 - Solicitors:
 - 22 105 solicitors held current NSW Practising Certificates, as at 1 Oct 2008.
 - Source: Law Society of NSW, '2008 Profile of the Solicitors of NSW', 7 Jan 2009, <http://www.lawsociety.com.au/idc/groups/public/documents/internetcontent/025941.pdf>
 - Barristers:
 - 2 744 practicing and non-practising members of the Bar, in 2008.
 - 2 052 practising.
 - 660 non-practising (this would include many judges, but also academics such as Prof Nottage who provide limited consultancy services or wish to keep in touch with the profession)
 - 32 life & honorary members.
 - Source: NSW BA, 'NSW BA Statistics Booklet Volume 9', October 2008, <http://www.nswbar.asn.au/docs/about/barstats/2008/s1.pdf>

5. **What is the standard course of study for law school students in your country – number of years of study and educational level that must be attained in order to enter law school?**

Generally students must have completed at least 12 years of schooling. Most law students begin the LLB straight from high school (but in conjunction with another non-law undergraduate degree).

- Undergraduate (Combined) Law – must complete Year 12 HSC or equivalent + English language requirements.
- Graduate Law – Year 12 HSC or equivalent + another degree (+ sometimes relevant work experience, STAT test etc).
- Diploma of law – Year 12 HSC or equivalent + another degree.
- [See also Question 3.]

6. Are there general requirements for graduation from law school, and who imposes these requirements?

Yes, the regulatory bodies in each State impose these requirements, in accordance with the Legal Profession Acts and Regulations in those States, e.g. in NSW, legal education is regulated by the LPAB. [See Question 8, which comprehensively sets out the requirements for admission to practice, including the academic qualifications required to be admitted as a lawyer.]

7. How much of the law school curriculum is mandatory, and how much consists of optional elective courses that permit students to choose? Who decides the proportion of mandatory versus elective courses at any given law school?

Most of the law school curriculum remains mandatory, although the proportion of mandatory subjects prescribed by admission rules in each state (eg the LPAR in NSW).

- Required areas of knowledge (the 'Priestley 11') prescribed by LPAR reg 95(1)(b) [see Question 8, below]: Criminal Law and Procedure, Torts, Contracts, Property both Real (including Torrens system land) and Personal, Equity, Administrative Law, Federal and State Constitutional Law, Civil Procedure, Evidence, Company Law, Professional Conduct.
- However, so long as these required areas of knowledge are covered, the universities are free to decide whether there are to be any additional mandatory subjects and/or the optional subjects offered.
- E.g. University of Sydney Law School:
 - 17 compulsory subjects (internal choice regarding mandatory jurisprudence subject) + Legal Research subjects + 7 true electives.
 - Compulsory subjects: Foundations of Law, Torts, Contracts, Criminal Law, Civil & Criminal Procedure, International Law, Public Law, Torts & Contracts II, Administrative Law, Corporations Law, Equity, Evidence, Federal Constitutional Law, Introduction to Property & Commercial Law, Real Property, The Legal Profession + Legal Research I & II + compulsory jurisprudence elective + 7 elective units.
 - Source: <http://www.law.usyd.edu.au/fstudent/undergrad/combined.shtml>
- Comparison of Priestley 11 and University of Sydney Law School prescribed subjects:

Priestley 11 (LPAR reg 95(1)(b))	University of Sydney Law School
[No equivalent compulsory subject]	Foundations of Law (i.e. introductory law subject)
Criminal Law and Procedure	Criminal Law Civil & Criminal Procedure
Torts	Torts Torts & Contracts II
Contracts	Contracts Torts & Contracts II
Property both Real & Personal	Introduction to Property & Commercial Law Real Property
Equity	Introduction to Property & Commercial Law Equity
Administrative Law	Public Law Administrative Law
Federal and State Constitutional Law	Public Law Federal Constitutional Law
Civil Procedure	Civil & Criminal Procedure
Evidence	Evidence
Company Law	Corporations Law
Professional Conduct	The Legal Profession

[No equivalent compulsory subject]	International Law
[No equivalent compulsory subject]	Jurisprudence Elective
[No equivalent compulsory subject]	Legal Research I & II (pass/fail only)

8. What additional requirements are imposed by law, rule or regulation, before or after graduation from law school, and prior to licensure as a practicing attorney? Is there an examination for entry into the bar, and if so, who administers it? Briefly describe the bar examination, particularly if it contains any component that measures practice skills, ethics or values, as discussed below. What percentage of aspirants pass the bar examination each time it is administered?

Generally, requirements again differ in each State – in NSW, regulated by LPA & LPAR. But there has been widespread adoption of LCA’s Model Laws (including by NSW), generating substantial uniformity in requirements. There is a two-step process:

- (1) Admitted as a lawyer in State – character and academic requirements (law degree + PLT).
- (2) Granted a Practising Certificate as a solicitor or barrister (with now ongoing mandatory Continuing Legal Education [MCLE] required to retain a Practising Certificate).

Though admitted in particular State, there is a mutual recognition scheme: *Mutual Recognition Act 1992* (Cth), s 17(1). Also note the Australian-New Zealand mutual recognition arrangement, under the *Mutual Recognition Act 1992* (Cth) and *Trans-Tasman Mutual Recognition Act 1997* (NZ) [for further information, see Lawlink at http://www.lawlink.nsw.gov.au/practice_notes/nswsc_pc.nsf/pages/350]. The following analysis deals only with admission to practice in NSW.

(1) ADMISSION AS A LAWYER:

