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10 December, 1997

The Review of Higher Education Financing and Policy
Location Code 728
GPO Box 9880
CANBERRA 2601

Dear Sir/ Madam,

Re: Higher Education Review

The Young Lawyers' Section ("YLS") of the Law Institute of Victoria exists to represent the views of younger members of the legal profession and presently has a membership of 1,800. The YLS is concerned Victorian Law schools have moved towards adopting "up-front" fees for undergraduate law courses. As a result the YLS has drafted a submission on higher education issues, a copy of which is enclosed.

The submission endorses the following three basic principles:

1. Access should be on the basis of merit not wealth.
2. There is a significant public benefit in citizens obtaining a legal education.
3. The level of funding for law courses should reflect the needs of a quality qualification and not perceived demand or projected earnings.

In response to "Learning for Life" the YLS makes the following specific comments:

1. The YLS agrees with the comments on page 4 that "*Our national target should be near universal access to some form of post-secondary education*" however would also emphasise that equal access requires the same quality of education being offered to all students (subject to merit based entry requirements).
2. The YLS agrees with the comments on page 6 about focusing on the needs of students and would encourage programs that would produce law schools with a greater emphasis on the needs of students.
3. In relation to the level of funding issue raised on page 32, the YLS's view is that when setting levels of student contribution for higher education, course cost should be a significant factor and demand for a course is not a relevant factor given that supply is controlled. Increased contributions based simply on course demand reduces the diversity of students (and therefore the profession) and discriminates against degrees being applied in lower paid roles.

The YLS is happy to provide further comments in relation to any of the issues raised above or the accompanying discussion paper. Please contact Nick Auden on (03) 9288 1279 for further information.

Yours sincerely,

W TIEN VY/PHOEBE DUNN
Joint Chair

**Law Institute of Victoria - Young Lawyers' Section
Community Issues Committee**

Submission on Higher Education Funding

This submission is made by the Community Issues Committee on behalf of the Young Lawyers' Section of the Law Institute of Victoria.

The following comments are made in the light of

1. Recent changes to Higher Education announced by the Minister for Employment, Education, Training and Youth Affairs, particularly *n relation to:

changes to HECS levies for law courses; and
changes allowing Universities to charge local students up-front fees'.

2. The current review of Higher Education Financing and Policy by the Higher Education Review Committee (the "West Committee");
3. Moves by Monash University to provide places in 1998 for 70 up-front fee paying students while reducing government funded HECS places for 110 students in comparison to the 1997 intake; and
4. "Learning for Life" - the policy discussion paper recently published by the West Review.

This submission does not follow the guidelines for submissions issued by the West Committee in so far as it covers some only of the issues which form the West Committee's terms of reference. Where possible however, the relevant chapter and sub-topic used in "Learning for Life" is identified.

In particular this paper focuses on issues faced by law students and is motivated by the desire for a quality legal education to continue to be available to all sectors of society.

Summary

The YLS submission raises the following three basic principles:

1. Access should be on the basis of merit not wealth;
2. There is a significant public benefit *n citizens obtaining a legal education;

3. The level of funding for law courses should reflect the needs of a quality qualification and not perceived demand or projected earnings.

The YES submits that access to law courses should be available to all students and merit should remain the main criterion for entry. Financial barriers will result *n law

~ The Higher Education Council in its report to the Minister for Employment, Education, Training and Youth Affairs subsequent to the 1996 Budget indicated that these two developments would impact on

equity of access to education and the profile of the law schools.

courses (and therefore the legal profession) being even less representative of society than they currently are.

The YLS submits that there is a significant public benefit in teaching law to students and that the skills obtained are utilized in a variety of professions as well as law. Equal access to law courses is crucial for the public acceptance of our legal system which is predominantly influenced and shaped by law graduates. The public utility in having a representative profession should be considered when relative funding levels are determined.

The YES submits that law courses should not be amongst the lowest funded courses at Universities. The level of funding provided to law schools should allow for changes to meet the demands of the profession.

