



WHAT SHOULD AN 'ENTRY-LEVEL LAWYER' LOOK LIKE IN A POST-COVID WORLD?

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I INTRODUCTION

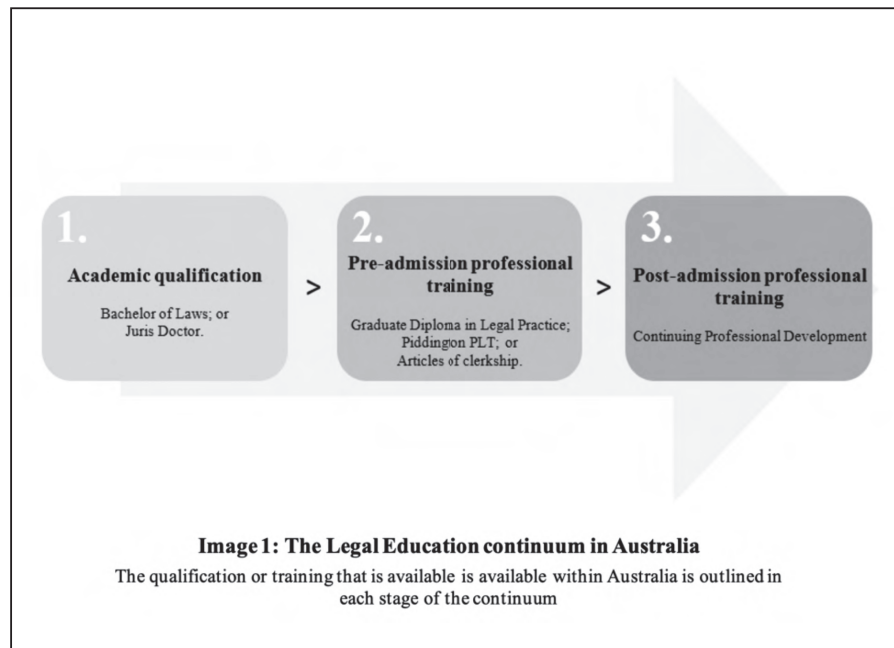
Practical Legal Training, colloquially referred to as 'PLT', is the final requirement that law graduates must satisfy in order to be admitted into the legal profession within various Australian jurisdictions.¹ While in some Australian jurisdictions there are alternative avenues to gain admission into legal practice, such as articles of clerkship, PLT has become the predominant option.² PLT is commonly offered by Australian universities and higher education providers.³

In 2002, all Australian Admitting Authorities endorsed the national 'PLT Competency Standards for Entry-level Lawyers' ('PLT Competency Standards') standardising the PLT courses and programs across Australia.⁴ The PLT Competency Standards were jointly developed by the Australasian Practical Legal Education Council ('APLEC') and Law Admissions Consultative Committee ('LACC') and are the yardstick used by Admitting Authorities for accrediting and monitoring Australian PLT courses.⁵ The PLT Competency Standards are intended to reflect the skills, practice areas and values essential for an 'entry-level lawyer' being admitted to the Australian legal profession.⁶

As the legal profession adapts to new challenges and technologies, there is a need to regularly revisit the PLT Competency Standards to ensure that they remain fit for purpose.⁷ This paper considers the relevance of the current PLT Competency Standards to the contemporary practice of law in Australia, and into the future. The PLT Competency Standards will first be considered in the context of the prevailing continuum of legal education,⁸ and then assessed against the needs of entry-level lawyers considering recent global trends affecting legal practice. Given the rapid changes that are disrupting the legal profession,⁹ it is contended that the PLT Competency Standards need to be revised in order to ensure that entry-level lawyers are equipped with practical skills, practice areas and values for legal practice today. Finally, this paper briefly proposes directions for further research to ensure that legal education keeps pace with legal practice, and that the perceived gap between what is taught during academic education and PLT and the realities of legal practice is closed.

III LEGAL EDUCATION CONTINUUM

The 1971 Report of the Committee on Legal Education (Ormrod Report) first proposed that legal education spans across a continuum that can be divided into three distinct stages: academic qualification, pre-admission professional training, and post-admission professional training.¹⁰ In Australia, each phase of the continuum is heavily legislated, resulting in very prescriptive requirements as to what must be covered in the qualification or training curriculum offered in each stage.



