

Introduction and Context to the CALD Standards for Australian Law Schools

The standards

The Council of Australian Law Deans (CALD) Standards for Australian Law Schools ('the Standards') were adopted by CALD, by unanimous resolution, on 17 November 2009. The Standards are wide-ranging, embodying in Part A ten sections covering not only educational matters such as curriculum and assessment, but also broader matters such as the law school's mission, its staffing arrangements, its infrastructure and resources including library resources, how it achieves interaction between teaching and research, its governance arrangements, and its processes for review and evaluation.

Part B of the Standards (sections 11-14) goes to their application, which is overseen by an independent committee, the Australian Law Schools Standards Committee (ALSSC). The inaugural ALSSC comprises:

- The Hon Michael Black AC QC, former Chief Justice, Federal Court of Australia (Chair);
- Mr Tim Bugg AM, Director and Principal, M+K Dobson Mitchell Allport, former Chair, International Legal Services Advisory Council;
- Professor Michael Coper, former Dean, ANU College of Law;
- Professor Kim Economides, Dean, Flinders Law School;
- Professor Richard Johnstone, Griffith Law School;
- Professor Sally Kift, Deputy Vice Chancellor, James Cook University;
- Justice Marcia Neave AO, Court of Appeal, Supreme Court of Victoria; and
- Professor Paul Redmond AM, UTS Law School, former Dean, UNSW Law School.

The Standards were amended by CALD on 22 March 2013 to incorporate into the educational standard in section 2 the Threshold Learning Outcomes (TLOs) that were developed in 2010, as part of an Australian Learning and Teaching Council project, for the Bachelor of Laws (LLB) degree, and in 2012 for the Juris Doctor (JD) degree (see <http://www.cald.asn.au/education>).

History

The issue of the professional accreditation of Australian law schools — that is, the recognition of the degrees awarded by those law schools for the purpose of admission to legal practice — has been much discussed over many years. The precise requirements and processes for admission to practice have varied from jurisdiction to jurisdiction, though with substantial uniformity achieved by the general adoption of the recommendations of the

national Law Admissions Consultative Committee (LACC, or the 'Priestley Committee' after former NSW Supreme Court Justice Priestley, its first Chair). In 2013, a truly national scheme for comprehensive regulation of the Australian legal profession was still under discussion, although the right to reciprocal admission in other jurisdictions, following original admission in one jurisdiction, was achieved in the 1990s under a national scheme for the mutual recognition of a range of professional qualifications.

In the 1990s, LACC and the Law Council of Australia proposed a national scheme for law school accreditation; this proposal ultimately failed for lack of funding for the proposed national accrediting body. CALD was largely peripheral to these discussions, and continued to adopt a relatively low-key approach to matters of professional accreditation, acting in the belief that law schools could live with the then fragmented but generally light-handed professional accreditation regimes.

By 2005, however, the climate on CALD had changed, and the predominant view was that CALD should be more proactive in constructively shaping the future for Australian law schools. To this end, it was proposed, and accepted, that the idea of standards could be decoupled from the context of accreditation, and that CALD should devise its own comprehensive set of standards for the benefit of Australian law schools. The new consensus was that it was a useful and important exercise for CALD, as the peak body of Australian law schools, to articulate a set of standards, by reference to which law schools could review their performance and strive to enhance the quality of all aspects of their operations.

The primary driver, therefore, was, and remains, the shared desire to have a self-regulatory framework that would enhance the quality of all Australian law schools, for the benefit of the discipline as a whole — reflected particularly, on the educational side, in the enhanced quality of the graduates, by reference not only to the legal knowledge and technical legal skills of those graduates, but also by reference to their values, their ethical frameworks, their professionalism, and their ethos of service .

There were other drivers as well. Of particular importance was the need, in the context of the international recognition and thus portability of our degrees, to be able to refer foreign audiences to a set of standards that encapsulated best-practice benchmarks for Australian legal education, against which Australian law schools measured their performance and aspired to continuously improve. Many law schools also predicted — correctly — that such a set of standards would be of great benefit in internal discussions within their universities, particularly in the context of arguing for better resourcing in order to enhance their capacity to effectively implement the standards.

CALD therefore commissioned an experienced and respected consultant, Mr Christopher Roper, to produce a report and a draft set of standards, not in isolation but in the context of comparable standards for law schools in other countries and for other disciplines such as

medicine: see http://www.cald.asn.au/docs/Roper_Report.pdf. The draft standards were reworked over a series of meetings, tested by self-assessment by a number of law schools, improved by feedback from law schools following consultation with their own constituencies, adopted in principle on 4 March 2008 (including an explicit commitment to a process of certification of compliance), and adopted in final form on 17 November 2009.

