PAY AS YOU LEARN

From 1995, ANU law students will have to pay $5,000 up front for practical legal training. SIMONE BURFORD, law student at Macquarie University, argues that the introduction of fees for Practical Legal Training will set back the social diversification of the legal profession.

THERE HAS BEEN a continued suggestion that the imposition of fees on law students is justified on the basis that these students are better able to recoup the cost of training given the supposedly higher salaries they will receive as graduates. Regardless of the questionable grounds on which assumptions of higher earnings are made, this position unreasonably assumes that students will be able to afford up-front fees at a stage prior to gaining full-time employment.

A potentially more devastating impact of the emphasis placed on the recoupment of investment through higher future earnings is the potential problem of students being forced to pursue employment in areas of the profession with higher financial returns at the expense of community and public legal services.

The deregulation of fees for postgraduate courses

The 1993 Federal Budget introduced the deregulation of fees for postgraduate courses. The focus of this statement appeared to be directed towards standard postgraduate courses, exempting courses that lead to a postgraduate qualification required for initial employment.

Despite this commitment the ministerial guidelines subsequently stated that:

"From 1994, the regulation of arrangements for postgraduate courses will be considerably relaxed. The 20% cap on the proportion of fee paying postgraduate students within Commonwealth funded load has been removed from 1994. Higher education institutions will be free to charge for both coursework and research degrees and the level of fees charged will not be regulated. *Postgraduate training that is required for registration for professional practice will not be protected.*"(emphasis added)

This change in policy signalled profound changes to the legal education system in Australia. Students in four jurisdictions - New South Wales, Tasmania, South Australia and the Australian Capital Territory are currently required to undertake some form of professional course upon completion of the standard Bachelor of Laws (LLB) before they are eligible to practice. Furthermore, Western Australia is likely to implement a similar system in 1996. In Victoria, students may undertake a one year articles program or the professional course at the Leo Cussens institute.

Setting a precedent: the ANU and Wollongong

Clearly, providers of Practical Legal Training (PLT) Courses have regarded the change in policy as an opportunity to charge fees for those courses. The decision to charge fees has already been made at the Australian National University (ANU), and the University of Wollongong, and is under discussion at several other institutions.

In 1995, students seeking entry to the ANU's Legal Workshop course will be forced to a $5, 000 fee to complete the course, a figure negotiated from an original $9, 000 price tag set by the ANU.

The inclusion of the compulsory practical legal training courses within the new definition of postgraduate studies will clearly translate into up-front fees for students who wish to practise law. The implementation of such payment structures at the University of Wollongong and the Australian National University for the 1995 academic year set a dangerous precedent for other practical legal training courses around Australia. This is an untenable position for legal education in this country.

The disaffiliation of UTS from the NSW College of Law

The decision to charge fees sets a dangerous precedent in particular for the College of Law course, the route to admission for the vast majority of New South Wales law students. The recent disaffiliation of the College of Law from the University of Technology, Sydney will effectively remove the HECS funding currently received by the College, from 31 December, 1995. It is unclear at this stage where the additional funds required to make up this shortfall will be found. To date there have been no open discussions on how the College of Law Professional Program will be funded from 1 January 1996.

Changing Federal Government policy

At the ALP Conference in Hobart in September 1994, the Federal Minister for Employment Education and Training, Mr Simon Crean, announced a Federal government review of postgraduate fees. The announcement came in the wake of student concern over the introduction of up-front fees for legal training courses at some Australian universities. However, no date has been set for the review and no review committee has been formed.

The Department of Education, Employment and Training (DEET) argues that one of the bases for denying PLT protected status from postgraduate fees, similar to that afforded nursing and teaching, is that those professions are regarded as having greater "social utility" than law. This "assessment" is based on an equation that measures "their value in terms of salary received compared to the occupation, ie the public versus private social rate of return". This invites a much deeper question than the purely financial issue of who will fund the training of lawyers. Clearly, this question is tied to important issues concerning the public perception of the legal profession generally.

Why the fuss?

The decision to introduce fees has met with protests from student groups throughout the country. Students have staged protest rallies in Sydney, Wollongong, and Canberra, with ANU students occupying the University's administration building to force a reconsideration of the decision to introduce fees. Are student protests motivated by their hip-pocket nerves, or is there more at stake?

The imposition of up-front fees for practical legal training creates a barrier to entry into the legal profession.

Clearly, students are concerned about their ability to afford fees. Arguably, their concerns are justified. Students from middle and lower socio-economic backgrounds may be prevented from entering the legal profession altogether. Upon the completion of a law degree, most students have already accumulated a significant HECS debt and many incur further Austudy supplement debts. The imposition of a further mandatory sum of several thousands of dollars makes the study of law financially unviable for the majority of students.