General Access Principles - Access based on merit not wealth:

Equity implications and impacts on the profile of the legal profession

(Refer Chapter 1: A fresh vision for higher education: into the third millennium; Realising the vision

Refer Chapter 3: The current policy and financing framework: strengths and weaknesses; Major Weaknesses)

The funding and entry systems for Higher Education should not reinforce existing divisions in society. Rather they should facilitate access on a merit basis by all those who wish to participate in higher education. Just as access to education should not depend on race or gender, access should not depend on wealth.

As the Higher Education Council (the "HEC") reported, equity requires that the legal profession "should be representative of the profile of the general community and that entry levels should therefore not discriminate different groups and access should not be related to a person's ability to pay."

The background to the West Committee's terms of reference acknowledges that there has been a recent transformation of our higher education system from elite to mass education. During this period there has been a dramatic increase in the presence of traditionally under-represented groups such as females and people from traditionally blue-collar backgrounds. This transformation has been facilitated in part by changes to society and in part by the provision of free or HECS funded education.

Nonetheless, our law schools still do not reflect society's composition. A recent survey by Monash University indicated that 78% of new law students come from private schools.

Any increase in the HECS levy or decrease in the number of HECS places available on a merit basis will decrease the participation rates of students from lower socioeconomic backgrounds as well as discouraging those who wish to move into careers that are not traditionally well paid.

It should be remembered that the purpose of subsidising higher education is not to redistribute income, but to facilitate more equal access to education.

Allowing universities to levy an additional fee to students will lead to a greater concentration of students from wealthy backgrounds at the more established and respected universities. Students from lower socio-economic backgrounds would be under-represented to an even greater degree than at present at arguably our better universities. In law, the university attended significantly effects job prospects.

The YES submits that the move to full-fees is a dangerous trend in the provision of higher education and that the ability to obtain a place at a particular university should be merit based and not wealth based.

Benefit to society

(Refer Chapter I: A fresh vision for higher education: into the third millennium; Realising the vision)

As the Martin Committee noted in 1964: the "material benefits of education, which accrue to individuals concerned, are only a fraction of the total benefits accruing to society."²

In the last decade there has been a significant increase in the number of law students at Australian universities from 11,000 to 22,000. Similarly, the number of law schools has increased from 12 to 28 at present. Although this increase in places has led to increased competition for Articled Clerk (and interstate equivalent) places, significant numbers of law students are now using their legal background as a basis for careers in a range of areas such as welfare, teaching, business, consulting, politics, merchant banking and foreign services. The Centre for Legal Education conducted a study in 1995 of over 5,000 students at 26 Australian law schools. The results indicated that more than half of those surveyed did not intend to practice law as a career.

In agreement with submission made by the Australian Committee of Law Deans, Australasian Law Students' Association and the Higher Education Council³, we believe that there is sufficient public benefit to justify law courses remaining predominantly publicly funded. The HECS system should be maintained with an

2 Report of the Committee on the Future of Tertiary Education in Australia

³ Get a reference for this

appropriate contribution from students that will not damage equality of access or discourage students from studying law.

Increases in HECS charges and decreases in HECS funded places, if anything, will decrease the public benefit of law degrees to society. The significant cost of a legal qualification will deter students from lower paid positions and place more emphasis on salary as a determinant in selecting a career. Areas that will be less attractive include Community Legal Centres, teaching, rural law firms and practices that act on behalf of poorer and Legal Aid funded clients.

Furthermore, the legal profession has a unique standing in society due to their representation of the rights of citizens and their heavy participation in the law making process in judicial, parliamentary and advisory roles. It is therefore in the interests democracy, social cohesion and public acceptance of our legal system that the legal profession, as far as possible, reflects the composition of society. This will only be achieved by facilitating access to higher education.

Funding Options

Changes to the HECS fee and equity implications

(Refer Chapter 4: The way forward: issues and options for the future; moving towards a student centred policy framework)

Although introduction of the HECS system in 1989 produced no discernible changes in the composition of the student population, this was only because the HECS repayments were income contingent and the levies modest. In contrast, the Stanley Report⁴ on fees for postgraduate course indicated that up front fees imposed a significant barrier for students, particularly impacting on those from a lower socio economic background. The report indicated that while women comprised 54% of students in course without an up front fee, only 41% of student in courses with an up front fee were women. The Higher Education Council has indicated that this trend applies to all equity groups that are under-represented in the education system generally and yet this trend of non-participation is not discernible where the charge is levied under a HECS style systems.