- In NSW, regulated by LPA Pt 2.3 ‘Admission of local lawyers’.
- Admitted as ‘lawyers’ (no longer divided profession) – s 31(1).
- By NSW Supreme Court, on advice from Legal Profession Admission Board (LPAB) – s 31(1).
- Two-fold requirements under s 31:
 - (a) ‘eligible’ (i.e. competence – educational requirements) and
 - (b) ‘fit and proper’ (i.e. character requirements).
- ‘Eligibility’ – s 24:
 - Regulates educational requirements – enumerated in LPAR Pt 11 ‘Eligibility for Admission as a Lawyer’.
 - (1)(a) approved/corresponding academic qualifications:
 - i. Completion of tertiary academic course, whether/not leading to a degree in law, including the equivalent of at least 3 years full-time study of law and which is recognized in at least one jurisdiction as providing sufficient academic training for admission by the SC of that jurisdiction as a lawyer – LPAR reg 95(1)(a).
 - ii. Required ‘areas of knowledge’: Criminal Law and Procedure, Torts, Contracts, Property both Real (including Torrens system land) and Personal, Equity, Administrative Law, Federal and State Constitutional Law, Civil Procedure, Evidence, Company Law, Professional Conduct – LPAR reg 95(1)(b).
 - iii. Synopsis of required ‘areas of knowledge’ in Sch 5 – LPAR reg 95(2).
 - iv. Academic courses conducted in NSW and recognized as satisfying are listed in Sch 2 – LPAR reg 95(3).
 - (1)(b) satisfactorily completed approved/corresponding practical legal training requirements (PLT):
 - i. [See Question 2 for detailed explanation of requirements.]
 - But note – (4) may exempt from requirements if think sufficient qualifications/experience.
 - Note:
 - i. ‘Approved’ academic qualifications etc = under ‘admission rules’ by LPAB.
 - ii. ‘Corresponding’ etc = under admission rules in other jurisdictions.
 - See also LPAR reg 94 – eligibility for admission (replicates + English test).
- ‘Fit and proper’ – ss 25 and 9:
 - In deciding whether applicant if a fit and proper person to be admitted, the LPAB must have regard to suitability matters in LPA s 9(1) and may consider any other relevant matters – LPA s 25(1).

(2) GRANT OF A PRACTISING CERTIFICATE:

- In NSW, regulated by Pt 2.4 ‘Legal Practice by Australian Legal Practitioners’.
- After being admitted as a lawyer and satisfying additional requirements, granted Practising Certificate (i.e. licensed to practise) as either a solicitor or barrister, by relevant Council (i.e. Law Society Council or Bar Council).

- Holder of Practising Certificate entitled to practise in jurisdiction – s 40.
- SOLICITORS – grant of certificate authorizing practise as a solicitor regulated by Law Society Council – s 41(3).
- BARRISTERS – grant of certificate authorizing practise as a barrister regulated by the Bar Council – s 41(2).
- Applicant must be suitable to hold practising certificate (i.e. character requirements) – s 42 (see also s 45).
- Note – BR 88 = both barristers & solicitors have a right of appearance, so barristers no longer have monopoly on advocacy – ‘solicitor advocates’ are subject to same duties as barristers under corresponding SR.

Requirements for admission to the Bar (NSW Bar Association):

- Lawyer must complete three Bar exams before taking out a (reader’s) practising certificate.
- On taking out a practising certificate with conditions, the legal practitioner is termed a ‘reader’.
- The reader embarks on the Reading Programme – two major elements: Bar Practice Course and reading with a tutor.
- (1) BAR EXAMINATIONS:
 - Must pass with a mark of 75% in three Bar exams before commencing the Bar Practice Course.
 - The three subjects are ‘Ethics for barristers’, ‘Aspects of evidence’ and ‘Practice and procedure for barristers’.
 - Cost = \$200 per exam.
 - Admission is not a prerequisite for sitting the Bar exams, but is a prerequisite for commencing practice.
- (2) BAR PRACTICE COURSE:
 - Registrant must be admitted to SC and have current passes in all 3 bar exams (passes current for 10 months).
 - One month duration.
 - Requirements: attendance at all sessions (unless exempted or excused) and satisfactorily complete a variety of practical exercises – see http://www.nswbar.asn.au/docs/professional/prof_dev/BPC/attendance.php
 - Cost = \$3 000.
- (3) READING PROGRAMME:
 - Must complete the Bar exams before taking out a (reader’s) practicing certificate.
 - On taking out a practicing certificate with conditions, the legal practitioner is termed a ‘reader’.
 - Period of reading continues for at least 12 months.
 - During that period, the reader remains under the supervision of at least one experienced barrister (‘tutor’).
 - Also required to complete two advocacy workshops and a series of extension sessions.
 - Depending on the reader’s progress, the conditions on the practicing certificate are lifted during the 12 month reading period.
 - Relevant legislation: LPA, NSW BR 112, 113.
 - Conditions attached to practicing certificate – see ‘Conditions to be attached to initial (reader’s) practicing certificates’ [Bar Council resolution 15 June 2006], http://www.nswbar.asn.au/docs/professional/prof_dev/readers_conditions.php
 - There are different requirements for civil and criminal reading.
- (4) LIFTING OF CONDITIONS:
 - Tutors will submit to the Professional Development Department the ‘Satisfactory completion of reading’ form so that the reader will be entitled to a practicing certificate without readers conditions.
 - The Director will advise the BA’s Certification Officer that a practicing certificate may be issued.
- LPA 2004 s 56 – Bar Council can impose additional requirements on practicing certificates for barristers.
- NSW BA Bar Practice Course Policy [Bar Council resolution 15 June 2006] – no person shall be admitted to the bar practice course until has passed 3 bar exams to satisfaction of the Bar Council.
- **Barrister Rules:**
 - **READING**
 112. A barrister with whom another barrister is reading as a reader must seek to assist the reader with all reasonable skill and diligence to comply with all the requirements imposed by conditions attached to the reader’s practising certificate under subsection 34(1) of the Act, and in particular must seek to:
 - (a) instruct the reader in:
 - (i) the art of advocacy;
 - (ii) barristers’ work;
 - (iii) the proper conduct of a barrister’s practice; and
 - (iv) the ethical standards required of a barrister, including these Rules;
 - (b) set aside sufficient time to meet and speak with the reader from time to time;
 - (c) make arrangements for the reader to attend the barrister in chambers to be shown and to assist in chamber work from time to time;
 - (d) make arrangements for the reader to appear with the barrister in court as an observer;

- 5. (e) ensure that the reader is attending to all necessary or appropriate courses of instruction arranged by the Bar Association; and
- 6. (f) introduce the reader to the barrister's colleagues.
- 113. A barrister with whom another barrister has read as a reader must certify the reader to be fit to practice, if it be the case, as required by paragraph 34(1)(c) of the Act.
- **What percentage of aspirants pass the Bar exam? Over half. (But note this is only to qualify and practice as a barrister. Solicitors just need to complete an LLB and PLT eg through College of Law, and effectively the pass rate must be close to 100% for those who persist in those studies, as explained at the outset of this report.)**
 - No prohibition on sitting exams multiple times.
 - However, passes are only current for 10 months, so must have three current passes within that time to qualify.
 - See table below for percentage of aspirants who pass the three bar exams.

