COUNCIL OF AUSTRALIAN LAW DEANS

A Brief History of the CALD Standards Project

Historic adoption by CALD of standards for Australian law schools
At its meeting in Sydney on 3-4 March 2008, CALD adopted in principle—and did so unanimously—a set of standards for Australian law schools. The significance of this moment (a 'magic moment' to quote new Melbourne Law School Dean Jim Hathaway) should not be underestimated. After years of discussion, the passage of the so-called 'Coogee Sands' resolution[1] was a considerable breakthrough.

Consultation process
In accordance with that resolution, the Deans have undertaken now to seek feedback on those standards from within their own law schools and other relevant communities, with a view not only to settling the content of the standards but also to progressing the vexed question of implementation, including the use to which the standards might be put in the context of accreditation.

This note supplements the Roper report and the standards extracted from it
In order to assist the process of wider consultation, I set out below, in very short compass, the history and purpose of the CALD standards project, with references to where further detail may be found. This brief note might be used as an introduction to, and should be read in conjunction with, the two main documents that Deans will use to disseminate information about the standards project:

- Christopher Roper (with input from the CALD Standing Committee on Standards and Accreditation), *Standards for Australian Law Schools: Final Report* (CALD, March 2008) ('the report'), and
- Council of Australian Law Deans, *Standards for Australian Law Schools: The Standards* (CALD, Draft March 2008) ('the standards').

The second document—the standards—simply extracts from the first document—the report—the actual standards that are embedded in the report amongst detailed discussion of the issues that arose for consideration, and of alternative models, including not only models used for legal education in other countries but also models used for professions other than law, especially for medicine. In other words, the standards are identical in each document, and have been extracted to form a separate, shorter, additional document, simply for ease of reference.

CALD input into the draft standards and meaning of adoption 'in principle'
The standards in their present form do represent, however, considerable input from the Deans over the course of at least two CALD plenary meetings, in addition to the input of the CALD Standing Committee on Standards and Accreditation. The consultant's report,

[1] Appendix 1; also included with the extracted standards document.

developed in consultation with the CALD Standing Committee, was presented to the Deans in draft form in mid-2007, and the final version of the report incorporates amendments made by the Deans to the then draft standards at CALD meetings 2007#2 (Byron Bay) and 2007#3 (Perth). Thus, the standards in their current form represent the current CALD consensus, both as to the merit in adopting a set of standards at all and as to the content of the standards in particular. Their adoption 'in principle' at CALD meeting 2008#1 (Sydney) may be taken to mean both commitment to the project and provisional approval of the standards themselves, subject to the qualifications set out in the Coogee Sands resolution.

Extracted standards now the working document

However, the standards are now a platform for wider consultation and further consideration, and will undoubtedly be further developed in the light of that consultation. Thus, although the standards in the two documents—the report and the extract from the report—are currently identical, CALD will henceforth regard the report as complete and therefore 'frozen in time', while the actual standards will be further developed and thus will in due course diverge from those set out in the report. In other words, it is the extracted standards that now constitute the working document.

Purpose of the CALD standards project

It should be said immediately that the overwhelming purpose of the CALD standards project is to enhance the quality of Australian law schools in all of their diverse endeavours, and to do so by assisting all Australian law schools to strive for and reach a clearly articulated set of standards. I wrote about this in my column for the last ALTA Newsletter, to which reference might usefully be made.[2] The point is that the standards are intended to be beneficial, not punitive. They are written largely in general rather than tightly prescriptive terms, and allow for diversity in the different ways in which law schools might seek to fulfil their particular missions. The object is to lift the quality of our various contributions to the discipline of law as a whole, and to work together to do so.

History of the CALD standards project

This simple message has been somewhat obscured by the tortuous history of the matter, especially in relation to the complex connections between standards and accreditation. This history has been well summarised by Dean Paul Fairall, in a briefing paper written for the purpose of discussion at CALD meeting 2006#1 (Hobart), and need not be repeated here.[3] CALD was somewhat peripheral to the discussions of the 1990s, which were driven largely by the Law Council of Australia and the Law Admissions Consultative Committee (LACC) (which together proposed a national appraisal body that ultimately failed for lack of funding) and the Australian Law Reform Commission

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[2] See Appendix 2 and, in full, http://www.cald.asn.au/newsletters/CALD_ALTA_Newsletter_Summer_2008.pdf. The standards project is also a part of, and should be seen in the context of, CALD's current Carrick Institute-funded project for improving learning and teaching in the discipline of law.

[3] See Appendix 3 and, with attachments, http://www.cald.asn.au/admin/docs/06_01/Item%205.4%20CALD%202006%20Accreditation%20issue.pdf (user name 'lawdean', password 'ucald?'). See also the introductory material to the Roper report.

(whose advocacy for an Australian Academy of Law has now borne fruit, but not as a body with any accrediting function).

Genesis of the current project

Discussions within CALD since the mid-1990s were characterised by two opposite schools of thought: one group saw the current system of accreditation (LACC-recommended and admitting authority-adopted minimum curriculum content and degree duration requirements) as sufficiently light-handed to allow law schools to get on with their business without undue interference,[4] and another group wanted to be more proactive in redesigning the current system of accreditation, so that it could be influenced by the law schools rather than imposed upon them. That was the state of play when CALD revisited the issue in 2005,[5] and the current standards project was seen initially as a way of avoiding the division of opinion by detaching standards from accreditation and developing them in the abstract.

Particular drivers of the current project

As the matter progressed, however, it became clear that meshing agreed standards with the way in which law schools are accredited by admitting authorities would remain an important issue that would demand attention. This was reinforced by consideration of some of the external drivers or pressures for revisiting the standards debate. It remains true that the overwhelming purpose of the project, as stated above, is to enhance the quality of Australian law schools, for their own benefit and for the benefit of the community. But the external drivers were many:

- the move in the 1990s to a national legal profession, with nationwide mutual recognition of admission to practice and the travelling practising certificate, heightened the concern of admitting authorities and of LACC that individual jurisdictions could no longer guarantee standards within their own borders, but were vulnerable to the standards of the 'lowest common denominator'—for the first time, therefore, there was an imperative for standards to be uniformly high across Australia;
- APLEC announced that it was embarking on a project for accreditation of PLT providers; and
- moves to promote the recognition of Australian law degrees overseas were increasingly met with requests by the countries that were the targets of that recognition for assurances about the quality of Australian law degrees and the robustness of our system of accreditation.

Full story in CALD minutes 2005-2007

In any event, CALD committed itself to the current standards project, and engaged the very experienced Christopher Roper to research the matter on a comparative basis, write a report, and develop a set of standards for discussion. The story of the development of the current project is told in the CALD minutes 2005-2007, the relevant extracts from

[4] For a fuller account of the Australian system of accreditation, though with a particular 'spin' for an American audience, see Appendix 4.

[5] See Appendix 5.

which are set out in Appendix 5 to this brief note, and the outcome is the report, and the standards extracted from the report, that are referred to earlier. Those standards cover a wide range of matters, including not only the curriculum but also teaching and assessment, staffing, resources, governance, evaluation, reviews, and quality assurance.