To be admitted to the Australian legal profession, a person must have:

1. completed a law degree, either a Bachelor of Laws or Juris Doctor, with an approved tertiary institution (Stage 1);
2. completed the PLT requirements (Stage 2); and
3. demonstrated they are a fit and proper person to be admitted.¹¹

If an Australian lawyer who is admitted into the profession chooses to engage in practice, they must have an Australian practising certificate,¹² professional indemnity insurance,¹³ and compete the requirements for continuing professional development ('CPD') (Stage 3).¹⁴

Academic Qualification (Stage 1)

In Australia, law degrees tend to have a strong doctrinal focus, with the coverage of legal knowledge and technical skills at the forefront. This is evidenced by the various regulatory instruments that currently govern legal education,¹⁵ in particular the strong emphasis that is placed on the teaching of the 11 prescribed areas of knowledge (colloquially referred to as the 'Priestley 11').¹⁶ The prescribed areas of knowledge are:

Criminal law and procedure;
Torts;
Contracts;
Property;
Equity;
Company Law;
Administrative Law;
Federal and State Constitutional Law;
Civil Dispute Resolution;
Evidence; and
Ethics and Professional Responsibility.¹⁷

While the 'Bachelor of Laws Learning and Teaching Academic Standards Statement' reiterates the importance of knowledge of the prescribed areas of substantive law,¹⁸ the standards also emphasise coverage of the following threshold learning outcomes: ethics and professional responsibility; thinking skills; research skills; communication and collaboration; and self-management.¹⁹

Pre-Admission Professional Training (Stage 2)

Prior to the existence of PLT, pre-admission professional training was predominantly conducted by way of 'articles of clerkship'.²⁰ Although the adoption of PLT commenced as early as the 1970s in New South Wales,²¹ PLT was only introduced in Western Australia as recently as the early 2000s.²² The introduction of the PLT within NSW was largely driven by the decision to replace the articles of clerkship with an institutionalised pre-admission professional training program.²³

The intention of PLT is to provide law graduates with practical training to 'bridge the gap between university studies and the real world of legal practice'.²⁴ The PLT Competency Standards reflect this objective as when they were developed APLEC and LACC 'sought to describe the observable performance in several key areas relating to legal practice, required of entry-level lawyers at the point of admission to the legal profession'.²⁵ The PLT Competency Standards prescribe that each form of PLT must comprise two components: coursework, and workplace experience (ie, supervised legal placement in a law or law-related workplace).²⁶

The PLT coursework component must cover the prescribed competencies that every applicant is to achieve. The required competencies are:

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

Compulsory Practice Areas
Civil Litigation Practice
Commercial and Corporate Practice
Property Law Practice

Optional Practice Areas

... [A]ny two of:

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

Values

Ethics and Professional Responsibility.²⁷

One of the prominent criticisms of PLT is that the components of the coursework 'feel like an extension of university but with a practical twist'.²⁸ An examination of the law academic qualification curriculum as against PLT coursework confirms that there is undoubtedly overlap. Taking civil litigation as an example, students can expect to cover issues such as the jurisdiction of courts, commencement of proceedings, pleadings, disclosure, costs, and enforcement in the core subjects of both their law degree and PLT. By reducing the overlap in the curricula of these two stages, it is contended that the PLT coursework 'could be more well-rounded with an increased focus on the specific skills that graduate solicitors need to know'.²⁹

Post-Admission Professional Training (Stage 3)

Once admitted into the Australian legal profession, legal practitioners who choose to engage in legal practice must meet the prescribed CPD requirements annually.³⁰ For example, solicitors must acquire 10 CPD points annually, with at least 1 CPD point in each of the following categories:

Ethics and professional responsibility;
Practice management and business skills;
Professional skills; and
Substantive law.³¹

Given that the purpose of the CPD scheme is to ensure that legal practitioners are engaged in ongoing professional development and keeping abreast of current legal knowledge and practice skills, it is neither surprising nor concerning that there is some overlap between the PLT coursework components and the CPD categories.

III GLOBAL TRENDS AFFECTING LEGAL PRACTICE

In his recent (and, hopefully, premature) eulogy to the legal profession, Hunter identifies five major trends that he considers will shape the future of the legal industry. These include technology, commoditisation, and globalisation.³² For present purposes, technology and commoditisation are bundled together as technology seems to be the enabling step in the commoditisation of legal services.³³ In this part we consider these trends and their impact on the work traditionally done by entry-level lawyers, as well as important aspects of their careers (eg, mandatory periods of supervised legal practice, and mentoring by senior colleagues).