Exam	Number of Candidates	Practice and Procedure Exam Pass Rate (%)	Evidence Exam Pass Rate (%)	Ethics Exam Pass Rate (%)
July 2009	99	53	68	80
Feb 2009	92	49	54	93
July 2008	81	50	58	85
Feb 2008	70	54	69	78
July 2007	81	68.3	54.5	80
Feb 2007	95	57.1	62.5	91.9
July 2006	92	61.5	62.2	93.3
Feb 2006	107	57.7	89.3	86.1
Average	-	56.33%	64.69%	85.91%

Note – not all exams had equal candidature.

Source: information provided by NSW Bar Association (Chris D'Aeth).

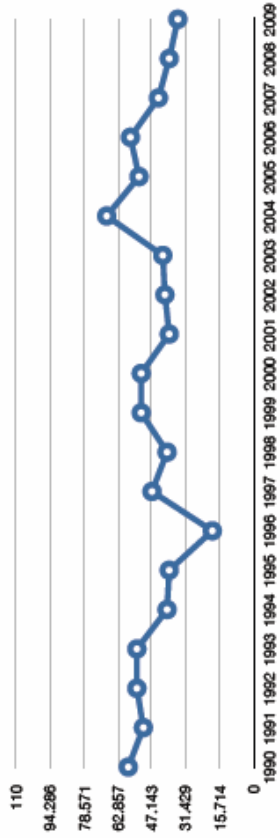
- See following page for number of aspirants who pass all three bar exams within a 10 month period, and so qualify for the bar practice course (source: provided by NSW Bar Association (Chris D'Aeth)):
 - i. Note – to complete the table, there will be 36 new barristers beginning Course 2 of 2009.

NSW Bar Practice course

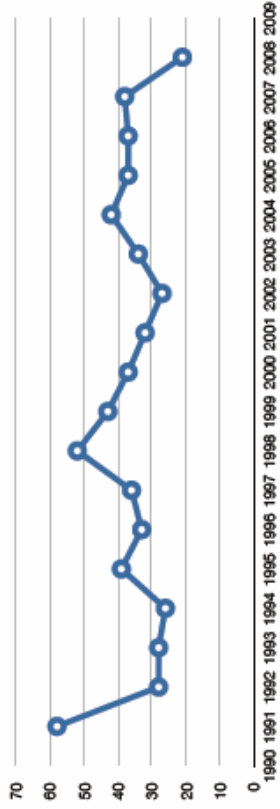
This records the numbers of barristers attending the NSW Bar Practice Courses since the course commenced in August 1990

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Course 1	58	51	54	54	40	39	19	47	40	52	52	39	41	42	68	53	57	44	39	35
Course 2		55	28	28	26	39	33	36	52	43	37	32	27	34	42	37	37	36	21	
Total	109	82	82	82	66	78	52	83	92	95	89	71	63	76	110	90	94	82	60	

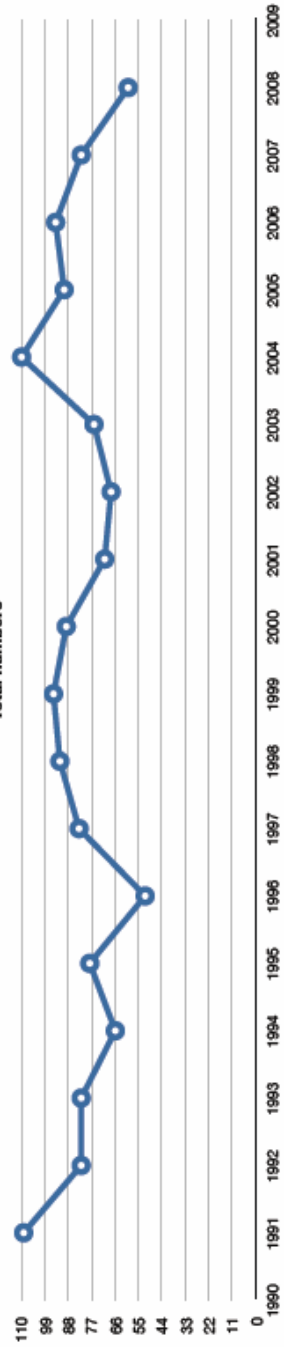
Course 1



Course 2



Total numbers



9. Can you estimate what percentage of law school graduates in your country who go on to enter into the practice of law, not only as advocates, but as prosecutors or in government service? If there are other categories of “lawyers” who engage in law practice, other than those set out here, please describe them.

Data is of varying quality regarding these major categories of practitioners:

- Solicitors.
- Barristers.
- Government lawyers.
- In-house legal counsel.
- Community legal centre lawyers.
- Legal aid lawyers.
- Judges.
- Legal academics.

There are also licensed conveyancers and other types of “quasi-lawyers”, although the ease of qualifying also as a lawyer in Australia means that these are probably disproportionately fewer than in countries like Japan (with a still very difficult national legal examination: Abe and Nottage 2008). See also Question 4.

- AUSTRALIA – SOLICITORS AND BARRISTERS HOLDING PRACTISING CERTIFICATES – as at 30 June 2008:
 - Solicitors:
 - i. 32 454 as at 30 June 2002.
 - Barristers:
 - i. 3869 (2008), 3 670 (2002).
 - ii. = approximately 10% of admitted practitioners (based on 2002 statistics).
 - iii. 656 Queen’s/Senior Council (i.e. 17% of all barrister practices) (2008).
 - Government lawyers:
 - i. Nine government solicitors and nine public prosecutors in Australia.
 - ii. Employed 2 455 practising barristers and solicitors.
 - iii. = approximately 7% of admitted practitioners (but note – inconsistencies in ABS statistics).
 - Source: ABS, ‘8667.0 Legal Services, Australia 2007-08,
[http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/ED9EDC3A4FFBF9BDCA2575DE0019F004/\\$File/86670_2007-08.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/ED9EDC3A4FFBF9BDCA2575DE0019F004/$File/86670_2007-08.pdf)
 - In-house legal counsel:
 - i. It is difficult to find good statistics.
 - ii. Australian Corporate Lawyers’ Association (ACLA) (a professional association for in-house lawyers) had 3 022 members in 2008, 89% holding current practising certificates, see
http://www.acla.com.au/Portals/0/downloads/ACLA_ANNUAL%20REPR%202008.pdf
- NSW:
 - Solicitors:
 - i. 22 105 solicitors held current NSW Practising Certificates, as at 1 Oct 2008.
 - ii. Private practice = 15 533 (70.3%).
 - iii. Government = 2 520 (11.4%).
 - iv. Corporations (i.e. in-house legal counsel) = 4045 (18.3%).
 - v. Source: Law Society of NSW, ‘2008 Profile of the Solicitors of NSW’, 7 Jan 2009,
<http://www.lawsociety.com.au/idc/groups/public/documents/internetcontent/025941.pdf>
 - Barristers:
 - i. 2 744 practicing and non-practising members of the Bar, in 2008.
 - ii. 2 052 practising (i.e. have practising certificate).
 - iii. 660 non-practising.
 - iv. 32 life and honorary members (24 non-practising, 8 practising).
 - v. Source: NSW BA, ‘NSW BA Statistics Booklet Volume 9’, October 2008,
<http://www.nswbar.asn.au/docs/about/barstats/2008/s1.pdf>
- Australian Law Graduates’ Career Destinations, Sumitra Vignaendra, The Centre for Legal Education, May 1998:
 - <http://www.dest.gov.au/archive/highered/eippubs/eip98-9/eip98-9.pdf>
 - Survey of career destinations of Australian law graduates in 1991 and 1995.
 - Working in private legal profession – 95 cohort = 55%, 91 cohort = 48%.