The task from here

As stated earlier, the Coogee Sands resolution is a significant milestone in signalling both commitment to the standards project and provisional approval of the actual standards themselves as currently drafted. Moreover, the resolution also recognises and faces up to the inescapable link between standards and accreditation, and signals commitment to some form of implementation (CALD 'commits to a process of certification of compliance'). However, Deans will need to come back to CALD meeting 2008#2 (Cairns, July 2008) with input from their various constituencies in relation to the content and drafting of the standards; how the standards might best be implemented[6] (one model is set out in chapter 6 of the report and is extracted along with the standards, but CALD has not committed to this particular model); and which standards might be thought to be core or minimum and which might be thought to be merely aspirational.

A new beginning

As I said in my ALTA Newsletter column, this might be thought to be not the end but a new beginning for how we approach the achievement of excellence in what we do. In particular, it is envisaged that the generality of the standards will require the development over time of 'commentaries' that will elucidate, amplify, and provide guidance on what each standard might involve. But if the commitment shown by all of the Deans at CALD meeting 2008#1 in Sydney is any indication, we should be optimistic that the standards project will make a difference. I commend the standards to all of our academic colleagues, in every law school across Australia, and look forward to further discussion of creative and constructive solutions to the outstanding issues.

Professor Michael Coper
Chair, CALD Standing Committee on Standards and Accreditation

9 March 2008

[6] With a view not only to inputs but also to outputs.

APPENDIX 1

COUNCIL OF AUSTRALIAN LAW DEANS (CALD)

'Coogee Sands' Resolution[7]

That the Council of Australian Law Deans (CALD) adopts in principle the standards for Australian law schools set out in Chapter 5 of the Roper Report,[8] and commits to a process of certification of compliance with the standards, subject to the following:

(i) that the Deans disseminate the standards within their law schools and other relevant communities, with a view to bringing any feedback to the next CALD meeting to be held in Cairns on 9 and 10 July 2008;

(ii) that the Deans give further thought to the implementation of the standards in light of the discussions that took place at the CALD meeting in Sydney on 3 and 4 March 2008, with a view to adopting a position on the matter at the next CALD meeting to be held in Cairns on 9 and 10 July 2008; and

(iii) that, in particular, and with a view to preparing the ground for the possible use of the standards for the purposes of accreditation, the Deans seek to more closely identify which standards are core or minimum standards and which standards are aspirational.

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[7] Passed unanimously, CALD Meeting 2008/1, University of New South Wales Faculty of Law, Sydney, Tuesday 4 March 2008.

[8] Christopher Roper (with input from the CALD Standing Committee on Standards and Accreditation), *Standards for Australian Law Schools: Final Report* (Council of Australian Law Deans, February 2008).

APPENDIX 2

Extract from Council of Australian Law Deans, 'From the Chair…', ALTA Newsletter Summer Edition 2008, pp33-34

Standards for Australian law schools
In my view, the CALD standards project is arguably the single most important issue on the current CALD agenda. I wrote about it in my previous column. The Deans further considered consultant Chris Roper's comprehensive draft report, including draft standards, at the CALD Perth meeting in September 2007 (one of CALD's three plenary meetings per year is always held in conjunction with the ALTA annual conference). My hope is that, once the changes suggested in Perth are incorporated, we will be in a position to sign off on the report at our first meeting of 2008, to be held in March at UNSW. Rather than the end, this will, I hope, be the beginning of a process, in which Australian law schools will have a set of clearly articulated standards, benchmarks, or minimum expectations, against which their progress towards genuine quality may be sensibly judged, by themselves and others. The standards will cover not only the traditional issues of curriculum and pedagogy but also much broader matters such as physical and human resources, strategic directions, governance arrangements, and quality assurance processes.

The CALD standards project is not uncontroversial, for obvious reasons. However, it has been well supported by the Deans, who see, rightly in my view, good potential for a set of standards agreed upon by the discipline to be used by them, in the context of their own universities, to argue strongly for the wherewithal to meet or exceed the standards. In this respect, the standards might be seen largely as aspirational rather than strict minima, and this useful ambiguity has been much debated within CALD; at the end of the day, much depends upon how a standard is formulated. We have taken the view, for example, that, generally speaking, it is not helpful to have prescriptive standards, such as a minimum number of library holdings, but rather that it is preferable to frame a standard more generally in terms of what is necessary or appropriate to enable a law school to achieve its particular mission or stated objectives.

The CALD standards project is much broader than, but is connected to, the issue of how law schools are accredited in Australia. The accreditation issue, and what CALD's approach to it should be, has been debated within CALD for well over a decade. At times the debate was quite divisive, with one side taking the view that the current system of accreditation was appropriately light-handed and that sleeping dogs should be let lie, and the other side arguing that we should be more proactive (as APLEC was in shaping the PLT competencies) and initiate debate about a revised and more robust system of accreditation, which we would then have had a role in shaping rather than having had it imposed on us. The standards project actually grew out of this debate, as it was seen initially as a compromise between the two opposing points of view on accreditation.

However, as time has gone on, it has become clear, I think, that the standards we devise will play a role, as yet undefined, in how law schools are accredited. LACC (the Law Admissions Consultative Committee) is keeping a close watch on the progress of our standards project, and is keen to mesh it with the accreditation process. This highlights the 'pointy end' issues of our project: who decides whether the standards have been met, and what are the consequences of not doing so? To the extent that the standards are aspirational, it may simply be a matter of 'best endeavours'; in any event, we are currently proposing an independent standards committee, which would decide whether a law school should be 'approved' by reference to the standards. Consideration will then need to be given to whether, for the purposes of accreditation, such approval is necessary, sufficient, helpfully relevant but otherwise inconclusive, or none of these things; in any case, it will be necessary to avoid confusing approval and accreditation, in particular to avoid the impression that the former is synonymous with the latter. One possibility is that, over time, the consequence of approval might be membership of CALD, or alternatively of a new body such as an Association of Australian Law Schools (a clear nod here to the situation in the US).

In my view, the CALD standards project has excellent potential to lift the quality of Australian law schools, by harnessing what we all strive to do individually (and generally do very well) and giving it the weight of collective action, from the perspective of the discipline as a whole. Again in my view, it was highly appropriate to be proactive on this front, in terms of ownership, agenda setting, and achieving real outcomes. In any event, we really had no choice; the dogs were really only slumbering, and were showing clear signs of a new friskiness. Other pressures were also surfacing: our push for recognition of our law degrees overseas has, for example, resulted in closer international scrutiny of the quality of those degrees and the processes by which that quality is assured. But whatever the pressures, and whether inevitable or not, the CALD standards project is, in my view, an intrinsically good thing to do, and will, I hope, be a good thing for the future of our discipline.

APPENDIX 3

COUNCIL OF AUSTRALIAN LAW DEANS

DEAN PAUL FAIRALL: BRIEFING NOTE FOR DISCUSSION AT CALD MEETING 2006#1 (HOBART) (without attachments)

RE NATIONAL APPROACHES TO ACCREDITATION OF LAW SCHOOLS

1. At the last CALD meeting, in Canberra, I was asked to write a paper on the accreditation issue, with a possible model for accreditation, for circulation and dissemination at the first meeting 2006[9]. After discussing the matter with our Convenor, Professor Michael Coper, it was agreed that I should tackle a slightly less ambitious project in the nature of a short Briefing Paper, with a view to debating the matter in full at the Hobart Conference.[10] This briefing note may assist members, especially new members, put this vexed issue into context.