Technology and Commoditisation

All one need do is read a book by Richard Susskind to see that the effect of advances in technology on legal practice is not a new phenomenon. Susskind's book, 'The Future of Law',³⁴ was published

over 25 years ago and accurately predicted many of the paradigm shifts in the intervening years.³⁵ Some examples of recent technological advances in the practice of law include mandatory electronic document filing in most civil jurisdictions, technology assisted review of documents (whether contract review or 'e-discovery'), virtual court rooms, and electronic conveyancing. Susskind is recently quoted as saying that '[w]e're going to move away from a ... human bespoke service, to legal services in a cart'.³⁶ This trend is already observable with legal services providers such as 'Legal Vision' and 'Law Path', among others, offering legal documents for sale online, with or without legal advice, depending on the user's preferences.³⁷

The adoption of technology in legal practice was accelerated by the COVID-19 pandemic, which saw many lawyers forced to switch to remote online work because of widespread lockdown and isolation requirements. In some jurisdictions, courts were forced to switch to predominantly online hearings, which came with their own unique issues.³⁸

Having spent much of the past few years working in a predominantly remote or 'hybrid' (ie, splitting time between home and the office) work environment, there is reluctance among lawyers, especially mid-level lawyers, to return to the office full time.³⁹ This preference for remote or hybrid work post-pandemic will have flow on effects for law graduates as the face-to-face supervision and mentoring opportunities that once existed may not be available, or as easily available, in a post-pandemic law firm.

Globalisation

According to Hunter, globalisation means the labour arbitrage from what he refers to as 'high-cost centres' (countries such as Australia) to 'low-cost centres' (countries such as India or the Philippines). The kind of work that is being 'offshored' is the work that used to be the bread and butter of newly admitted lawyers, especially in large firms — jobs like document review, due diligence, and discovery.⁴⁰ What this likely means is that newly minted lawyers, especially at large firms, may find themselves in roles where they are managing, or assisting in the management of, teams of foreign lawyers who are engaged in the actual task. However, these recently admitted Australian lawyers are likely to have little to no training or practical skills in project or team management to equip them for this task.

In addition to labour arbitrage, there is an increase in lawyers acting as independent contractors, as well as firms offering flexible legal workforces for hire.⁴¹ This 'gig work' (work performed by freelancers or independent contractors) is not a new phenomenon, at least not within the United States.⁴² While 'gig-work' may have certain attractions, such as flexibility and a degree of autonomy, junior lawyers are not likely to be in a position to take advantage of this because they lack the expertise and/or network to make independent work sustainable. This creates a potential paradox for graduates because, according to Thornton, 'gig-work' would be ideal for law graduates who cannot find a permanent graduate position; however, those graduates will almost certainly be constrained by requirements of supervised legal practice, lack of experience, and lack of a referral network.⁴³

However, despite the disruptive effect of advances in technology and different ways of working, the authors are not aware of any law schools or PLT providers that specifically address these changes in their curricula. This is likely because these issues do not currently fall within the ambit of either of the Priestley 11 or the PLT standards.

IV CONCLUSION

The PLT Competency Standards must be frequently reviewed to ensure they remain aligned with the skills and knowledge expected of entry-level lawyers. Perhaps when first formulated the PLT Competency Standards did reflect the practical day-to-day abilities that entry-level lawyers needed. However, with the advancement of legal technology and artificial intelligence more generally, it cannot be assumed that all lawyers will be involved in legal practice as we currently understand it, or like it was in 2002 when the PLT Competency Standards were first nationally endorsed. For instance, speaking from her perspective as a recent graduate, Gab Royle suggests that the use of legal technology ought to be introduced as a core competency in the PLT program.⁴⁴ Hunter further observes that:

[Law] Schools will need to teach students how to network, engage in flexible work arrangements, develop an entrepreneurial mindset and have a personal brand. In time, these skills may be as important as mastery of the Priestley 11. If schools do not teach their students these skills they will not survive.⁴⁵

Given that there is overlap between the law academic qualification curriculum and PLT coursework component, there is certainly scope for reform and improvement. However, any proposal for reform must be measured and reflect the needs of relevant stakeholders. Therefore, further research in the area could be conducted to better understand the experiences of newly admitted legal practitioners. For example, a survey of current entry-level lawyers querying their PLT experience and how well PLT prepared them for the realities of legal practice would be appropriate. Such research could inform decisions about whether the PLT Competency Standards need reform, and if so, what contemporary practice areas and skills should be covered.