Some points to note

The Standards are of course self-explanatory, though it is envisaged that in due course they may be accompanied by a set of commentaries, reflecting the wisdom of accumulated experience with their interpretation and application (see section 11.4 of the Standards). However, a number of general points might usefully be made:

1. Purpose

The Standards are intended to be beneficial, not punitive. They are an articulation of the values and ideals that Australian law schools in the early 21st century believe are necessary and appropriate to achieving excellence and adding real value to society.

2. Breadth

The Standards are broad in their coverage, ranging from educational matters to physical and human resources, strategic directions, governance, and quality assurance.

3. Innovation

The Standards are in some respects innovative, dealing not only with traditional matters but also with, for example, a law school's pastoral care responsibility to its students and staff (sections 2.9.1 and 4.3.4) and its duty to engage with the wider community (sections 1.3.2 and 9.6.2).

4. Generality

Notwithstanding the breadth of their coverage and the degree of innovation, the Standards are not written in tightly prescriptive detailed terms, but remain at a level of generality designed to allow flexibility and common sense in their application. Thus, for example, the Standards prefer generally to require what is 'necessary' or 'appropriate' or 'adequate' in the circumstances to achieve a particular objective rather than to prescribe some fixed measure (such as the number of books in a library).

5. Minimum vs aspirational

The question of whether the Standards are 'minimum' or 'aspirational' was much debated in the course of the drafting. In the end, CALD decided that the distinction was unhelpful, and that each standard should be read according to its own terms and applied accordingly.

(Section 1.2.1 provides, however, that a law school ‘seeks to exceed the requirements of these Standards’.)

6. Inputs vs outcomes

Also much debated in the course of the drafting were the relative merits of ‘inputs’ and ‘outcomes’ (the former being alleged not to guarantee the latter). Again, in the end CALD found this distinction to be unhelpful. Many of the standards are directed explicitly to outcomes, especially the now incorporated TLOs, while others articulate inputs in the belief that those inputs, if not sufficient, are at least necessary, or helpful, in promoting or facilitating what might not be able to be guaranteed. In any event, the distinction is blurred, or moderated, by the judgments to be made in the certification process about whether a law school has done what is ‘necessary’ or ‘appropriate’ or ‘adequate’ to achieve the objective of a particular standard.

7. Certification of compliance

Notwithstanding its relative brevity, a large amount of attention was given to the drafting of Part B of the Standards, dealing with their application. Part B establishes the ALSSC (section 12.1) as a body independent of CALD (sections 13.1 and 13.4), to certify whether a law school complies with the Standards (sections 13.2 and 13.3). CALD funds the administrative costs of the ALSSC (section 12.4), but a law school bears the cost of the certification process as applied to its own application (section 14.7). A law school cannot be compelled to apply for certification (section 14.1). Importantly, to reduce the overall administrative burden, coordination with other reviews, internal or external, is explicitly encouraged (section 14.2).

8. Relationship to accreditation

Although the standards project was launched and brought to fruition by decoupling it from the debate about accreditation, the two remain intimately connected. While the encouragement in section 14.2 to coordination of reviews remains important in reducing the overall administrative burden, it may be that, in due course, other reviewing bodies whose tasks overlap with that of the CALD certification process (for example, professional accreditation authorities such as state or territory admission boards, the National Legal Services Board under the proposed national scheme, or the Tertiary Education Quality and Standards Authority (TEQSA)) may find it useful, in whole or in part, to adopt or otherwise defer to findings of the ALSSC, at least in relation to matters of overlap. CALD has encouraged the ALSSC to enter into discussions with these other bodies with a view to avoiding duplication.

9. Regulating as partner

The role of the ALSSC is to work in partnership with law schools, to ensure that the CALD Standards are implemented. The notion of ‘regulating as partner’ is discussed in detail in the

recent report prepared by Professors Kwong Lee Dow and Valerie Braithwaite, *Review of Higher Education Regulation* (2013, Chapter 2, especially 22-25), and relies on sharing knowledge and on mutual respect and dialogue between the parties to encourage and nurture law schools continually to improve and to move 'beyond compliance'. The ALSCC will consider that it has achieved its mission if it works together with law schools to improve standards in law schools and to ensure that the CALD Standards are met – although it has clear power to refuse certification to a law school, it does not believe that its legitimacy depends necessarily on ensuring that it finds an occasion to exercise this power.

Conclusion

Section 1.3.3 of the Standards provides that a law school's mission 'encompasses commitment to the rule of law, and the promotion of the highest standards of ethical conduct, professional responsibility, and community service'. CALD has adopted these Standards in the hope and belief that they will assist in making this mission a reality.