2. At the July 2005 meeting in Waikato, CALD resolved:

   > *That the new CALD Executive take on as a major project the development of a model for the accreditation and external monitoring of standards of law schools in Australia, and initiate discussions within CALD at the earliest opportunity. (2005/18)*

   The minutes record that CALD committed itself to an inclusive Conference in the first half of 2006 dealing with a variety of issues[11] including the question of accreditation of Law Schools and the monitoring of standards. Following this resolution, Professor Coper organised a teleconference with members of the Executive, which met on 27 October 2005. No final conclusion was reached at this meeting and circumstances prevented further discussion in Canberra on 16 November meeting. The matter was therefore stood over for discussion in Hobart.

3. Proposals for the establishment of a system of national appraisal of law degrees and accreditation for law schools have been around for some time, spurred on by significant developments in transnational and international legal practice. The matter has been discussed by CALD

[9] Resolution 2005/31.

[10] Moreover, the task has been complicated by the lack of easy access to CALD papers, and if nothing else, this exercise confirms the need for a centralised filing system.

[11] See attachment A. Other issues included arising from: variable treatment of academic misconduct, a forthcoming consultant's report on the accreditation and monitoring of PLT providers.

sporadically, and sometimes in considerable detail, since at least the 1994 release by the Law Council of Australia of its Blueprint for the structure of the legal profession.

4. Professor Paul Redmond, in a 1999 Report to the Australian Law Teachers' Association singled out the move towards national accreditation as a key issue.

> "Law deans have continued to advocate for the establishment of a national body performing the functions of specifications of law courses and the appraisal of overseas qualifications, being a body that comprising an appropriate mix of academic and judicial members, representatives of legal professional bodies, the Australasian Law Students Association, and other providers of practical legal training. It cannot be said that there has been any clear movement towards a national consensus as to the establishment of such a body. However, the membership of the Priestley Committee, which has had the responsibility de facto of recommending minimum standards for professional admission in all Australian jurisdictions, has been widened to include representation of the Convenor of CALD, the Convenor of the Australian Professional Legal Education Council, and the President of the Law Council of Australia. CALD does not, however, see this expansion of membership as satisfying its expectations with respect to the desirable structure for national oversight of course appraisal and accreditation."

5. Some of the significant milestones in discussing this issue have been:

- CALD and the Law Council of Australia met in 1999 to discuss a variety of issues and decided that there should be Conference to discuss accreditation and the possibility of establishing a national body.[12]

- CALD and the Law Admissions Consultative Committee ('The Priestley Committee') have discussed the matter in joint sessions, such as the 2000 Perth meeting.[13]

- CALD has devoted considerable energy to the issue in general meetings, for example, in Sydney in February 2002.

6. In July 2001 the issue of accreditation was flagged as a critical issue in the CALD submission to the Senate Committee inquiry into the *Capacity of Public Universities to Meet Australia's Higher Education Needs*[14]

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[12] CALD Minutes, 16 December 1999; see Attachment C.
[13] CALD Minutes, Perth March 2000; see Attachment D.
[14] Professors Fairall and Redmond appeared before the Senate Committee. See <http://www.aph.gov.au/Senate/committee/eet_ctte/completed_inquiries/1999-02/public_uni/submissions/sublist.htm> footnote 284.

> "There is at present no single accreditation authority for law schools or law programs. Law Schools have however been compelled to comply with certain standards laid down by the Law Admissions' Consultative Committee (LACC) for the academic component of the law degree. This has been by virtue of the gate-keeping role of the admitting authorities in the various jurisdictions who have the power to admit persons to practice. Attempts to establish a national accreditation council have met with a lack of funding support from SCAG, although such moves are strongly supported by the Law Council of Australia and LACC. CALD is also of the view that a properly constituted body may play a valuable role in the maintenance of high standards of legal education."

6. The 1994 Law Council Blueprint referred to above (para 3) proposed the establishment of a National Appraisal and Standards Committee to accredit law schools, as an incident to the move to uniform, national admission.[15] This was following by a 1997 proposal by the Law Admissions Consultative Committee for a National Appraisal Council. These proposals were rejected by SCAG.[16]

7. The 1999 ALRC Discussion Paper 62[17] and subsequent Report 89[18] focussed the debate. In DP 62, the ALRC floated the idea of `a body to provide a degree of oversight and coordination to ensure that standards are developed and maintained, and a measure of quality assurance provided', to be known as the Australian Council on Legal Education (ACOLE). In its Report, the Commission, drew back from this approach, perhaps because there did not at the time seem much hope of reconciling representational issues between the Academy and the leading professional bodies.[19] There were also disputes about function and whether present deficiencies were with the manner in which the admitting authorities discharged their responsibilities. The Commission therefore settled for a more modest proposal.

> 2.76 The Commission believes that, in the medium to long term, the public interest may be better served by the establishment of a body which sets (appropriately high) national minimum standards for legal education. Once developed, such standards should be accorded great weight in determining whether a degree from a particular institution will be accepted for admission purposes. The formal auditing and accrediting process should remain at the State and Territory level. This would in no way imperil the emerging system of mutual recognition and uniform national admission. Admitting authorities surely should be able to trust each other to monitor effectively the standards of law schools within each jurisdiction, with automatic and reciprocal effect given to State and Territory

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[15] See ALRC Report 89, *Managing Justice*, para 2.29.
[16] See ALRC *Managing Justice*, para 2.46.
[17] For a record of the 1999 CALD Discussion of DP 62, see Attachment B.
[18] See ALRC, Project 89 *Managing Justice*
http://beta.austlii.edu.au/au/other/alrc/publications/reports/89/ch2.html#Heading3
[19] See para 2.76 and 2.77.

accreditation. This would make for a far less cumbersome, protracted, expensive and intrusive system, would allow for greater participation and representation within each jurisdiction, and would accord with virtually all of the other regulatory processes in operation in respect of the legal profession in Australia.

2.77 However, the major stakeholders must work together constructively and develop a sense of commonality of interests. Until such time as this eventuates, and in order to promote conditions which might facilitate this cooperative approach, the Commission has replaced its proposal 3.1 (for an ACOLE) with a suite of recommendations, which involve the encouragement of an emphasis upon legal ethics and high order professional skills, without derogating from the responsibility law schools have to provide students with a grounding in substantive law; the introduction of a regime for quality assurance in Australian law schools another national discipline review, to update and build upon the Pearce report the establishment of an Australian Academy of Law an approach which permits diversity in the delivery of PLT programs and ensuring the participation of practitioners in approved, high quality professional development programs.

8. Following the Law Reform Commission report, and the decision of SCAG not to fund a national body, CALD put its energy into developing the Academy of Law. The Academy is presently fine-tuning its constitution and awaiting launch. It does not, however, have an accreditation role.