- Working in public sector (next most popular career destination) – 18% in both cohorts.
- In the 95 cohort, another 5% of graduates were doing legal work in the private sector, 6% non-legal work in the private sector, 2% teaching, 1% working in CLSOs (Community-based Legal Service Organisations, commonly referred to as Community Legal Centres or CLCs) and 5% were doing ‘other’ work.
- In the 91 cohort, another 6% of graduates were doing legal work in the private sector, 8% non-legal work in the private sector, 4% teaching, 2% working in CLSOs, and 8% were doing ‘other’ work.
- Only 11% of graduates in 95 cohort, and 12% of graduates in the 91 cohort, known to be in non-legal positions.
- More than half the graduates in the 95 cohort (55%), and 64% of graduates in the 91 cohort, claimed to have required a practising certificate for their job.
- No statistics are kept on lawyers admitted to Supreme Courts, but without practising certificates.

10. Is the professoriate within law schools in your country made up of full or part-time teachers, and in what percentage for each? May law school professors in your country engage in the private practice of law while employed as a professor? Under what circumstances? If law schools in your country do offer “practice” components, as discussed below, are the faculty who teach “practice” courses given status equal to or commensurate with those who teach in the classroom only?

Law school professors are generally entitled to practice law, and the rule of thumb is generally that this is permitted as of right up to one day per week. Some (even or especially) senior professors drop down to fractional appointments so they can devote even more time to legal practice, although this may be diminishing at least in more established law schools.

There is usually a core of (mostly) full-time professors, mostly on continuing contracts (tenured or tenure-track) but some on “nomination” for specific terms, plus a much larger cohort of casual (outside) lecturers (increasingly now appointed “Adjunct Professors” – another possible example of “Americanisation”, as well as indicative of growing “competition” among law schools to attract better-quality outside teachers). Outside lecturers (and full-time core staff teaching courses “above load” for extra remuneration) generally receive less remuneration on a pro rata basis than full-time core staff members, but mainly because their law school salaries also require them to undertake research and administration on top of teaching their regular courses. Status differentials also vary considerably, depending for example if the casual teacher is a (eg younger) tutor as part of a large compulsory LLB course, as opposed to an Adjunct Professor who mostly designs and teaches a specialist LLM course (more likely to include practice components).

- Indicative statistics from Sydney Law School (as of September 2009):
 - Full-time or other core academic staff (only full and Associate Professors can call themselves “Professors”): 67
 - Emeritus Professors (also “Professors”) and Honorary Lecturers: 11
 - Adjunct Professors (can only call themselves “Adjunct Professors”): 48
 - Other casual lecturers/tutors: At least one hundred
- General statistics on university staff, 2008 at <http://www.dest.gov.au/NR/rdonlyres/FFF44326-CBF4-47D4-B638-C89442363A65/25919/Numbers.xls#Contents!A1> (but not helpful re law lecturers).

B. Practice elements within the law school curriculum or otherwise, prior to licensure

1. **“Practice” within law school courses or curricula can encompass many elements. Please describe broadly what courses or elements of courses within your country’s law school curricula contain an element of “practice.” Please do not limit your answer to legal analysis and reasoning, or to general theories regarding law or legal science. Examples of “practice” include both skills training and methods of instruction. Examples of skills training include the preparation and conduct of interviews with possible or present clients; fact investigation; development of case theory; counseling; selection of expert witnesses; negotiation, mediation or other alternative dispute resolution processes; problem solving; legal research; written or oral communication and persuasion skills; trial or appellate advocacy skills, organization and management of legal work within a law office, etc. Methods of instruction for the teaching of “practice” are generally**

experiential (the student plans, does and reflects on some lawyering activity), and might include the professor's use of legal or fact pattern problems, simulations, role plays, games, moot courts, structured and supervised internships or externships with practitioners or judges, clinical programs offering legal services to real clients under faculty supervision for credit, etc. If these elements are not present within law school curricula, is there some other required component of preparation for the practice of law, such as a required period of apprenticeship, that assures that the aspiring lawyer will acquire this training prior to becoming a licensed attorney?

There are no mandatory practice requirements, but Professional Conduct and Civil & Criminal Procedure is included in the "Priestley 11" that law schools must cover (see Question 3 below). Sometimes such practice elements are integrated into coursework, e.g. client interviewing, mock trials etc (see eg Nottage 2008). Some clinical programs available – e.g. Sydney Law School's External Placement program – LLB students can take this as a credited elective course. It is also increasingly common for (especially mid-degree and older) LLB students to undertake not only summer clerkships, but also continuing part-time paralegal positions, in Australia's (especially large commercial) firms and government organizations.

However, post-graduation and before admission to practise, must complete PLT requirements [see Question 2].

- BARRISTERS: practice requirement in Bar reading periods – equivalent to period of apprenticeship.
- SOLICITORS – LPA s 53 'Statutory condition regarding practice as a solicitor':
 - (1) Must engage in supervised legal practice only until has completed:
 - (a) if completed PLT under supervision of Aus legal practitioner – 18months supervised legal practice.
 - (b) if completed other PLT – 2 years.

2. Is there a legal, regulatory or internal administrative regime which mandates, regulates, permits or proscribes practice as part of legal education? If so, please briefly identify it and its major components.