From 1997 onwards, three bands of HECS rates were introduced and law degrees were placed in the top band at a rate of \$5,500 per annum. The government stated that it had relied on the future earning capacity of graduates and costs of running courses in deciding which band would apply to a particular courses. The recent placement of law courses in the top HECS band is opposed on the basis:

⁴ Stanley, G.V., Review of Postgraduate Fee-paying courses, AGES, Canberra, 1994. ⁵ Ibid at 54.

Although the impact of the more than doubling of HECS charges for law students is yet to be seen.

1. Victorian figures indicate that the vast majority of young lawyers are not highly paid;
2. the law degree is amongst the lowest in terms of cost per student; and
3. under the current system law students are required to repay 80.5% of the cost of their education as compared to around 30% for Medicine, Dentistry and Veterinary Science students.

Contrary to perceptions used to justify increases to the HECS levy, law graduates are not highly paid when compared to the national average adult earnings of around \$35,000 per annum. The following table indicates Median gross salaries paid in Victorian practices June 1995):

	Country	Suburban	Large CBD	Award
Articled Clerk	\$ 16,049	\$ 16,302	\$26,000	\$ 16,042
1st year solicitor	\$25,050	\$26,520	\$35,000	\$23,265
2nd year solicitor	\$27,725	\$30,775	\$38,867	\$26,016

For comparison, law ranked 26^h out of a survey of the starting salaries of 29 disciplines, with an average starting salary of \$25,000.

As well as the fact that law graduates generally do not start earning the average wage until after four years of working, most have undertaken at least 5 years of tertiary education.

Up front fees

(Refer Chapter 4: The way forward: issues and options for the future; moving towards a student centred policy framework)

In relation to the introduction of up front fees we agree with the Australian Committee of Law Deans in their submission to the West Committee, who noted "...the option is obviously likely to favour applicants from wealthier backgrounds, and that this may have adverse implications for equity of access." The result will be a decrease in the socio economic diversity of law students and consequently of the legal professions.

The YES is aware that the Monash University Faculty of Law has reduced its HECS funded places for 1998 by 110 and simultaneously made available 70 places for full fee paying students. For all of the reasons listed above, we submit that this is an undesirable and inequitable development in legal education that will also have significant consequences for the legal profession in terms of the profile of the profession.

6 Adapted from figures provided by Kriegler, R. "What do Lawyers earn?", Law Institute Journal 71(2) February 1997 at pp 12-13.

7 Australia's Graduate Starting Salaries Survey, Graduate Careers Council of Australia, Melbourne, 1995
8 McInnis, C., and Marginson, S. Australian Law School After the 1987 Pearce Report, Centre for the Study of Higher Education, AGES, Canberra, 1994 at p 263.

Level of Funding

(Refer Chapter 4: The way forward: issues and options for the future; moving towards a student centred policy framework)

The YES recognises the pressure placed on Universities and Law Faculties as a result of significant funding cuts in real terms.

In recent times there has been a decrease in practical training components, a decrease in funding to libraries, a decrease in the number of faculty offered tutorials and an increase in the student - lecturer ratios in Victorian Law Faculties. This is a reflection of the inadequacy of funds provided to law schools which in turn has added to the pressure on these faculties to impose up front fees.

In reality, funding for law courses must be increased. To improve the quality of legal education and to assist in job placement, the following are suggestions for change in the provision of legal education:

an increase in the use of electronic mediums, such as electronic presentations for lectures;

an increase in practical skills training as part of the qualification;

an increase in the use of computers by students for legal research and communication;

an increase in the use of work experience as part of the qualification.

Although law is classified at the lowest funding level under DEETYA's **Relative** Funding Model, this is more of a restriction on the ability of the law Faculties to teach than a reflection on the cost of an ideal law course. To assist in the improvement of legal education and to enable progressive changes, the funding level for law course should be re-assessed.