

Draft Position Statement of CALD on Masters Coursework in light of the Higher Education Standards Framework (Threshold Standards) 2011

Statement

The Council of Australian Law Deans (CALD) is the collective voice of Deans of Law Schools and Faculties in Australia. This Position Statement has been prepared by CALD to communicate an agreed perspective by Law Deans on the issue of Masters by Coursework under the Higher Education Standards Framework (Threshold Standards) 2011. These Standards require university qualifications to meet the specifications described in Australian Qualifications Framework 2011 (AQF).

This CALD Position Statement will support the effective implementation of those AQF specifications to Law programs. Specifically, it explains why CALD regards the delivery of Masters degrees of one year in duration, which deliver Level 9 learning outcomes, as desirable, legitimate and consistent with the Threshold Standards and the AQF Framework.

The Nature of Masters degrees in Law

Australian Law Schools teach two main forms of Masters by Coursework qualifications:

- The first is a Master of Laws (LLM) – a further degree for students who already hold a qualifying law degree (ie a Bachelor of Laws, Juris Doctor or equivalent). The degrees can be offered as generalist and specialist degrees.
- The second type of coursework Masters is a degree for students whose first degree is not a qualifying law degree; that is; for graduates who are not legally qualified. These degrees are typically multidisciplinary in nature and are designed to allow for study of areas in the discipline of law by non-lawyers. There is no single label for this type of Masters degree taught by Australian Law Schools. But for ease of reference they are referred to in this statement as Law Related Masters (LRM).

Students enrolling in LLM and LRM programs do so for a range of reasons. Some seek to specialise in an advanced area of knowledge, others seek to deepen and broaden their knowledge across a range of subjects. CALD considers that this range of motivations and underlying quest for breadth as well as depth should be recognised. Masters by Coursework programs in Law should not thus be required to be constructed as a set of subjects/courses in a lineal progression, as is appropriate for Bachelor degrees.

Instead the ability of the student to construct their own progression of subject/courses should be maximised wherever possible. Depth of learning should be assured by the complexity of assessment tasks rather than the inherent nature of the subject matter.

Knowledge

CALD expects that all subjects/courses taught in both LLM and LRM programs are based on the latest developments and research in their subject areas. All subjects/courses should refer to the most recent and relevant legal decisions or practice and a representative sample of current academic research.

CALD considers that students entering an LLM should have achieved a qualifying law degree of at least credit average, and as part of that degree have developed the ability to undertake independent legal research – or have demonstrated attainment of these standards by subsequent professional practice. Where individual law schools choose to admit students who do not meet these standards, CALD expects that appropriate scaffolding and support would be provided to enable those students to reach the standards expeditiously. CALD thus considers knowledge of research principles and methods to be immanent in coursework undertaken in the LLM.

By contrast students enrolled in an LRM are unlikely to have such knowledge and CALD would expect LRM programs to contain compulsory legal research methods elements to the degree.

Skills

In Law, Masters by Coursework programs are overwhelmingly taken by students who wish to deepen and reflect on their professional practice whether as lawyers or as non-legal professionals who come into contact with legal issues as part of their professional lives. The skills that such students require are thus professionally oriented and applied.

CALD considers that the skills of graduates of LLM and LRM programs required by the AQF are to be most appropriately demonstrated by the ability to absorb and analyse legal professional documents and legal academic writing and to synthesise and apply these sources in addressing novel issues or current controversies.

Graduates of Masters degrees in law should be required to demonstrate their ability to integrate professionally relevant theoretical perspectives to analysis of current legal issues

Such knowledge and skills will be assessed through a combination of extended academic writing and oral communication, typically essays and class participation or presentation.

Application of knowledge and skills

CALD considers that application of knowledge and skills to the level specified in Level 9 AQF is to be determined by individual law schools. By way of illustration CALD considers that the AQF requirements are satisfied by any of:

- An independently developed topic and written research essay of 10,000 words, generally as an independent subject/course
- More than one independently developed topic and written research essay of 7,000 words or more, generally as part of coursework subject/courses
- A “capstone” course that brings together materials studied in earlier courses
- A “capstone” experience that could include a reflective portfolio of work or an overarching assessment task

CALD notes that leading academic and professional law journals now see articles of 10,000 words as best practice. On that basis CALD does not consider that requiring students to complete research essays of longer than that length is consistent with what industry and the academy require.