In Australia, legislation is generally in keeping with NSW's LPA. Lawyer candidates must undertake PLT at one of authorized institutions for admission in any State or Territory (See CALD, 'Studying Law in Aus 2006' p.165 for a list of pre-admission PLT courses:

<http://www.cald.asn.au/docs/SLIA%202006.pdf>).

NSW:

- Practical Legal Training (PLT) mandated by LPA & LPAR, administered by the LPAB – required for admission as a lawyer.
- Must have satisfactorily completed approved/corresponding PLT requirements – LPA s 24(1)(b).
- This requires completion of a course of practical training or articles which is recognized in at least one Australian jurisdiction as providing sufficient practical training for admission by the SC of that jurisdiction as a lawyer and which includes evidence of the attainment of competencies in the following areas – LPAR reg 96:
 - Skills: Lawyers' Skills, Problem Solving, Work Management and Business Skills, Trust and Office Accounting.
 - Practice Areas:
 - i. Civil Litigation Practice, Commercial and Corporate Practice, Property Law Practice.
 - ii. One of the following: Administrative Law Practice, Criminal Law Practice, Family Law Practice and
 - iii. One of the following: Consumer Law Practice, Employment and Industrial Relations Practice, Planning and Environmental Law Practice, Wills and Estates Practice.
 - Values: Ethics and Professional Responsibility.
 - A detailed synopsis of these competencies is in LPAR Sch 6 – LPAR s 24(2).
 - Recognised PLT courses in NSW in Sch 4 – (3):
 - i. College of Law: Professional Program
 - ii. University of Newcastle: Diploma of Legal Practice
 - iii. Australian National University: Legal Workshop (other than by the Summer Graduate Diploma in Legal Practice Program) up to 30 June 2007
 - iv. University of Wollongong: Practical Legal Training Course
 - v. Bond University: Practical Training Program up to 30 June 2007
 - vi. University of Technology Sydney: Faculty of Law Professional Program OR Master of Law and Legal Practice

vii. University of Western Sydney: Graduate Diploma in Legal Practice OR Master of Legal Practice (subject to completion of professional legal placement)

- See LPAR Pt 6A 'Approved Practical Training Courses'.
- Also, after completion of PLT, candidates must engage in supervised legal practice for 18-24 months – LPA s 53 (see Question 1).

Example – College of Law, Sydney:

- Duration: 30 weeks.
- Course component – 15 weeks full time or 30 weeks part-time.
- Work experience component – 15 weeks at an approved placement.
- Continuing professional education component – 10 hours of provided online seminars.
- Fees – domestic students = \$6 280, international students = \$9 490.
- Source: CALD, 'Studying Law in Australia 2006', www.cald.asn.a/docs/SLIA%202006.pdf

3. Practice-related courses are often focused on the teaching of the basic skills necessary to function as a practicing attorney. However, the teaching of “practice” within a law school might also be said to include elements of ethics or professional responsibility, as well as values relating to the practice of law. To what extent do law schools in your country offer courses or components of courses, either required or optional, on ethics or professional responsibility? On promoting justice, fairness and equality within the legal system? On professional obligations to improve the legal profession and to enhance the likelihood that law and legal institutions will do justice? On assuring that the legal profession does not engage in discrimination based on gender, race or ethnicity, religion, sexual orientation, disability or other grounds? If these elements are not present within law school curricula, is there some other required component of preparation for the practice of law, such as a required period of apprenticeship, that assures that the aspiring lawyer will acquire this training prior to becoming a licensed attorney?

Generally, ethics/professional responsibility is mandated under LPA and LPAR as a compulsory part of ‘eligibility’ requirements for admission (LPA s 24) – compulsory subject, both in ‘academic qualifications’ (i.e. in law degree) and as part of PLT.

Academic Qualifications:

- Must have completed an accredited ‘Professional Conduct’ course as part of ‘academic qualifications’ – LPAR reg 96(1)(b).
- List of accredited legal ethics/professional practice courses – LPAR Sch 2.
- Synopsis of requirements of ‘Professional Conduct (including basic Trust Accounting)’ courses – LPAR Sch 5:
 - Professional and personal conduct in respect of practitioner’s duty:
 - (a) to the law,
 - (b) to the Courts,
 - (c) to clients, including basic knowledge of the principles of trust accounting, and
 - (d) to fellow practitioners.
 - OR – Topics of such breadth and depth as to satisfy the following guidelines:
 - The topics should include knowledge of the various pertinent rules concerning a practitioner’s duty to the law, the Courts, clients and fellow practitioners, and a basic knowledge of the principles of trust accounting.
 - The aims of the trust account segment of Professional Conduct are:
 - (a) to impart an understanding of the legal requirements on solicitors for dealing with trust property.
 - (b) to help students obtain a level of competence in, and understanding of, the recording requirements for trust accounts and other trust dealings.
 - Areas covered should include:
 - (a) provisions of the relevant State or Territory legislation governing the legal profession which relate to the handling of trust money and other trust property.
 - (b) legislative provisions which enable the proper identification of trust moneys.
 - (c) the ramifications of breach of trust.
 - (d) methods of maintaining trust account records. This includes class exercises in recording of receipts, payments and direct payments of trust moneys and investments (including mortgage investments) by solicitors on behalf of their clients.
 - (e) a detailed study of any relevant legislation, regulations or rules relating to trust accounting.
- Example – University of Sydney ‘The Legal Profession’ (LAWS2013):

- TOPICS: Law as a Profession, The Structure of the Legal Profession, Regulation of the Legal Profession, Admission to Practice, Discipline, Forms of Legal Practice, Women in the Legal Profession, Reorganising Legal Practice and the Provision of Legal Services, Communication, Interviewing, Duties to the Court, Duties of Prosecutors and Criminal Defence Lawyers, Duties of Representation, Duties to the Client, Advocates' Immunity, Confidentiality, Client Legal Privilege, Concurrent Conflicts, Successive Client Conflicts, Duty to Account.
- MAIN MATERIALS: textbook, cases, *Legal Profession Act 2004* (NSW), *Legal Profession Regulation 2005* (NSW), *Legal Profession Admission Rules 2005* (NSW), *NSW Solicitors' Rules* and *Barristers' Rules*.
- OVERVIEW AND OBJECTIVES included: 'Part 3 evaluates the way clients are treated by lawyers and suggests strategies to change their conduct in the interests of both equality and effective communication. Furthermore, it examines lawyers' duties to their clients and the Court, and the ways in which the rules and principles of confidentiality and conflicts of interest shape the advice and representation lawyers provide for their clients.'
- PERSONAL OBSERVATIONS by Alicia Lyons:
 - Led through rules and legislation regulating lawyers' professional obligations to court, clients, other lawyers.
 - Alerted to some of the applicable anti-discrimination legislative regimes + policy discussions etc.
 - Discussed changes and reforms in law, what areas need to be reformed etc.
 - Discussed different methods of teaching ethics in law schools and merits/demerits of each.
 - Discussed (potential) existence of professional obligation to promote access to justice, engage in *pro bono* work and reform the law etc.