ENDNOTES

- 1: See, eg, *Legal Profession Uniform Law Application Act 2014* (Vic) sch 1 s 17(1)(b) ('Legal Profession Uniform Law').
- 2: See generally, Law Admissions Consultative Committee, *Practical Legal Training Competency Standards For Entry-Level Lawyers* (Standards, October 2017) <<https://legalservicescouncil.org.au/documents/PLT-competency-standards-for-entry-level-lawyers-Oct-2017.pdf>>.
- 3: See, eg, Curtin University, *Graduate Diploma in Legal Practice* (Web Page, 16 August 2022) <<https://www.curtin.edu.au/study/offering/course-pg-graduate-diploma-in-legal-practice-gd-lawlp/>>; Flinders University, *Flinders Law – Preparing lawyers for tomorrow* (Web Page, 25 August 2020) <<https://www.flinders.edu.au/study/law/practical-legal-training/>>; UTS, *Practical Legal Training (PLT)* (Web Page, 10 November 2021) <<https://www.uts.edu.au/current-students/current-students-information-faculty-law/practical-legal-training-plt>>; College of Law, *Practical Legal Training* (Web Page, 2022) <<https://www.colaw.edu.au/learn-with-us/our-programs/practical-legal-training-programs/>>; Leo Cussen, *Practical Legal Training* (Web Page, 2022) <<https://www.leocussen.edu.au/practical-legal-training/>>. But note, the PLT course offered by the Piddington Society Inc (an incorporated association of lawyers in Western Australia) has received approval from the Legal Practice Board of Western Australia: Piddington Society, *Advancing Access to Justice and Collegiality* (Web Page, 2022) <<https://www.piddingtonsociety.org/>>.
- 4: Ibid. The PLT Competency Standards have since been reviewed and revised in 2013 and 2017.
- 5: Ibid. In the late 1990s, the Australasian Practical Legal Education Council (APLEC) drafted the first PLT Competency Standards which were subsequently endorsed by the Law Admissions Consultative Committee (LACC) – this first version formed the basis of the current PLT Competency Standards. See 'About APLEC', APLEC The Australasian Professional Legal Education Council (Web Page, 2021) <<https://aplec.asn.au/about/>>.
- 6: Law Admissions Consultative Committee (n 2).
- 7: Maureen Fitzgerald, 'Determining the Content of Professional Legal Training' (1998) 16(1) *Journal of Professional Legal Education* 69, 80.
- 8: 'Report of the Committee on Legal Education', Committee on Legal Education (Report, 1971) 100, 185.
- 9: 'FLIP Report: The future of law and innovation in the profession', The Law Society of NSW (Report, 2017) <<http://lawsociety.com.au/ForSolicitors/Education/ThoughtLeadership/flip/OnlineReport/index.htm>>.