9. Apart from our various discussions, CALD has passed a series of relevant resolutions:

- Resolved (99/2) that CALD considers the body performing the functions of specification of law courses and of appraisal of overseas qualifications should comprise a mix of academic and judicial members, and representatives of legal professional bodies, from ALSA and other providers of practical legal training.

- Resolved (99/25) that CALD supports the establishment of an appropriately funded national body that would promote innovative, diverse, scholarly and high quality legal education and on which the law deans are significantly represented. The CALD seeks to engage in constructive discussions to advance this end.

The background discussion to Resolution 99/25 may be found in the Attachment B.

<u>Conclusion</u>

10. It is more than a decade since the Law Council Blueprint and little progress has been made towards the establishment of a national body with responsibility for setting or monitoring standards, or accrediting law

schools. This may be a good thing. However, given that at various points in the past CALD has been strongly in favour of the national approach, it is timely to take stock of this issue and decide whether to pursue it as a strategic goal, or whether to drop it. CALD may take the view that the establishment of national standards for law schools is an impossible goal and inconsistent with the DEST framework for the regulation and funding of universities and disciplines therein. It may also be overly ambitious to establish a national body with a Priestley-type role in determining a national law curriculum. The easy route is to say that these matters are appropriately left to law schools and independent university administrations, working with local admitting authorities. The irony is that any semblance of a national curriculum may be credited to LACC – a body with (at the relevant time) no representation from CALD or the academy.[20] The absence of provision for regular and principled academic review of the content of the law curriculum, as a partnership with the major professional bodies, is an oddity of the Australian system.

Issues for discussion

1. What would a national appraisal body do, and what powers would it have? What are its functions?

2. Is there a clear need for such a body? To what extent has the proposal for national accreditation been overtaken by local development, eg accreditation mechanisms at the state level?

3. To what extent is Australia out of step with other jurisdictions in not having such a body: eg New Zealand, Canada, England, Scotland?

4. Who would pay?

5. What would the membership be?

6. Should CALD commit itself to promoting the establishment of such a body (by at least reaffirming the commitment made in Waikato), and if so, what steps should be taken?

Professor Paul Fairall
Adelaide University, 15 March 2006

[20] Apart from (at the relevant time) Professor Sandy Clark from Melbourne.

APPENDIX 4

Australia-United States Legal Services Initiative

Meeting between Law Council of Australia and Conference of Chief Justices, Indianapolis, July/August 2006

Accreditation of Australian Law Schools: Background Paper

[Attachment A to Law Council of Australia, *A Proposed Approach to the Regulation of the Practice of Law in US States and Territories by Australian Lawyers and for the Admission of Australian Lawyers to US State and Territory Bars*, Submission to the United States Conference of Chief Justices, Annual Meeting, Indianapolis, July/August 2006. Background paper prepared by Professor Michael Coper, Dean of Law, Australian National University, Chair, Council of Australian Law Deans.]

Executive summary

Australian law schools are accredited by a double-barrelled process of quality assurance for the universities in which they are embedded, involving audit on a five-year cycle by an independent agency, and separate professional accreditation of the law degree by the authority that controls admission to practice in the relevant jurisdiction. The latter requires a compulsory core curriculum and a course duration of a minimum of the equivalent of three years full-time study, following a common template used across Australia by each admitting authority. There are differences from jurisdiction to jurisdiction in matters of detail, including whether there is a formal system for regular re-accreditation, but the combination of quality assurance for the educational standards of the institution and external scrutiny of the law degree by the legal profession has ensured an overall high standard.

Introduction

There are 39 universities in Australia, 29 of which have law schools whose degrees are accredited by the legal profession for admission to practice as a lawyer. Some universities have schools or departments of legal studies, the degrees from which are not accredited for admission to legal practice. These schools are usually part of a broader school or faculty of sociology, economics, or business, and they may or may not have aspirations for professional accreditation. All but three[21] of the 39 universities are public institutions, though none is solely dependent on public funding; all are funded by a varying mix of public funds (including per capita student funding and competitive research funding), student fees, and private donation, endowment, or sponsorship. There are no free-standing law schools.

[21] The three private universities are Australian Catholic University, Bond University, and Notre Dame University.

Thus, as all of Australia's accredited law schools are embedded within universities, there are two levels of accreditation: accreditation of the university as a tertiary or higher education institution, and external professional accreditation of the law school for the purpose of admission of its graduates to legal practice.

Accreditation of Australian universities

Australian universities are accredited through the internationally-recognised Australian Qualifications Framework (AQF),[22] which is a national system of learning pathways endorsed by the Australian Government. Although in the Australian federal system it is the States and Territories that have primary legislative responsibility for the establishment and oversight of higher education institutions (including control of use of the term 'university'), the national system is implemented through Protocols agreed to by all Australian governments and underpinned by conditions attached to federal funding. The Protocols cover, for example, the recognition of new universities and the operation in Australia of overseas higher education institutions.[23]

Protocol 1 specifies the criteria and processes for recognition of Australian universities. Key requirements relate to teaching quality, scholarship, governance, and resources. Once accredited, universities are subject to audit by the Australian Universities Quality Agency (AUQA).[24] This is an independent, national body, which rigorously and transparently audits Australian universities on a five-year cycle. There are also additional safeguards put into place specifically to protect, for example, the interests of international students.

A brief history of Australian law schools

Australian law schools have been preparing students for legal practice since the mid-19th century. The first 100 years following the establishment of law teaching by the Universities of Melbourne and Sydney in the 1850s saw the development of a stable pattern of six law schools, one in each State capital: Melbourne (University of Melbourne), Sydney (University of Sydney), Hobart (University of Tasmania), Adelaide (University of Adelaide), Perth (University of Western Australia), and Brisbane (University of Queensland).

Then, in a second wave in the 1960s and 1970s, the numbers doubled to twelve, with the addition in 1960 of the Australian National University Law School in Canberra, and competitor law schools for the established schools in Melbourne (Monash University), Sydney (University of New South Wales, Macquarie University, and the University of Technology Sydney), and Brisbane (Queensland University of Technology). A third wave followed in the 1990s, responding to increased demand and resulting in today's total of 29 accredited law schools.[25]

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[22] See http://www.aqf.edu.au/aboutaqf.htm .

[23] For example, Carnegie Mellon University (located in Pittsburgh) opened a campus in South Australia in 2006: see http://www.cmu.edu/PR/releases05/051128_australia.html .

[24] See http://www.auqa.edu.au/aboutauqa/auqainfo/index.shtml , http://www.dest.gov.au/sectors/higher_education/policy_issues_reviews/key_issues/assuring_quality_in_higher_education/the_australian_universities_quality_agency_auqa.htm .

[25] For a list of all Australian law schools see http://cald.anu.edu.au/schools.htm .