Practical Legal Training:

- Must have completed an 'Ethics and Professional Responsibility' component as part of PLT – LPAR reg 96.
- Synopsis of requirements of 'Ethics and Professional Responsibility' component – LPAR Sch 6:

Descriptor:	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.	
	Element	Performance criteria
		The lawyer has competently:
1.	Acting ethically	• identified any relevant ethical dimension of a particular situation. • taken action which complies with professional ethical standards in that situation.
2.	Discharging the legal duties and obligations of legal practitioners	• identified any duty or obligation imposed on the lawyer by law in a particular situation. • discharged that duty or obligation according to law and good practice.
3.	Complying with professional conduct rules	• identified any applicable rules of professional conduct. • taken action which complies with those rules.
4.	Complying with fiduciary duties	• recognised and complied with any fiduciary duty, according to law and good practice.
5.	Avoiding conflicts of interest	• identified any potential or actual conflict, as soon as is reasonable in the circumstances. • taken effective action to avoid a potential conflict or, where a conflict has already arisen, dealt with it in accordance with law and good practice. • taken appropriate action, where applicable, to prevent such a conflict arising in the future.
6.	Acting courteously	• demonstrated professional courtesy in all dealings with others.
7.	Complying with rules relating to the charging of fees	• identified any rules applying to charging professional fees. • complied with those rules, where they are relevant. • maintained records and accounts in accordance with law and good practice.
8.	Reflecting on wider issues	• reflected on that lawyer's professional performance in particular situations. • brought to the attention of an employer or professional association any matters that require consideration or clarification. • recognised the importance of pro bono contributions to legal practice. • demonstrated an awareness that mismanagement of living and work practices can impair the lawyer's skills, productivity, health and family life.

Explanatory Note:

- This competency standard applies to:
 - ethics;
 - statutes and general law relating to the duties and obligations of legal practitioners;

- written and unwritten rules of professional conduct;
- written and unwritten rules of professional courtesy.
- The duties and obligations imposed by law on legal practitioners include duties:
 - of confidentiality;
 - to act competently and to maintain competence;
 - to act honestly;
 - not to mislead the court;
 - not to pervert the course of justice or the due administration of justice.
- Conflicts of interest commonly arise between:
 - joint venture partners;
 - directors and shareholders of a company;
 - trustees and beneficiaries in a family trust;
 - parties to any transaction where their interests potentially differ.

Admission as a barrister:

- One bar examination is on 'Ethics for Barristers'.
- During reading period, tutor must instruct the reader in, inter alia, the proper conduct of a barrister's practice and the ethical standards required of a barrister, including the BR – BR 112 (see above, Question 7).

Mandatory Continuing Legal Education (MCLE):

- Mandatory requirement of CLE re EEO, discrimination/harassment, OHS, employment law & management – LP Reg 176.
- Must satisfy this component for retention/renewal of practising certificate.

4. Is the provision of legal services by law students – “student practice” – permitted under the law of your country, and if so, under what circumstances?

There is a general prohibition on engaging in legal practice when not an Australian legal practitioner (ie barrister or solicitor) – LPA s 14(1). Non-practitioners are not entitled to recover any payment for work done in contravention – LPA s 14(4). Relevant exceptions include legal practice engaged in by a complying community legal centre – LPA s 14(2). There is also a prohibition on representing/advertising entitlement to engage in legal practice when not an Australian legal practitioner – LPA s 15(1). Thus, provision of legal services by law students is limited. There is not an absolute or blanket prohibition, but students must be careful not to engage in legal practice (i.e. giving legal 'advice' [what the law is] as opposed to providing only legal 'information' [how it applies to a particular person or situation]) or to hold themselves out as a legal practitioners. There may also be even stricter requirements imposed by indemnity insurance policies held eg by the organisations they work for.

5. Do law schools in your country offer mandatory or optional clinical legal education courses? In this context, “clinical legal education” means a course within the law school, for credit, in which the student provides legal advice or other services to persons who could not otherwise afford counsel. If law schools offer clinical legal education, what is the nature and extent of faculty or practicing lawyer supervision of student work product? Do teachers or students accompany students to court for court appearances or filings? How is credit awarded for participation in a clinical program, and during what year in the course of study is clinic made available or required? Are there prerequisite or co-requisite courses required before enrollment in a clinical program? Is there a prior or parallel seminar conducted in conjunction with participation in a clinical program, and if so, what does that seminar cover?

Clinical legal education is generally not mandatory in Australian law schools. There are some optional programs, eg Sydney Law School's External Placement Program (EPP) – externships. See Question 6 below.

6. Do law schools in your country require or offer internships or externships with a law office, government agency or court, outside of the law school? If so, how are these programs supervised

or overseen within the law school? Is there a seminar, either in parallel or separate from internships, to discuss issues arising from the external experience, such as professional role, legal institutions, etc.?

Law schools do not generally require such externships but often offer a course or program, and increasingly promote summer clerkships. The latter are particularly attractive to law students, as it gives them a foot in the door for applying for well-paying jobs after graduation in Australia's large commercial law firms. These links also complement those between such firms and the legal profession more generally with the law schools, who often rely on casual teachers from these sources.