- 10: 'Report of the Committee on Legal Education' (n 8).
- 11: See, eg, *Legal Profession Uniform Law* (n 1) s 17.
- 12: See, eg, *ibid* pt 3.3 div 2.
- 13: See, eg, *ibid* pt 4.4.
- 14: See, eg, *Legal Profession Uniform Continuing Professional Development (Barristers) Rules; Legal Profession Uniform Continuing Professional Development (Solicitors) Rules*.
- 15: *Tertiary Education Quality and Standards Agency Act 2011* (Cth); *Higher Education Standards Framework (Threshold Standards) 2015* (Cth); 'Australian Qualifications Framework', Australian Qualification Framework Council (National Policy, January 2013) <<https://www.aqf.edu.au/sites/aqf/files/aqf-2nd-edition-january-2013.pdf>>; Law Admissions Consultative Committee, 'Model Admission Rules 2015', Law Council of Australia (Rules, December 2016) <https://www.lawcouncil.asn.au/files/web-pdf/LACC%20docs/212390818_8_LACC_Model_Admission_Rules_2015.pdf>; Sally Kift, Mark Israel and Rachael Field, 'Bachelor of Laws Learning and Teaching Academic Standards Statement' (Standards, December 2010) <https://researchrepository.murdoch.edu.au/id/eprint/54827/1/altc_standards.pdf>; 'Australian Law School Standards with Guidance Notes', Council of Australian Law Deans (Standards, 30 July 2020) <<https://cald.asn.au/wp-content/uploads/2020/07/Australian-Law-School-Standards-v1.3-30-Jul-2020.pdf>> ('Council of Australian Law Deans Australian Law School Standards'); and the regulations and rules set by the local regulatory authorities.
- 16: See Law Admissions Consultative Committee, 'Model Admission Rules 2015' (n 15). The Model Admission Rules have generally been adopted by all local regulatory authorities within their respective admission rules.
- 17: Ibid, sch 1.
- 18: Kift, Israel and Field (n 15) 12–13.
- 19: Ibid 10. The coverage of the identified threshold learning outcomes is also prescribed in the Council of Australian Law Deans Australian Law School Standards (n 15).
- 20: Paul K Cooper, 'Training Solicitors: The Expectations of the Profession' (1985) 3(1) *Journal of Professional Legal Education* 57. Before the proliferation of university law schools in the second half of the 20th Century, aspiring lawyers were able to combine Stages 1 and 2 in a professional apprenticeship known as 'five-year articles', see, eg, K E Lindgren, 'Reflections on Legal Education' (2005) 9(1) *Newcastle Law Review* 67.
- 21: See Ainslie Lamb, 'Changes in Attitude, Changes in Latitude: The Changing Climate in Pre-Admission Practical Legal Training in New South Wales' (1995) 13(2) *Journal of Professional Legal Education* 173 for a comprehensive discussion of the introduction of PLT in New South Wales.
- 22: 'Annual Report: 1 July 2005 – 30 June 2006', Legal Practice Board of Western Australia (Annual Report, 1 December 2006) <https://www.lpbwa.org.au/Documents/For-The-Public/Annual-Reports/LPB-Annual-Report-2005_06.aspx> 17.
- 23: Lamb (n 21) 173.
- 24: Michael Cole, 'Practical Legal Training' (2007) 34(8) *Brief* 19.
- 25: Law Admissions Consultative Committee (n 2) 1.
- 26: Ibid 4. The duration of the workplace experience requirements varies across the States and Territories. While the PLT Competency Standards specifies a 'minimum requirement', local regulatory authorities are permitted to set an 'additional requirement'.
- 27: Ibid.
- 28: See, eg, Gab Royle, 'How Practical is PLT?' (2020) 160 *Precedent* 41.
- 29: Ibid.
- 30: See, eg, *Legal Profession Uniform Continuing Professional Development (Barristers) Rules; Legal Profession Uniform Continuing Professional Development (Solicitors) Rules*.
- 31: See, eg, *Legal Profession Uniform Continuing Professional Development (Solicitors) Rules*, rule 6. Barristers have similar CPD requirements, but their categories are slightly different, eg, 'Substantive Law, Practice and Procedure, and Evidence' and 'Barristers' Skills'. See, eg, *Legal Profession Uniform Continuing Professional Development (Barristers) Rules*, rules 8–9.
- 32: Dan Hunter, 'The Death of the Legal Profession and the Future of Law' (2020) 43(4) *University of New South Wales Law Journal* 1199. The other two trends identified by Hunter both fall under the banner of 'technology' so are not specifically mentioned.
- 33: Ibid 1201–4.
- 34: Richard E Susskind, *The Future of Law: Facing the Challenges of Information Technology* (Clarendon Press, 1996) ('The Future of Law').
- 35: Richard E Susskind, *Tomorrow's Lawyers: An Introduction to Your Future* (Oxford University Press, Second edition, 2017) ch 12.
- 36: Virginia Ginnane, 'The Future for Lawyers: Legal Service in a Cart?', Thomson Reuters | Business Insight (Blog Post, 22 March 2021) <<https://insight.thomsonreuters.com.au/business/posts/the-future-for-lawyers>>.
- 37: Legal Vision (Web Page) <<https://legalvision.com.au/>>; Law Path (Web Page) <<https://lawpath.com.au/>>.
- 38: See, eg, Peter Devlin, 'Novak Djokovic Visa Battle: Porn and Techno Music Livestreamed during Court Hearing | PerthNow' (News Article, 10 January 2022) <<https://www.perthnow.com.au/sport/novak-djokovic/novak-djokovic-visa-battle-porn-and-techno-music-livestreamed-during-court-hearing-c-5251442>>.
- 39: Unispace, 'The Reluctant Returner' (Report, 2022) <<https://www.unispace.com/reliantant-returner/download-legal>> 13; see also, Unispace, 'COVID-19 and the Future of the Legal Workplace' (Web Page, 18 August 2020) <<https://www.unispace.com/insights/future-ways-of-working-legal-sector>>.
- 40: Hunter (n 32) 1205.
- 41: Ibid 1211.
- 42: Carolyn M Corcoran, 'Gig Lawyers in the U.S. Economy: Realizing the Potential of Platform Markets and Bolstering Ethical Duties to Affect Change and Innovation' (2021) 34 *Georgetown Journal of Legal Ethics* 883, 892.
- 43: Margaret Thornton, 'Towards the Uberisation of Legal Practice' (2019) *Law, Technology and Humans* 46, 59.
- 44: Royle (n 28).
- 45: Hunter (n 32) 1212.

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