The second and third wave of Australian law schools marked a shift away from the predominant model of part-time teaching by busy practitioners to today's model of full-time academic staff who combine research, scholarship and teaching. Australian law schools today very much resemble their American counterparts, combining professional training with education in the law as an intellectual discipline; producing law journals and other scholarly outputs; and supplying expertise to an array of broader community activities, through, for example, submissions to government enquiries, membership of tribunals, media commentary, and public education.[26]

International recognition

As noted, 29 law schools are accredited in Australia today for the purpose of admission of their graduates to legal practice in Australia. The law degrees of some of those law schools are also recognised for the purpose of admission to practice in a number of other countries, including Singapore, Malaysia, Brunei, India and Pakistan. Generally, this recognition is partial fulfilment of the criteria that must be satisfied for admission to practice in those countries. In other words, the LLB or JD satisfies the basic academic requirement, leaving further local conditions to be fulfilled such as practical legal training (PLT) or some form of examination in local law.

Practical legal training

PLT—the modern equivalent of apprenticeship or articles of clerkship—is undertaken in Australia either as an integrated part of the LLB or JD, or in a separate subsequent program. There are PLT providers both within and outside the universities, and all must be accredited.[27]

The typical Australian law degree: 3-year graduate or 5-year combined program

Generally speaking, to be admitted to undertake a law degree in Australia, applicants must have completed thirteen years of primary and secondary schooling and have achieved final grades that place them approximately in the top 5 percent of all Australian school-leavers for that year. In other words, one assurance of quality is the high academic entry level.

Despite some variations, the typical Australian law degree today (LLB or JD) that qualifies its holders for admission to practice involves a course of study for the equivalent of a period of three years full-time, with a compulsory core and a range of electives. It may be taken either as a graduate of another discipline (on the American model), or in combination with another degree, which extends the total period to a minimum of five years (with the law component remaining at three years). Secondary school leavers can in some instances be admitted directly to an LLB without being a graduate or without undertaking liberal arts or some other degree simultaneously, but this is relatively rare and would generally require four years of full-time study.

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[26] For further elaboration, see Michael Coper, 'Law Reform and Legal Education: Uniting Separate Worlds' in Brian Opeskin and David Weisbrot, *The Promise of Law Reform* (The Federation Press, 2005) 388.

[27] Council of Australian Law Deans, *Studying Law in Australia 2006* (14th ed), Chapter 6: Pre-Admission Practical Legal Training Courses in Australia: see http://cald.anu.edu.au/ .

In brief, the Australian LLB or JD (the JD nomenclature sometimes being preferred for the graduate degree) is in substance very similar to the law degree in the US. A student who undertakes a combined program is, by the time he or she reaches 4th and 5th year, to all intents and purposes in the same position as his or her American counterpart doing a graduate JD, even though the Australian law degree may in theory be characterised as an 'undergraduate' degree. It is on this basis of de facto equivalence that a number of US law schools have entered into exchange arrangements with Australian law schools, involving mutual recognition of study undertaken in the other institution.

Postgraduate study in Australia
Many Australian law schools also have extensive postgraduate (eg LLM, SJD and PhD) programs, covering coursework and research degrees, but that is not directly relevant for present purposes.

Accreditation of Australian law schools

As explained above, Australian universities are first accredited by government as educational institutions, with a particular focus on teaching, scholarship, governance and resources. Then, the professional disciplines such as law, medicine, engineering, dentistry, veterinary science and psychology are externally accredited by their respective professional bodies.

Role of State and Territory admitting authorities
In the case of law, the precise process and the nature of the accrediting body varies slightly from State to State, but generally speaking each State and Territory has an admitting authority (that is, a body that regulates admission to legal practice) that comprises judges and legal practitioners. The admitting authority usually acts as a committee with delegated authority from the body that has ultimate control of the profession in the State or Territory, that is, the Supreme Court of the State or Territory.

Subject to two factors to be mentioned that inject a national element, the admitting authority in each State or Territory decides which law degrees will be recognised in the State or Territory. This is then generally embodied in legislation or regulations and reviewed from time to time (though not on a uniform or fixed cycle). Individual applicants for admission are then vetted not only for their possession of a recognised academic qualification but also for their compliance with other requirements, such as their completion of PLT and their good character and ethical standing as fit and proper persons to be admitted.

National framework
The two factors that push this jurisdiction-by-jurisdiction system towards a national framework are, first, the recommended curriculum content and course duration set by the Law Admissions Consultative Committee (LACC), and, secondly, the recent move towards a national legal profession that entitles practitioners admitted directly in one jurisdiction to obtain reciprocal admission in all of the others.

Role of Priestley Committee
LACC, sometimes known as the 'Priestley Committee' after its Chair, Justice Priestley (retired) of the Supreme Court of New South Wales, is an advisory body that includes representatives from every Australian jurisdiction and is answerable to the (Australian) Council of Chief Justices. Although in form only advisory, its recommendations as to curriculum content and course duration have been adopted by the admitting authority of every jurisdiction, bringing considerable uniformity to the accreditation of law degrees across Australia. The Deans of each law school certify that their graduates have studied and passed examinations in the required courses.

National legal profession initiative
The second centralising factor has been a system of mutual recognition of admission to practice[28] (in part forced by judicial decisions on federal constitutional provisions akin to those in the US, including the 'privileges and immunities' clause and 'full faith and credit'). [29] This is currently provoking discussion of the system of law school accreditation to ensure that there is no 'weak link' in the chain, that is, to ensure that every law school in the nation is properly and adequately accredited. This may see a shift over time from the State- and Territory-based system to a more truly national approach.

Initial accreditation followed by regular internal review
If there is a weakness in the current system, it is the diversity in the process of accreditation and the absence of any uniform, formalised requirement for re-accreditation following initial accreditation, although many jurisdictions do in fact revisit accreditation at fixed periods. In New South Wales, for example, accreditation must be confirmed on an annual basis, following certification by the Dean of compliance with the accreditation requirements and notification of any changes to the curriculum.

The most recently accredited law school, at Edith Cowan University in Western Australia, was accredited in 2005 by the admitting authority in Western Australia after rigorous examination of the curriculum, library resources, and the number and qualifications of the teaching staff, and made subject to annual review, at least until fully operational with a full complement of students in each year of the degree.

More established law schools may operate and remain accredited, for varying periods of time, more by dint of their established reputation than by virtue of any formal process of re-accreditation, but it would be rare that an established law school did not go through a rigorous process of regular internal review, often (and typically) by an external panel, or a panel with external members (eg members drawn from the legal profession or from other law schools, Australian and overseas). For example, the University of Melbourne Law School was recently reviewed by a panel that included distinguished and experienced law deans from the US and Canada. All Australian law schools undertake some kind of regular internal quality assurance process, including reviews of courses, facilities and outcomes.

[28] See http://www.lawcouncil.asn.au/natpractice/home.html .
[29] See in particular *Street v Queensland Bar Association* (1989) 168 CLR 461.

Summary of system of professional accreditation of Australian law schools
In brief, to be accredited, Australian law schools must have their degrees recognised by the admitting authority in their jurisdiction, which does so according to a common template across Australia shaped largely by the recommendations of the LACC (Priestley) Committee. While there is no regular, formalised system for re-accreditation, admitting authorities require assurances of compliance with curriculum and course duration requirements and have been vigilant to act upon any information giving rise to concerns. These concerns are generally avoided in any event by law schools undertaking their own regular reviews.