Volume of Study – LLM degrees

CALD considers that the level of knowledge and skill of legal practitioners entering LLM degrees is such that they are capable of achieving Level 9 learning outcomes in one year of full time study. This conforms to international benchmarks. Internationally, Masters level qualifications in law are one year of full-time study. This has long been the case in the countries most likely to compete with Australia for postgraduate law students (UK, Canada, USA). Leading examples one year Masters are the LLM degrees offered by:

- Harvard University
- Cambridge University
- University of Toronto
- National University of Singapore

Masters degrees offered by Australian law schools are part of this international market.

The Tertiary Education Quality and Standards Agency (the “Agency”) is the body charged with administration of the Australian Qualifications Framework. That body is constituted under the *Tertiary Education Quality and Standards Agency Act 2011* (the “Act”). Section 3 of the Act contains the objects of the Act and thus the Agency. Those objects refer to aims of consistency and quality in Australian tertiary education and also include as an object:

c) to protect and enhance: ...

(ii) Australia’s international competitiveness in the higher education sector;

CALD considers that this object informs the interpretation of the Australian Qualifications Framework. Consequently, CALD considers that whenever possible the AQF should be interpreted to preserve a level playing field between Australian degrees and those of quality international education providers.

CALD is of the view that requiring students enrolled in Australian coursework Masters in Law to study for longer than one year full time would leave Australian law schools internationally uncompetitive in the LLM market. Such an outcome would be inconsistent with the objects of the Act.

It is noteworthy that LLMs remain at one year in length in the UK, given the UK’s involvement in the Bologna process. Undergraduate law degrees in Australia are of 4 years duration, unless combined with another undergraduate degree that would make the overall undergraduate volume of learning greater than 4 years. The Bologna schema accepts a 4+1 combination – that is a 4 year undergraduate degree leading to a one year Masters degree.

In relation to combined law degrees CALD notes that the majority of study of law in such degrees takes place following completion of the non-law degree. This has the effect that law students in their last two years of study are already graduate students, and have developed their skills to that approaching a Level 9 student who has completed a two year Masters degree after a three year Bachelor’s degree. Law students thus enter LLM degrees with what amounts to advanced standing in Level 9 skills.

Additionally, most students entering the LLM programs will be practicing lawyers. Practicing certificates are only issued in Australia following the successful completion of Practical Legal Training accredited by the relevant admitting authorities. Such training, when completed as a Graduate Diploma amounts to a level 8 AQF qualification. Under

the AQF, students with a Level 8 qualification would typically require only one year of full time study to achieve a Level 9 qualification.

Volume of Study – LRM degrees

Different considerations apply to LRM programs. Such programs prima facie require the student to acquire new approaches to theoretical and doctrinal knowledge, given that their first degree was not in law. CALD recognises that the ability of students entering such programs to achieve Level 9 learning outcomes after one year of full-time study will depend on the nature of their prior studies and their work and life experience.

At the outset it should be recognised that LRM degrees are neither lineal progressions of further legal studies law degrees, nor are they degrees where the student typically enters into an entirely new field of study, divorced from their prior undergraduate degree. Instead LRM degrees are typically multidisciplinary degrees.

The AQF does not explicitly recognise multidisciplinary degrees at Level 9. Necessarily, in such degrees, the quality of the learning is more about creative synthesis of areas of knowledge rather than depth in one area. CALD considers that such degrees should draw on the knowledge and experience a student brings from their previous undergraduate degree and combine that with legal knowledge. A student undertaking a multidisciplinary Masters degree typically brings to that degree previous study in one relevant discipline (eg, a student who holds a Bachelors degree in Criminology who enrolls in a Master of Criminal Justice degree offered by a Law School).

CALD considers that such students fall within the AQF concept of a student undertaking study in the “same discipline”, and so the default length of LRM programs would typically be 1.5 years of full time study. However, other considerations, including the background of students entering a particular LRM, and the international educational environment for the field of study in question, may support the delivery of the course over one year of full time study.

Multidisciplinary Masters courses offered by Law Schools are innovative and gaining popularity worldwide. Many of the leading international examples of such courses are one year in length. For example:

- MSc in Criminology & Criminal Justice: University of Oxford
- Master of Legal Studies: University of Auckland

- Global Professional Master of Laws: University of Toronto

In addition, many students entering such degrees have the industry experience of the equivalent of a Level 8 vocational qualification (eg a Master of Taxation Law student who has professional accounting experience).

With those considerations in mind, CALD considers that a one year full time LRM delivered by a Law School should be regarded as consistent with the Threshold Standards and the AQF Framework where it can be demonstrated that graduates attain Level 9 learning outcomes.

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