- Summer clerkship program:
 - Opportunity to work full-time at a commercial law firm over summer holidays of penultimate year in law school (sometimes also in earlier years).
 - Program run by the law firms, not the law schools.
 - However, some information and assistance may be supplied by the law schools, and law schools often allow or even invite firms to give presentations.
 - Nonetheless, law schools would not have follow-up seminars re student experiences (unlike, for example, usually for an accredited Externship course like Sydney Law School's).
- Internships and externships with government agencies:
 - External – run by the relevant government agencies.
- Associateships and tipstaff for judges:
 - External – run by judges/courts, not law schools.
 - Usually hire
- Some universities run externship programs.
- E.g. University of Sydney Law School's 'External Placement Program' (EPP):
 - Australia's first law externship program, established 1996.
 - Unit of study available to ultimate year law students.
 - Focus on 'experiential learning', i.e. 'learning by doing'.
 - Opportunity to work for one day per week during semester in a 'public interest' placement site.
 - E.g. Aboriginal Legal Service, Amnesty International, AHRC, ALRC, DDLC, Legal Aid, CLCs, National Native Title Tribunal, NSW DDP, NSW Public Defenders Office, RACS.
 - In addition, students attend fortnightly seminars designed to promote discussion and reflection on experience.
 - Assessment consists of one essay (40%), seminar performance (30%) and placement site evaluation (30%).
 - Aims of unit – by the end of the unit, students should have:
 - (i) acquired a better sense of the professional and personal responsibilities associated with the practice of law;
 - (ii) developed an appreciation that the law is a people profession;
 - (iii) observed and participated in a high level of problem solving flowing from real case files (where appropriate);
 - (iv) been introduced to the basic inter-personal skills involved in the practice of law;
 - (v) been introduced to aspects of the practice of law such as legal writing, advocacy and time management; and developed the character and habits of a reflective practitioner.
 - Source: http://www.usyd.edu.au/courses/?uos=1&uos_sef_id=LAWS3025_External_Placement_Program_5134
- E.g. Sydney Law School Social Justice Program:
 - Established 2009.
 - One aim is to arrange the placement of students with public interest organizations for credit.
 - Including RACS, PILCH, SCIL etc.
 - See further http://www.law.usyd.edu.au/fstudent/undergrad/social_justice_program.shtml.

7. What specialized components of training for the practice of law exist outside of or beyond the required course of law school study, or as an alternative to it, to prepare a student or law school graduate for either the general practice of law, or for a specialized area of practice such as that of a prosecutor or judge? Describe these programs, please, and by whom they are administered.

Solicitors and then barristers around Australia have recently been required to undertake Continuing Legal Education (CLE). There are now many suppliers, but leading law schools offer many opportunities, including sometimes offering all or part of a course not for university credit but to satisfy CLE requirements. (See eg University of Sydney Law School's Legal Development Program (LPD):

<http://www.law.usyd.edu.au/LPD/>). There is also growing interest and experience in judicial training and CLE for judges, who are generally appointed from among experienced barristers.

- **SOLICITORS: Mandatory Continuing Legal Education (MCLE) (NSW) – SR 42:**
 - All solicitors who hold a current practising certificate are required to complete MCLE as a condition of retention.
 - Required to complete 10 MCLE units per year.
 - Practitioners must include at least one (1) MCLE/CPD unit every year in each of the following fields:
 - Ethics and Professional Responsibility
 - Practice Management and Business skills
 - Professional Skills
 - As per cl 176 of the *Legal Profession Regulation 2005*, every three years at least one CPD unit must cover:
 - equal employment opportunity
 - discrimination and harassment
 - occupational health and safety law
 - employment law.

- **BARRISTERS: Continuing Professional Development (CPD) (NSW):**
 - Required to complete 10 CPD points per year (one point per hour).
 - Must include at least one point in each of the following four ‘strands’:
 - Ethics and Regulation of the Profession;
 - Management;
 - Substantive Law, Practice and Procedure, and Evidence;
 - Advocacy, Mediation, and other Barristers’ Skills.
 - Every three years, must also include mandatory requirements in cl 176 of *Legal Profession Regulation*, above.
 - Must be provided by accredited CDP providers, such as NSW BA, groupings and bodies of barristers for their members (e.g. floors, chambers, Public Defenders, Crown Prosecutors), Law Society of NSW, LCA.
 - 6 points may consist of an Individual Professional Development Activity (IPDA), e.g. legal research and writing for publication, post-graduate legal studies, marking bar exams etc.
 - Source: http://www.nswbar.asn.au/docs/professional/prof_dev/CPD/cpd_info.php

- **JUDICIAL TRAINING: see separate report by Justice Douglas and M. Tellier.**

C. Possible future elements of practice in legal education

Q. If legal education in your country does NOT include an element of practice, please provide an opinion as to whether or not law schools should provide more or less practice-related components, and why.

Not applicable to Australia. Directly, and especially indirectly, legal education retains strong practice elements even in university law schools.

Judicial Training in Australia

Justice James Douglas of the Supreme Court of Queensland
M. Charles Tellier of the Court of Appeal of Caen, France

Background

In Australia, as in other common law jurisdictions with a divided legal profession including a specialised bar, judicial training was not treated as necessary until relatively recent times. Professional experience developed at the bar, a profession with close links to the bench, was regarded as the most suitable training ground for judges.

The more recent expansion of the pool from which judicial appointments are made to include solicitors and legal academics, the appointment of lawyers instead of public servants as magistrates and the increase in the number of tribunals headed by lawyers not necessarily recruited from the bar has been a spur to change. As the former Chief Justice of Australia, the Hon Murray Gleeson, said about the earlier practical monopoly of judicial appointments from the ranks of barristers:¹ “... historically, the monopoly has been protected by the lack of proper arrangements for judicial training and development. Real change, as distinct from window-dressing, in the one area, requires real progress in the other.”

There has also been recognition of the fact that even a full and varied career as a leading barrister may not be enough to prepare the practitioner to handle the variety of judicial work now performed in courts of general jurisdiction as well as in the specialised courts and tribunals that include judicial members. Many barristers experienced in the civil side of a Supreme Court’s jurisdiction will have had little or no experience of criminal trials and vice versa. Appointees to the Federal Court of Australia may know much about intellectual property and corporations law but little of immigration law. Support for judicial education may also have arisen from some apparently ill-advised comments by judges in socially sensitive cases.²

Comparison with the French system

The system is, however, not at all like the lengthy training undergone, for example, by French trainee judges at the *École Nationale de la Magistrature*.³ There, judges and prosecutors, both known as *magistrats*, and belonging to the same judicial body, are selected after passing a competitive exam. Between 100 and 200 candidates succeed every year. Most of them are young graduates from a variety of academic backgrounds. Their training includes lectures and seminars, an internship in a court, and another with a lawyer and lasts almost three years.