The groups most detrimentally affected by the imposition of financial barriers will be those who already suffer limited access to the legal profession; people from minority ethnic groups, women, people from lower socio-economic backgrounds and mature age students.

However, there is more to this issue than students' concern for their own financial situation and that of their peers. Barriers to access to the profession also have broader implications for the achievement of greater access to justice for the Australian public.

The imposition of fees directly contradicts the professed aims of the federal Government. In a letter to the ANU Law Students' Society, the Commonwealth Attorney-General, Mr Michael Lavarch stated:

"I too am concerned that the imposition of fees, especially of this magnitude, will deter many students from entering the legal profession. This is of particular concern at this time, when the Government is seeking to promote equity in the legal profession and competition in the legal services market in the interest of improving access to justice."

The public has demanded, and the federal and state governments have promised, that the legal profession become more accessible. The diversification of the composition of the profession is central achieving this goal. Further, universities have implemented policies to ensure quotas and allowances for those from minority ethnic groups and those from traditionally disadvantaged backgrounds. The introduction of fees for PLT courses directly conflicts with these goals through its restriction of access to the profession.

The introduction of fees will deny the disadvantaged the opportunity to gain entry to the profession and will perpetuate the widely criticised ethnic, socio-eco-

nomic and gender bias of the composition of the profession.

If we do not have a legal profession that reflects the interests and concerns of sections of the Australian community, efforts to ensure a more just legal system will fail. The composition of the profession has a significant impact on the achievement of justice. Inequitable barriers to the profession will mean that minority and disadvantaged groups will be denied a legal system which is sensitive to their experience.

Thus, the introduction of fees is an issue which threatens to determine the future structure of the legal profession upon institutionally-enforced financial lines. This threat challenges us to assess expectations about the future of the legal profession and the provision of legal services Australia - a challenge which is apparently being ignored by the various bodies which control the provision of admission courses.

So far, efforts to oppose the introduction of fees and stimulate debate over alternative funding methods have been hampered by bureaucratic buck-passing of epic proportions. It seems that no-one is willing to take ultimate responsibility for the apparent lack of funding available for the training required to prepare law graduates for professional practice.

The issue of funding has been brought to flashpoint at least in part by the increasing numbers of law students progressing through the tertiary system. Australia now has 25 universities offering LLB degrees. The University of Western Sydney will add to this total next year when it opens its doors to law students. It is unclear, however, why this increase in student numbers should equal the introduction of financial barriers to entry to the profession. While increased demand for PLT courses has placed a significant strain on funds currently used to finance existing courses, the introduction of fees is nothing more than a quick-fix solution, one that disregards issues of equality of access and closes off discussion of more equitable alternatives.

"Students from middle and lower socio-economic backgrounds may be prevented from entering the legal profession altogether..."

Solutions?

Clearly, the disavowal of responsibility for the injustices of this development by both the federal government, the individual universities concerned and the professional bodies responsible for instituting the entry standards cannot be tolerated by the students or the society they hope to serve.

If the issues of justice, equity and access raised here mean little to the present Federal government they will continue to sit on their hands and reap the political outcomes of the application of their tertiary education policies by the universities.

If the universities continue to open their doors to students, conscious of additional professional requirements, their status as genuine seats of quality teaching and learning will be damaged. Indeed the change in the conditions of the playing field for many students already fully committed to their degrees raises both education and legal issues for all three groups.

The solution must rest with a joint response from the universities, the profession and the federal government who have all managed, if in isolation, to create this problem in the pursuit of economic rationalism in tertiary education. Anything less than shared ownership of the problem by these groups will be a cynical political solution.

One compelling response calls for PLT courses to be classified as undergraduate or exempt post-graduate in keeping with their standing as a first professional qualification. The *Higher Education Funding Act* 1988 considers initial professional qualification for courses such as dentistry, medicine, engineering and veterinary science to be undergraduate courses and therefore must not be offered on a fee paying basis. Practical legal training should be classified as an undergraduate course in line with these corresponding initial professional qualification requirements, given the similarly high level of knowledge and practical skills required to practise law.

While a change in classification may be said to properly reflect the nature of PLT courses, it may be argued that this does deal with the problem of where the money will come from to fund the increasing demand for these courses. Obviously a solution must be found. But the answer does not lie with the introduction of fees.

It may be possible that such a solution lies in a mix of options available ranging from, universities funding the completion of the professional qualification in the same way as is done for "socially valuable" professions to the government funding, in co-operation with professional bodies must fund the final professional qualification through assistance to the student via some process such as the National Training System or full acceptance of the responsibility for additional training required for admission by the profession itself.

The students, the profession, and society need solutions quickly. It is paradoxical that the government, the universities and the profession itself have reserved such injustices for the future legal professionals of this society whom they hope will be the instruments of justice in the future. ■