Conclusion

High overall standard in Australia
The key to understanding the difference between Australia and the US in relation to the accreditation of law schools, and to their educational institutions generally, lies not so much in the differences of form and process but rather in sociological and historical differences relating especially to the different spreads of institutions. In the US, excellence is represented by Harvard, Yale and others at one end of the spectrum, while poor quality might be thought to be represented at the other end by the notorious non-accredited, fly-by-night or even mail-order institutions. In Australia, the extremes are not so great. Some universities aspire to, and in many respects approach, the excellence of the best American universities, at least in selected areas if not in general resources, but would be hard-pressed to equate themselves generally with those institutions. On the other hand, the quality assurance framework in Australia, described earlier, ensures that there are few, if any, institutions at the other extreme of poor quality. Generally speaking, and without denying the existence of a pecking order in terms of relative excellence, Australian tertiary institutions are of a uniformly high to moderately high standard. The accreditation of the 29 law schools in Australia is indicative of the generally high professional competence of Australian legal education, even if none of the law schools is quite the research powerhouse that is Harvard or Yale.

Summary
In brief, Australian universities do not earn that name or status without rigorous quality assurance, thus guaranteeing the general quality of Australian tertiary education programs. Built on top of that is the external accreditation of law schools by the legal profession. That system of accreditation is more robust in substance than in form, and is currently (perhaps endemically) under discussion, but has to date generally produced sound and competent lawyers, many of whom have succeeded outstandingly on the international stage (including some internationally renowned jurists) and have contributed to Australia's high reputation for effective lawyering.

Professor Michael Coper
Dean of Law, Australian National University
Chair, Council of Australian Law Deans

24 July 2006

APPENDIX 5

Extracts From CALD Minutes 2005-2007

1. Meeting 2005#2 (University of Waikato, Hamilton, NZ, 5 July 2005)

5.4 Accreditation issues and external monitoring of standards

The Chair reported on a meeting on 21 June 2005 in Sydney of the Law Admissions Consultative Committee (LACC, otherwise known as the ‘Priestley Committee’) that he attended on behalf of CALD (the Chair of CALD being an *ex-officio* member of LACC). This was the first meeting of LACC for the past two years. The meeting, *inter alia*, revisited the Mallesons’ complaint about the ‘teaching of equity in some law schools’, and also considered an Australasian Professional Legal Education Council (APLEC)-initiated project designed to explore the possible accreditation of professional legal training programs.

The Chair reminded members of the background to the establishment of LACC, its membership, and the role it had played to date in influencing the law school curriculum. In particular, LACC had undertaken a major project in drafting and recommending uniform admission rules which had been adopted in substance in every Australian jurisdiction. There were still difference between jurisdictions, but mutual recognition and portable practising certificates allowed forum shopping and largely made nonsense of these differences. However, this in turn only increased the pressure for greater scrutiny of standards.

APLEC, which had been proactive in working with LACC to devise the 'Priestley Twelve' practical legal training (PLT) competency standards (see www.cleaa.asn.au/aplec), had commissioned a consultant (Ms Ainslie Lamb of Wollongong University) to do an initial feasibility study of whether and how PLT providers might now be accredited and/or how the quality of the actual delivery of PLT programs might be assessed and monitored. The consultant's report is due in early 2006. Ms Elizabeth Loftus of APLEC suggested in the LACC meeting that, given this development, together with LACC's revisiting of the Mallesons' complaint and the raising of new issues such as the variable handling of academic misconduct in the context of admission to practice, it would make sense to have a meeting or conference in the first half of 2006 involving all the major players, at which these issues could be discussed and progressed. Such a conference might achieve some of the objectives that the session on legal education at the Lawasia Conference at the Gold Coast in March (organised by the previous CALD Chair, in conjunction with the Law Council, as a partial response to the Mallesons complaint) had signally failed to do through lack of attendance and participation. Ms Loftus agreed to liaise with the Chair in relation to the proposed conference.

In discussion, CALD members not only strongly supported the idea of a major inclusive conference, but also felt that it was time for CALD to be proactive in developing ideas about the accreditation of law schools and the external monitoring of standards. The Chair recalled that CALD in the past had largely adopted the view of former University of Newcastle Law Dean Professor Neil Rees that the Priestley standards involved minimal intrusion and, whatever their defects, to rock the boat was likely to lead to greater intrusion and greater external control, more akin to the oft-criticised role of the ABA in relation to US law schools. It was felt, however, that times had changed, and in particular that it was now necessary for law schools to take the lead in devising a system that was robust and sensible and in which the legal community and the public could have confidence, rather than have an inappropriate system imposed without proper academic input. This could also be important in the argument for more resources to be put into legal education.

Resolution 2005/18: That the new CALD Executive take on as a major project the development of a model for the accreditation and external monitoring of standards of law schools in Australia, and initiate discussion of the issue within CALD at the earliest opportunity.

2. Meeting 2005#3 (ANU, Canberra, 16 November 2005)

5.4 Accreditation issues and external monitoring of standards

CALD agreed at its last meeting to take on proactively as a project the development of a model for the accreditation and external monitoring of standards of Australian law schools. The CALD Executive met by teleconference on 27 October 2005 to discuss the matter, and included in the discussion, by invitation, Dean Michael Crommelin, who had expressed concern about the proposal. The Executive discussed this important, difficult and controversial matter extensively, especially the pros and cons of the proposal, and decided that it would be appropriate to continue the discussion at the 16 November meeting.

Because of time constraints at the 16 November meeting, where a thorough discussion on this important issue was not possible, it was decided that the best way forward was for a written paper to be circulated to all the Deans for discussion at the first meeting in 2006. Dean Fairall, a strong proponent of the proactive approach, volunteered to prepare the paper.

Resolution 2005/31: That Dean Fairall write a paper on the accreditation issue, with a possible model for accreditation, for circulation and dissemination at the first meeting 2006.

3. Meeting 2006#1 (University of Tasmania, Hobart, 17 March 2006)

5.4 Accreditation issues and external monitoring of standards

CALD agreed at meeting 2005#2 to take on proactively as a project the development of a model for the accreditation and monitoring of standards of Australian law schools. However, the matter has proven to be controversial, and it was decided to reopen the decision to proceed with the project and to debate the matter further at meeting 2005#3. Time constraints prevented full discussion at meeting 2005#3, and it was decided there that the best way forward was for Dean Paul Fairall (Adelaide), a proponent of the proactive approach, to prepare a written paper as the basis for further discussion. After consulting further with the Chair, Dean Fairall considered that a short briefing paper, without advocacy for a particular model, would be more beneficial at this time.

Dean Fairall's paper, 'National Approaches to Accreditation of Law Schools', provided a succinct overview of the discussions and proposals on this issue that members of CALD and organisations such as LACC, LCA, ALRC, and SCAG have been involved with over the last decade. Dean Fairall emphasised that it was time to make a decision on whether CALD should actively pursue this issue by making it a strategic goal, or take it off the agenda. He acknowledged that CALD may take the view that the establishment of national standards is an impossible goal and inconsistent with the DEST framework for regulation and funding, or that it is overly ambitious to try to establish a national body to determine a national curriculum.

