

31 July 2008

Secretariat  
Review of Australian Higher Education  
Location 023  
GPO Box 9880  
Canberra ACT 2601

By email: [HEReview@deewr.gov.au](mailto:HEReview@deewr.gov.au)

Dear Sirs,

**NSW YOUNG LAWYERS  
SUBMISSION TO REVIEW OF AUSTRALIAN HIGHER EDUCATION**

We write to you on behalf of NSW Young Lawyers Civil Litigation Committee.

We refer to your invitation to make submissions to the Review of Australian Higher Education as announced by the Minister for Education, The Hon Julia Gillard MP, on 13 March, 2008.

We also refer to the radio interview conducted with Emeritus Professor Denise Bradley AC on the ABC National Radio programme *Life Matters* on 21 July, 2008.

We note that the purpose of the Review is to consider the issues and challenges facing the Australian higher education sector with the intention of developing a vision for higher education over the next decade.

We also note that in her radio interview Professor Bradley mentioned that one of the aims of the Review is to look into the question of what is the optimal quantity of graduates that our tertiary sector should produce. We understand from that interview that you are considering whether there are too many or too few students graduating from our tertiary institutions and whether there needs to be any adjustments made as a result.

In this submission we will address these issues in relation to the legal profession and the role that tertiary institutions carry out in providing law graduates to the employment market for lawyers. Although our observations are based on our experiences in New South Wales, we suggest that many of them are likely to be relevant to other areas of Australia to varying degrees.

### Legal Profession - Media and the Public

Obtaining a law degree and entry to the legal profession is seen by many in the general public as a path to wealth, status and success. Traditionally, it has often been said that if you aspire to achieving these outcomes in life then you should become a doctor or a lawyer. The electronic media often plays up that image of our profession through various television programmes such as *Ally McBeal*, *Boston Legal* and *Law & Order*. The print media likewise reinforces this message through various articles based on the assumption that all lawyers are rich or at least handsomely rewarded.

### Legal Profession – Tertiary Sector

With these assumptions and other matters already in the minds of so many members of the public it has been relatively easy for the tertiary sector to use this to attract students to their law schools. Faced with increasing pressures from governments to be financially self-supporting there has been an increasing need to attract fee-paying students. In regards to government funded university positions, law is one of the least expensive degrees to teach, particular when compared to teaching or sciences, and yet it is made up of all Band 3 subjects which attract the highest fees. It is possible that the level of these fees is based on the assumption that all law students will be able to obtain lucrative careers to repay the fees, yet more often than not, this is not the case. Quite often the tertiary sector marketing overtly uses expressions like a “wealth of opportunities available” or “the sky’s the limit” for any student who obtains a law degree.

The result has been that the number of law schools and law students has grown dramatically over the past 20 years. For example, since 1990 the number of institutions providing new entrants to the profession around Australia has increased from 12 to 32 (31 law schools and the NSW Legal Practitioners Admissions Board). In the same period the number of students enrolled in LLB programmes has risen from 11,000 to around 28,000.

### Legal Profession – Issues for New Entrants

However, for many graduates entering the profession the reality they experience is starkly different to this. Broadly speaking, the challenges are much higher and the rewards lower than is commonly assumed. The rate at which tertiary institutions are producing law graduates is far in excess of the market’s capacity to absorb them. At the same time, there have been a series of legislative and market reforms, from tort reforms and caps on recoverable legal costs through to the growth of new industry players such as non-lawyer mediators and low cost conveyancers which has led to a situation where there are a plethora of suppliers chasing a shrinking demand for services.

The results of this are frequently seen in low pay and long working hours, high staff turnover, depression and low levels of professional satisfaction. Although many outside the profession would be surprised to hear this, the only pay award that applies to lawyers in New South Wales, the Graduate at Law Award (NSW) is a flat \$28,452.30 per annum. Whilst graduates who enter the mid-tier and top-tier firms will enjoy higher rates than this, many others will start on wage levels in this region and then work their way up

slightly. In extreme cases some graduates are actually working without pay just to obtain experience. The figure that's commonly referred to in the profession is that more than 50 percent of lawyers in New South Wales are on annual wages of \$50,000 or less.

#### Alignment of Supply and Demand for Graduates

Question 4 of the Discussion Paper asks how adequate the mechanisms for aligning supply and demand of graduates are. Given the environment described above it can only be concluded that the mechanism for aligning supply and demand of law graduates has broken down. The profession has been totally over-supplied with graduates and the gap between what they were expecting to be paid and what they actually are paid is a significant contributing factor towards depression amongst lawyers. (See the comments of Dr Ian Chung, Sydney Doctor at NSW LawCare, on ABC Radio National's Law Report titled *Lawyers and Depression* on 25 March 2008 at <http://www.abc.net.au/rn/lawreport/stories/2008/2195243.htm>) A further contributing factor is that the work conditions experienced by most new lawyers have deteriorated as a consequence of a highly employee-competitive labour market.

Question 4 also asks how pricing and labour market signals impact on student choices. As previously mentioned, members of the public are continually fed the message that lawyers are wealthy. On top of this, for professional reasons practitioners are often reluctant to speak publicly about the market and work conditions they experience. The result is that there is no opportunity for the oversupply to be rectified and/or students being able to factor in these realities before deciding to invest so much of their resources and time into obtaining law degrees.

#### The Way Forward

We request that the Review seriously consider the issues we are raising in this submission. In our view, the Review should recommend that an enquiry be established specifically to examine the situation currently prevailing within the legal profession leading to the possible reduction of numbers of graduates produced by tertiary institutions in total.

We acknowledge that these issues require further research and further empirical studies before policy decisions on these issues are made. Part of the problem in this area is that there appears to be a relative scarcity of research and statistics relating to these issues. Also our conclusions are primarily based on the direct experiences of young lawyers in New South Wales. Clearly, there is a need to more thoroughly enquire into and document the situation prevailing throughout Australia before making any policy changes in this area.

In addition, this submission should not in any way be read as supporting reductions or reallocations of the public funding provided to law schools in general. The quality of education provided by law schools to their students obviously has a critical role in influencing the quality of future lawyers entering the profession. To the extent that the maintenance of the existing levels of funding, or even enhanced funding levels, are necessary to ensure the quality of education for law students this submission supports the provision of such funding.

However there is no inconsistency between the maintenance of quality legal education and our recommendation that the issue of law graduate numbers be the subject of research and an enquiry to determine whether these numbers should be reduced in total. Indeed there is every reason to believe that, if there is any effect at all, lower rather than higher student numbers would result in enhanced funding on a per student basis.

NSW Young Lawyers

By way of background, NSW Young Lawyers is an organisation dedicated to supporting young solicitors, barristers and law students under the age of 36 or within the first five years of practice. We currently have a membership of 9,500 and our member services include the provision of Continuing Legal Education, practical guides to areas of practice and pro bono-style publications and forums for the wider community.

We look forward to reading the recommendations of your Review in its final report.

Yours faithfully,



Joanne Chaina

Chair, Civil Litigation Committee and Executive Councillor  
NSW Young Lawyers