

## ***The CALD Standards for Australian Law Schools: much more than course content***

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Between 2005 and 2009, initially under the leadership of Professor Michael Coper, and with the assistance of Christopher Roper, the Council of Australian Law Deans (CALD) developed a set of standards for Australian law schools. The Standards, titled “The CALD Standards for Australian Law Schools” were to be administered by an independent body, the Australian Law Schools Standards Committee (ALSSC) established and supported by CALD.

The Standards were formally adopted by CALD in November 2009. They have been amended only once since, by the incorporation in March 2013 of the Threshold Learning Outcomes developed as part of the Australian Learning and Teaching Council project for law degrees. The Standards are available online at <http://cald.asn.au/education> and in booklet form.

The ALSSC was established in December 2011 and, after a change in approach by CALD reflecting concerns

about the regulatory burden imposed upon law schools, a process of *interim* certification, conducted on the papers, was undertaken. Twenty-eight law schools have now received interim certification by the ALSSC as compliant with the Standards. The interim certifications are for a period of five years.

The regulatory burden on Australian law schools, and on universities generally, is substantial. For law schools the regulatory frameworks include:

- The Higher Education Standards Framework, administered by the Tertiary Education Quality and Standards Agency (TEQSA);
- Internal University Faculty/School/Departmental reviews; and
- Accreditation requirements for admission to practise.

There are also the recent Accreditation Standards for Australian Law Courses, adopted by the Law Admissions Consultative Council (LACC) on 27 February 2017 and now the subject of practical testing in three law schools. The LACC accreditation standards are notable for, amongst other attributes, their precision and clarity of drafting in relation to the content and standard of law courses. But as their title reflects, and

their introductory note recognises, they are concerned with law courses, not law schools as such and are intended to complement rather than to supplant other standards, including the CALD Standards.

The first point to be made about the CALD Standards is that they represent the collegiate decision of eminent members of the academic community appointed to the wide-ranging leadership role of a law school Dean. The collegiate decision of a council of academic leaders about the standards to which they believe their law schools should aspire must, of itself, carry substantial weight and command respect especially since the Standards cover matters within the core areas of concern and expertise of law deans.

In this short paper, I examine the CALD Standards, not from the viewpoint of their detailed provisions for course content and other technical academic aspects, important as these are, but by looking at the broad and important values they embrace and seek to uphold in Australian law schools. In relation to course requirements, and in some other areas, there is indeed overlap with other standards, including the recent LACC Accreditation Standards, but there are other areas, upon which this paper focuses, that are not

touched at all by any of the other regulatory frameworks. What we are concerned with in these other areas is, essentially, academic leadership with the law deans setting aspirational standards, aware that the legal profession of tomorrow will be comprised largely of their graduates and thus the importance of those graduates being well-equipped to serve the broader community as lawyers - *good* lawyers.

The Standards are divided into two parts. Part A deals with the substantive standards and has 10 sections. The provisions of Part A dealing with law schools (rather than the courses) are the focus of this paper. Part B is concerned with the ALSSC and other aspects of the application of the Standards.

In essence, Part B provides for an independent Standards Committee, comprising at least five members, two of whom must be from outside the law school sector. The Committee is given power to establish panels, normally comprising at least one member of the Committee and “augmented by other suitably qualified persons as appropriate.” The Committee’s functions are to consider and determine applications by law schools for certification as compliant with the Standards, to keep the Standards under review and to propose amendments to CALD

from time to time. Importantly, best endeavours are to be made to coordinate any application to the Standards Committee with other relevant intra-university or “externally imposed reviews”.

At present the ALSSC has eight members, five of whom have, or have held, professorial rank and three of whom are lawyers from outside academia. Two of these members held office as judges of superior courts and the third held high offices in legal professional bodies. The Committee has also benefited greatly from the expert assistance given as a consultant by Professor Alex Steel from the University of New South Wales.

The broad scope of the Standards is sufficiently indicated for present purposes by the headings of Part A’s ten sections: 1 Fundamental issues, mission and objectives; 2 The Law course; 3 Assessment of students; 4 Academic staff; 5 The law library or law collection; 6 Resources and infrastructure; 7 Course and subject evaluation; 8 The nexus between teaching and research; 9 Governance and administration; 10: Continuous renewal and improvement.

These are of course the subject headings that we would expect to find in any comprehensive set of standards for law schools providing degree

qualifications for admission to practise as an Australian lawyer. More closely examined, however, the Standards, whilst certainly covering the important aspects of academic standards, course content, assessment and resources, also demonstrate the concern of the deans of Australian law schools that their graduates are not merely technically qualified as lawyers (using that expression in a narrow sense) but, much more than that, will be fitted to take their place as members of a learned profession with corresponding social and ethical duties. There is, of course, a fundamental difference between the requirements of technical competence as a lawyer and the essential added requirements and capacities required to be a *good* lawyer and, as such, a person who has a vital role to play in civil society. As a closer examination of the Standards reveals, they also demonstrate the concern of the deans that there should be a creative interaction between Australian law schools, the legal profession and the wider community.