Dean Chalmers expressed the view that accreditation was an important issue to be kept on the agenda, but one that need not be resolved immediately. The decision that SCAG took not to fund the proposed Australian Council on Legal Education (ACOLE) was disappointing. At present, our admission system is run through LACC based on the Priestley 11. Issues of internationalisation of the curriculum, reviews, and setting national standards are being considered by other bodies. Curriculum reviews should be coming back to CALD for monitoring. The essential question is, if CALD commits itself to promoting the establishment of a national body, how do we do it?

The Chair stated that there are currently at least three sources of pressure on us to take the accreditation issue seriously:

i) the move to a national basis for the legal profession, with reciprocal admission in any jurisdiction after initial admission;

ii) the APLEC initiative for accrediting PLT programs;

iii) the increasing discussion of internationalisation of the curriculum.

The Chair asked whether CALD is perhaps too narrowly focused on the issue of accreditation. Should CALD instead develop a 'principles' paper (cf item 6.4), setting out minimum standards for law schools? This could be easier and

more manageable than going straight to accreditation, and would in any event be a necessary platform for thinking about the next step.

Dean Crommelin expressed reservations about a formal system of accreditation, on pragmatic grounds. The present system gives law schools a degree of freedom in establishing the curriculum that a national system would not. He had observed in discussions with practitioners that they are often dogmatic about the needs of legal education, driven, by and large, by their own experiences at law school. Unless CALD has the capacity to shape the agenda, the result may not be what we want. There is also the question of resources - who should pay? If you take the US as an example, the cost to law schools for re-accreditation is extraordinarily high. Most law schools in Australia could not afford this. Dean Crommelin also pointed out that CALD could not move forward with this unless it openly and frankly acknowledged the possibility that there might be loss of recognition of some law degrees as a result. He was not advocating that CALD do nothing. If CALD as a group could reach agreement on minimum standards for legal education (itself a big challenge), this could assist us to crystallise our own thinking and position us well in the debate.

Dean McKeough agreed, suggesting that it would be prudent for CALD to put forward a minimum standards model. This would establish our credentials as CALD and also put CALD in a better position to respond should the issue proceed.

Deans Davis and Ford agreed that CALD should move ahead on this and could seek funding from the Carrick Institute. Dean Croucher suggested also that there are specific areas where it would be helpful for CALD to be actively engaged. A project like scoping real data on the trends (ie decline) in student/staff ratios would be a useful project and, again, one that the Carrick Institute might agree to fund. Having accurate and complete data at hand would put CALD in a much better position when going into future discussions.

Dean Trakman supported these views, suggesting that there is a risk of being caught napping, as happened in Canada. CALD needs to set some useful, identifiable indicators that can be used. He agreed that CALD should undertake to collect relevant data and be prepared.

With general agreement that a minimum standards project be initiated, the Chair suggested that Mr Chris Roper be approached to take this on as a consultancy project, with a working group from CALD to set out the parameters. Dean Fairall noted that there is already a lot of data and information available on the web, and resources like the AUTC report.

In summarising, it was agreed:

- not to pursue accreditation as such, but rather minimum standards for legal education, as a possible precursor to an accreditation model, and in any event, to provide guidance for accrediting bodies under the current system

- to compile data on eg student/staff ratios, library holdings etc.
- to form a working group to scope the terms of reference for the minimum standards model
- to approach Mr Chris Roper to be a consultant to the project

Resolution 2005/13: The Chair to set up a working group to progress the project on developing minimum standards for law schools and legal education, and approach Mr Chris Roper in relation to a possible consultancy on the subject.

4. Meeting 2006#2 (Victoria University, Melbourne, 4 July 2006)

5.4 Accreditation issues and external monitoring of standards

At the Hobart meeting, and after considerable discussion of the long-standing issue of accreditation of law schools, it was agreed to take on as a project the development of minimum standards for law schools and legal education. As discussed, the Chair approached Mr Chris Roper, who has agreed to act as a consultant for CALD on the project. He will work with a small group to scope the study, and make an initial report to CALD at the next meeting. The Chair distributed Mr Roper's CV, and the meeting was happy to confirm the consultancy, subject to clarification of the source of funding.

Following discussion with Mr Roper, the Chair reported that he envisaged that the consultancy would comprise initial consultation with Deans (five days), comparative work on other jurisdictions (five days), isolation of the main issues (five days), and writing a draft standard (three days). The consultancy will cost $20,000, and Mr Roper undertook not to exceed that, even if he had underestimated the time necessary to complete it.

The meeting confirmed the consultancy, and the commitment of funds to it, but suggested that it might be paid for out of the $200,000 grant available from the Carrick Institute (see item 4.4). The Chair agreed to pursue this with the Carrick Institute.

On another matter relating to standards and accreditation, the Australasian Professional Legal Education Council (APLEC) has been looking at accreditation of professional legal training (PLT) programs, and is awaiting a report from its consultant Ms Ainslie Lamb, formerly of the University of Wollongong. APLEC has expressed interest in a joint meeting with CALD some time in 2007, possibly in conjunction with the Sydney meeting in March 2007. No further discussion on this matter.

Resolution 2006/29: That the Chair and Secretariat to progress the Roper consultancy on minimum standards by setting up a steering group, possibly comprising Deans Chalmers, Crommelin and Fairall, and organising a teleconference between Chris Roper and the group prior to the next meeting.

5. Meeting 2006#3 (QUT, Brisbane, 30-31 October 2006)

54. Accreditation issues and external monitoring of standards

The Chair introduced and welcomed Mr Christopher Roper, who has been engaged as a consultant for CALD's project on minimum standards for law schools and legal education. Mr Roper was concerned in the first instance to tease out, with the assistance of the Deans, the scope of the project. The Carrick Institute has indicated that it will fund the project, at least so far as it relates to the Carrick DBI initiative (see item 4.4 above).

Mr Roper set out how he envisaged the project and how it might be conducted. He noted that there was a difference between ideal or aspirational standards, and minimum standards. There were also issues of content of the standards: curriculum, library resources, staffing, and so on. He will examine, inter alia, select overseas systems: the US, the UK and Asian countries such as Hong Kong, Singapore and Malaysia. He suggested that there were three basic approaches, not mutually exclusive, to developing a set of standards:

1. *Functional:* standards reflect the philosophical statement of what a law school wants to be - eg, if it wants to promote critical thinking, then a relevant standard might be small-group teaching.

2. *Comparative:* standards might be set by reference to best practice in an international context.

3. *Modelling:* what do we want to be? Where do we sit in comparison with other disciplines?

The Chair opened the topic for discussion.

Points made or issues raised included:

(i) How will diversity amongst law schools be accommodated and preserved?

(ii) The project might usefully include standards for reviews of law schools (often thought to be a weak spot in the Australian accreditation system)

(iii) Should a review question the assumptions or goals set by a law school or simply examine whether a law school had achieved its stated goals?

(iv) Was there a role for CALD in coordinating or assisting institution-driven reviews of individual law schools?

(v) Arbitrary standards should be avoided – eg a set figure for minimum library expenditure

(vi) What is the objective or *real-politik* of this project? Is it to drive standards up?