¹ See Murray Gleeson, *Judicial Selection and Training: Two Sides Of The One Coin*, a speech delivered to the Judicial Conference of Australia on 31 May 2003;
http://www.hcourt.gov.au/speeches/cj/cj_judicialselection.htm

² See Kenny, S C, *Judicial Education in Australia* [2004] LegEdDig 54; (2004) 13(2) Legal Education Digest 8; <http://www.austlii.edu.au/au/journals/LegEdDig/2004/54.html>

³ <http://www.enm.justice.fr/> and <http://www.enm.justice.fr/anglais/home.php>. See also a useful comparative analysis of judicial training by L Armytage, *Training Judges: Reflections on Principle and International Practice* (2005) 2(1) EJLE 21-38 at <http://www.educatingjudges.com/Hyperlinks/EuropeanJournal.pdf>

The major part of this training, the internship in a court, consists, for the trainees, of work in several judicial roles, civil, criminal, juvenile or investigating, under the control of the sitting judges. They are assessed throughout their period in the ENM, and can be failed if unsuccessful. If they succeed in their training and in the final examinations, they are appointed by decree of the President of the Republic, proposed and approved by the High Council of the Judiciary.⁴ Many become judges before they have turned thirty years of age. Once appointed, judges (and prosecutors) must undertake at least five days of training annually in order to keep informed of recent developments in the law, or learn more about areas of the law with which they are unfamiliar.

This career path is relevant for most judges in France, but not for all of them. Some have had professional experience before they entered the ENM, for example as lawyers, public servants or commissioned officers in the military. A relatively small number of experienced and capable lawyers can be appointed without passing through the usual ENM selection and training. This last possibility, closer to the Anglo-Australian system, is not widely used in France where competitive examination of graduates or post-graduates for appointment to any public position is seen as a bulwark of the Republic. In the French system, although the status of judges is different because of their guaranteed independence pursuant to Article 64 of the French Constitution and the permanence of their appointments, judges are not considered in the popular eye to be really different from leading public servants.

In Australia, however, experience of litigation gained from a lengthy and successful period of practice in the legal profession is still the main recognised qualification for appointment and recruitment from among the leading private practitioners is a recognised means of enhancing the independence of the judiciary from the executive and legislative arms of government.

Current training in Australia

The major courts commonly provide new appointees with useful information and practical resources such as bench books providing guidance for the conduct of criminal trials. Most also conduct their own continuing education programs at least once a year and rely on the national orientation program provided twice a year for new judges.

The newly appointed judges of Australia's state and federal superior courts attend a five day orientation course conducted by the National Judicial College of Australia in conjunction with the Judicial Commission of New South Wales, the Australian Institute of Judicial Administration and the Judicial College of Victoria during the first year after appointment. The NJCA was established in 2002 and provides a source of education and training nationally with programs covering a wide range of

⁴ Conseil Supérieur de la Magistrature: <http://www.conseil-superieur-magistrature.fr/>

topics as well as the orientation courses.⁵ Not long after it was established the Hon Murray Gleeson said of it:⁶

“So long as governments adhere to the old-fashioned idea that new judges are thrown in at the deep end, they cannot complain that judicial office is available only to experienced swimmers. Successive New South Wales governments have been leaders in the field of judicial education. The Judicial Commission of New South Wales, of which I was President for almost 10 years, does work that has gained it an international reputation. It supports the National Judicial College. There is enormous scope for development in the field of judicial education, and tackling that issue on a national basis seems to me to be the best way of promoting greater unity without sacrificing the advantages of diversity.”

Another significant national body is the Australian Institute of Judicial Administration. It is a research and educational institute associated with Monash University in Melbourne. Its principal objectives include research into judicial administration and the development and conduct of educational programmes for judicial officers, court administrators and members of the legal profession in relation to court administration and judicial systems.⁷ It also provides a regular series of programs of interest and use for judges.

The Judicial Conference of Australia is principally concerned with the maintenance of a strong and independent judiciary within Australia but also holds an annual colloquium addressing issues of current interest to the judiciary.⁸

The most notable body providing education and training at the State level is the Judicial Commission of New South Wales, established in 1986 and combining an educational and training role with assistance to the courts to achieve consistency in sentencing. It also examines complaints against judges.⁹ It offers an extensive conference and seminar programme for judges in each New South Wales court, ranging from induction courses for new appointees to specialist conferences.¹⁰ It also liaises with national bodies such as the NJCA, the AIJA and the Judicial Conference of Australia.

The Judicial College of Victoria was established in 2001. It provides education for judges, magistrates and tribunal members in that State and aims to keep judicial officers abreast of developments in the law and social issues, and help them build and

⁵ <http://njca.anu.edu.au/Professional%20Development/Programs%20public%20version/Programs%202007%202008.htm>. See also the Australian Law Reform Commission *Report 89: Managing Justice: A review of the federal civil justice system - 2. Education, training and accountability* recommending the establishment of such a body at

⁶ <http://www.austlii.edu.au/au/other/alrc/publications/reports/89/ch2.html#Heading10>.

⁷ *The National Judicial College and managing a federal judicial system*
<http://www.onlineopinion.com.au/view.asp?article=2510>

⁸ <http://www.aija.org.au/index.php>

⁹ <http://www.jca.asn.au/>

¹⁰ <http://www.judcom.nsw.gov.au/>

For the 2010 program see
<http://www.judcom.nsw.gov.au/education/Education%20Calendar%202010.pdf>

maintain the skills they need to perform their roles with rigour.¹¹ It also provides some support to the national programs conducted by the NJCA and the AIJA.

It is a common feature of the judicial training programs in Australia that they are under the control of judges, an approach regarded as necessary for the maintenance of judicial independence.

There are, of course, many other programs, conferences and seminars provided by professional associations and universities which judges are encouraged to attend. In most cases courts will have a budget to send judges to such programs or judges will be paid an allowance to be used for such purposes. The variety and number of training courses are significant but the system is still heavily reliant on recruiting its judges from experienced barristers and solicitors whose skill has been demonstrated over many years of practice and who are, therefore, likely to be able to adapt to the judicial role with relative ease and without much specialised training.

Interest in the development of judicial training in Australia and internationally was spurred by the Fourth International Conference on the Training of the Judiciary organised by the International Organization for Judicial Training and held in October 2009 in Sydney.¹² It is likely that opportunities for judicial education and training in Australia will continue to increase in number and variety.

¹¹ <http://www.judicialcollege.vic.edu.au/>. The 2010 prospectus can be found at <http://www.judicialcollege.vic.edu.au/sites/default/files/2010JCVProspectus.pdf>

¹² <http://www.iojt.org/iojt2/index.html>