### **Law schools, the legal profession and the community:**

The Standards are explicit about the requirement for an interaction between the law schools, the legal

profession and the wider community. Standard 9.6.1 expressly provides that the law schools should seek to engage with the legal profession and the legal sector generally.

Engagement with the profession is also required in the development of the curriculum. Thus, Standard 2.7.2 requires that the law school consult widely with the profession and other environments in which graduates will be expected to work.

If conscientiously undertaken by the many Australian law schools, with reports back to CALD, the application of this standard ought to reveal – for the benefit of all – the newly-emerging fields in which lawyers need to have knowledge and skills. Obviously, these new fields will not necessarily be covered by the present mandatory requirements for admission to practise.

Standard 7 offers similar opportunities. Standard 7.1 provides for internal subject evaluation but my focus in this paper moves to 7.2 which requires that measures of, and information about, graduate attributes are used as feedback in course and subject development. There is some ambiguity in the Standard, which will need to be resolved, but on what would seem the better view of its requirements, law schools are obliged to seek feedback not only from their graduates

but also from the various fields in which their graduates are working.

Active feedback of this nature is surely important. If, in the rapidly changing world of legal practice, there are perceived inadequacies the sooner they are identified by law schools and measures taken to address them, the better.

There is yet another provision, Standard 2.2.4, that requires law schools to maintain contact with the profession. Standard 2.2.4 requires the law school to endeavour to provide, as far as is practicable, experiential learning opportunities, including clinical programs, internships, workplace experience and pro bono community service. These requirements reflect, as it seems to me, the broad themes of about the role and duties of lawyers in society which the law deans had in mind in formulating their Standards.

### **What values?**

Other standards address aspects of what might be termed “the character” of a law school. Does it care about the welfare of its students? Does it care about the welfare of its own staff? These are basic matters of leadership that go to the values of an organisation and, if a teaching organisation, to the values that it implicitly imparts to its students.



Notably, there are standards that address these matters. For example, Standard 2.9, which appears in the section dealing with “the Law course” is headed “Pastoral responsibility”. It is worth quoting in full: “the Law school’s commitment to sound educational methods and outcomes *includes* (my emphasis) a commitment to, and the adoption of, practical measures to promote student well-being, with particular reference to mental health and awareness of mental health issues.”

Part 4 of the Standards is directed to academic staff and addresses such matters as appointment on merit, non-discriminatory practices, opportunities for staff development, academic freedom and published policies about fair and reasonable conditions of employment.

Standard 4.3.4 specifically provides: “the law school is committed to and promotes the well – being of its staff.”

### **The ethical lawyer, community service**

The ideal of the ethical lawyer with a commitment to community service is another powerful notion that finds reflection in the Standards.

For example, Standard 9.6.2 provides “The Law School seeks to engage with the wider community by encouraging its staff and students to use their knowledge and skills for the benefit of the community in outreach programs including, for example and as far as is practicable, clinical programs, law reform, public education and other forms of pro bono community service.”

The ideal of the ethical lawyer, committed to community service, also runs through the provisions for curriculum content. As well as coverage of all the academic requirements specified for the purposes of admission to practise, there are general requirements of the curriculum, including that it seeks to develop knowledge, skills and values. The values referred to are “the values of ethical legal practice, professional responsibility and community service.” There are other provisions requiring the curriculum to seek to develop “awareness of and sensitivity to, and, so far as is practicable, internalisation of, the values that underpin the principles of ethical conduct, professional responsibility and community service.” There are other references in the Standards to ethical conduct and the role and responsibility of lawyers.

### **Fundamental issues, mission and objectives**

I have left the overarching standard, Standard 1, until the last. Standard 1 requires a law school to have a statement of mission and objectives. It requires a law school to have defined its mission and the objectives of the law course and to have made them known to students and other stakeholders. The mission is to encompass not only teaching and research but also community engagement (Standard 1.3.2)

Standard 1.3.3 requires that the law school's mission "encompasses a commitment to the rule of law, the promotion of the highest standards of ethical conduct, professional responsibility, and community service."

I can report that, as appears from their websites, at least 28 Australian law schools do have such a mission statement and that these mission statements are "made known" to students and other stakeholders. Moreover, many of these statements, whilst adopting the language of standard 1.3.3, do so as part of more comprehensive material embodying other related ideals of high ethical standards and community service.

Some of the material submitted to the ALSSC described, in considerable detail, highly commendable and substantial examples of community service with which law schools are closely involved. Other highly commendable examples of community service and

ethical standards were provided in response to inquiries about some of the other standards. And in many instances the requirements of the standards about mission statements form part of a much larger context reflecting high ideals of service and ethics.

### **Where to now?**

As noted, the recently developed LACC Accreditation Standards for law courses are being trialled. But they are standards for law *courses*; the Standards developed by the Council of Australian Law Deans in 2009 and recently trialled through the process of interim certification, whilst also concerned with law courses, go beyond and look to the standards and values of the law school in which the law courses are taught.

This brief examination of the CALD Standards focusing upon the values they embody may be seen to make a case for the closer engagement of the CALD Standards with the admissions process. The practice of the law and the essential role of the lawyer in society is, after all, about very much more than knowing the law.

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