(vii) There is risk to some, perhaps all, law schools in this project, but the exercise will be useless if it panders to the lowest common denominator

(viii) Reviews inevitably raise resource issues, which universities characteristically exclude from the purview of the review

(ix) We need to look at both minimum and aspirational standards

(x) Standards are not just about process but must be substantive as well

(xi) We must engage the profession, and indeed go to the profession with a set of standards, not have them imposed on us

(xii) It is appropriate to consider ideal or aspirational standards, as this is what benchmarking is all about

(xiii) Aspirational standards can be helpful – eg, that the integrity of the discipline of law demands that it should be organised as a separate faculty or like organisational unit within a university

(xiv) Multi-campus institutions do not benchmark well against single campus law schools

(xv) Who is the audience for the statement of standards: peers, university hierarchies, government, the profession, law schools, admitting authorities, the community? (Tentative answer: all, but especially admitting authorities.)

(xvi) If the project is to be included within the Carrick Institute funding, then it must encompass the enhancement of teaching and learning and set standards in this context.

The Chair thanked Mr Roper for his outline, and agreed to send to him all the Carrick material. Mr Roper observed that, although there were dangers whether one focused on minimum or aspirational standards, he was delighted to be involved in such an important project, and looked forward to working with CALD.

Resolution 2006/49: That the Chair send a copy of the Carrick proposal to Mr Roper.

6. Meeting 2007#1 (Hotel Inter-Continental, Sydney, 21-22 March 2007)

5.4 Accreditation issues and external monitoring of standards

The Chair welcomed Mr Christopher Roper, who has been engaged by CALD for its project on minimum and aspirational standards for law schools and legal education. Mr Roper provided a progress report, and took the Deans through the draft table of contents for his report, 'Standards for Australian Law Schools', which had been circulated as part of the meeting papers. The familiar

imponderables discussed at meeting 2006#3 were again discussed (minimum vs aspirational, general vs particular, relevance of social policy (eg to admissions), who the major target audience was, avoiding the lowest common denominator, etc). Dean Carlin (Macquarie) informed the meeting about the various processes for accreditation of business schools and was immediately added to the relevant Standing Committee.

Mr Roper requested that the CALD Standing Committee on Standards and Accreditation workshop with him the content of 'Chapter 3: Discussion of various aspects of the proposed standard' and 'Chapter 4: The proposed standard', and indicated that a draft would be ready for discussion at the CALD July meeting.

Resolution 2007/11: That the CALD Secretariat facilitate arrangements for a meeting between Mr Chris Roper and the Standing Committee on Standards and Accreditation to workshop his first draft.

7. Meeting 2007#2 (SCU, Byron Bay, 15-16 July 2007)

5.4 Accreditation issues and external monitoring of standards

The Chair welcomed Mr Christopher Roper, and stressed the importance of the document that Mr Roper has produced. He felt that the quality of the document (assuming it represents something like the final product and is ultimately adopted) should silence any critics waiting to assert that CALD is not able to produce a robust document because of vested interest.

Mr Roper took the Deans through the draft report step by step, and there was general agreement that he had well identified all or most of the possible areas in which there might usefully be standards: curriculum, teaching, postgraduate programs, research, staffing, student admission, credit for prior study, resources, library, governance, quality assurance, and enforcement. He would draft what the standards might actually look like for discussion at the next meeting. A number of Deans were quick to point out the key problem of the 'meta' issue: who, at the end of the day, would judge whether the standards had been complied with, and what were the consequences for failure to comply (an issue at least for minimum standards, if not for aspirational standards)? Would CALD have a role in this process? Mr Roper said he would address these issues in the report.

The Chair explained, in response to persistent questioning from Dean Fairall about what the purpose of the discussion was, that the object of today was to walk the Deans through the areas identified by Mr Roper, to give Mr Roper feedback and initial reactions about whether standards in these areas were viable and appropriate (which on the whole Deans indicated they were), but not to make any firm decisions as yet. Dean Davis thought we should slow down so as to ensure that all relevant stakeholders could be brought on board, ensuring

integration with the Carrick project. Dean McCallum, on the other hand, thought we should rather speed up, as the issues were really important, the Pearce Report was now way out of date, private providers were on the doorstep, and we needed to stand up for quality legal education. Dean Fairall agreed to email the Standing Committee with his suggestions about how CALD could progress the matter between meetings.

Particular issues touched on were:

- Law for practice vs law for broader purposes
- Knowledge vs skills, and graduate attributes
- Outcomes vs methodology
- Research and research training – minimum or aspirational?
- Full time vs part time staff
- Relevance of social policy to admissions
- Relevance of quality to export of legal education and legal services
- Resources standard as a double-edged sword: saviour or death-knell?
- Governance as a matter for institutions or of wider concern?
- Data collection as necessary foundation for policy
- Comparison with accreditation of medical schools would be valuable.

The Chair thanked Mr Roper for the quality of the report, and his dedication and commitment to the project. Mr Roper thanked the Deans for their input into the report and indicated that he will have the next draft available for meeting 2007#3.

[***Post-meeting note:*** The CALD Standing Committee on Standards and Accreditation held a teleconference with Mr Roper on 10 September 2007 to discuss Mr Roper's draft of the actual standards and their administration. That draft will be revised in the light of comments made during the teleconference, and presented for discussion at meeting 2007#3 in Perth.]

8. Meeting 2007#3 (UWA, Perth, 22-23 September 2007)

5.4 Accreditation issues and external monitoring of standards

The Chair welcomed Mr Christopher Roper, the consultant employed by CALD to progress CALD's standards project. Mr Roper joined the meeting by telephone. The Chair thanked Mr Roper for his extensive work on the project. In the Chair's view, the development of minimum and aspirational standards for Australian law schools was arguably the most important matter on CALD's current agenda.

Mr Roper had incorporated into the draft report the input from the Deans from CALD meeting 2007#2 at Byron Bay and from the teleconference with the CALD Standing Committee on Legal Research on 10 September 2007. Discussion at the Perth meeting focused on chapters 5 and 6, with particular reference to:

- the need to *better align* the identification of the *areas appropriate for standards* in chapter 4 with the *standards* themselves in chapter 5;
- the issue of the *relationship between the standards and the accreditation processes* employed by the accrediting authorities;
- the need for the *standards not to be too prescriptive*;
- the desirability in due course of having explanatory narrative *commentaries* to supplement and amplify the articulation of the standards;
- the utility of using *medical profession standards* as a comparator;
- the importance of including *ethics, professional responsibility, and professional values* (including pro bono obligations) as an integral part of the standards; and
- the 'pointy end' issues of *who determined whether the standards had been met*, and *what were the consequences of not doing so* (for example, should demonstrated compliance result in membership of CALD or perhaps of some new body?).

As noted under item 5.1A, it is envisaged that a draft final report will be circulated in advance of and be finalised at meeting 2008#1 (UNSW, Sydney, 3 & 4 March 2008).

<u>Resolution 2007/57</u>: *That the points made at meeting 2007#3 in relation to the draft report on Standards for Australian Law Schools be incorporated into the draft and that the CALD Standing Committee on Legal Research make any final changes prior to presentation of the report at meeting 2008#1 for finalisation.*