

Briefing for Law Academics – Australasian Law Teachers Association Annual Conference, Auckland, July 2010

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Setting Standards for the Australian LLB: The Learning and Teaching Academic Standards Project

The Australian Government has announced the creation of a new quality and regulatory agency based on recommendations stemming from the Bradley Review of Higher Education. There are plans to establish the Tertiary Education Quality and Standards Agency (TEQSA), though this not likely to occur until 2012. It will build on work previously undertaken by the Australian Universities Quality Agency (AUQA), but will operate with an extended brief. Of particular interest to Law Schools is that TEQSA is to be charged with evaluating the performance of institutions and programs of study (such as the LLB) against a range of standards criteria. These criteria will take into account those set out in the revised Australian Qualifications Framework (AQF), which are to be aligned with the academic standards that discipline communities nationally agree represent the core 'threshold learning outcomes' for their graduates.

The Australian Government has awarded the Australian Learning and Teaching Council (ALTC) \$2 million to lead the Learning and Teaching Academic Standards (LTAS) project which involves facilitating and coordinating discipline communities' definition of these academic standards in preparation for the new regulatory environment and the

creation of TEQSA. How TEQSA will operate is not settled and the Learning and Teaching Academic Standards Project offers the academic community an opportunity to both shape the standards and influence how they should be used. The project is driven by Discipline Scholars across a number of broad disciplinary groups including: Arts, Humanities and Social Sciences; Business, Management and Economics; Engineering and ICT; Health, Medicine and Veterinary Science; Science; Architecture and Building; and Law.

We – Sally Kift and Mark Israel – have been appointed by the ALTC as joint Discipline Scholars: Law. Sally is professor of law at Queensland University of Technology, a Senior Fellow of the ALTC and the national teaching award winner for Law in 2003. Mark is a professor of law and criminology and is Associate Dean (Learning and Teaching) in the Faculty of Law at the University of Western Australia. He won the Prime Minister's Award for teaching in 2004. Together with Ms Rachael Field (a Senior Lecturer at Queensland University of Technology) as Project Officer, we started on this project in February and are spending the rest of the year working with Law Schools and other professional groups and bodies to define the Threshold

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Learning Outcomes (TLOs) for the LLB. We are living in a world of acronyms (for those new to Australian higher education acronyms, we've listed some the ones that we are using at the end of this document), working to a very tight deadline and will report to the Department of Education, Employment and Workplace Relations (DEEWR) in December.

The Story so Far

In November 2009, the Council of Australian Law Deans (CALD) agreed a set of Standards for Australian Law Schools. The purpose of the CALD Standards Project was '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' (Coper, 2008). The final version of the CALD Standards, as formally adopted in November 2009, is available on the CALD website. While the CALD Standards are all encompassing, our work is concerned only with the 'curriculum content' aspect of them (at 2.3.2 and 2.3.3). We are seeking to identify what law students should know and what they should be able to do on graduation. For example: should all law graduates be able to work collaboratively and should we assess them for this outcome over the course of their degree? While we would all agree that law graduates should be committed to ethical practice, how do we articulate this objective in a way that is assessable and measurable, to a specified minimum level at graduation?

Following national consultation (discussed below), we are producing a statement of approximately six

Threshold Learning Outcomes (TLOs) for the LLB. As presently framed, these TLOs will deal with:

1. Knowledge
2. Ethical Reasoning
3. Thinking Skills
4. Problem Solving and Research Skills
5. Communication and Collaboration
6. Professional and Personal Development

These Threshold Learning Outcomes ought to make it possible for Law Schools to meet concurrent requirements from the Australian Government, the professional Admitting Authorities, and their own institutions. The TLOs developed should therefore be consistent with the requirements of the new Australian Qualifications Framework and also mesh with the requirements of those bodies responsible for profession entry.

Consultation Update

As part of this work, we have been seeking advice from those groups with a stake in the Law LTAS Project. Through consultation, we have sought to develop TLOs that are clear, flexible and have legitimacy. Consultation is ongoing and, to date, has included the following:

- In February, the ALTC convened a **National Standards Forum** in Melbourne which brought together, among others, representatives of Council of Australian Law Deans (CALD), the Law Admissions Consultative Committee (LACC), the Australian Academy of Law (AAL) and Universities Australia.

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- We have created **Expert Advisory and Discipline Reference Groups** to oversee the project, which include representatives from CALD, LACC, the Australian Academy of Law, the Law Council of Australia (LCA), the judiciary, the Australasian Law Teachers' Association (ALTA), the Young Lawyers' Group, the Australian Law Students' Association (ALSA), the Australasian Profession Legal Education Council (APLEC), the Council of Australian Governments' Standing Committee on Legal Practice and Relations with the Legal Profession, as well as senior legal educators from Australia, New Zealand, the United Kingdom and the United States. The Expert Advisory Group and part of the Discipline Reference Group have provided feedback on a first full draft of the TLOS. This round of feedback included very helpful responses from two members of Council of Australian Law Deans and from the New Zealand representative, Associate Professor Donna Buckingham, University of Otago.
- In March, we briefed **CALD** at its meeting in Sydney. CALD endorsed the broad approach outlined to drafting the TLOs for the LLB and agreed to support the work of the Discipline Scholars. CALD is also being briefed at its July meeting in Auckland.
- We ran a National Forum in Melbourne on 7th June for all **Law Associate and Assistant Deans** with responsibility for learning and teaching. Almost 40 academics attended, drawn from nearly every

Australian Law School. The Forum reviewed a full first draft of the TLOs for the undergraduate law degree to discuss whether they were drafted according to agreed principles. The group was addressed by Professor Clark Cunningham, W. Lee Burge Professor of Law and Ethics, Georgia State University College of Law, who is also a member of the LTAS Expert Advisory Group for Law. Associate and Assistant Deans in Law are now working to establish a **permanent network** that continues to operate long after the LTAS Project has ended.

- On 17th June, we met with **Law Admissions Consultative Committee** in Melbourne to brief them on the project and receive feedback on drafts of TLOs 1 and 2 (Draft 2.1) relating to Knowledge and Ethical Reasoning.

Generally, these consultations have resulted with a broad acceptance that the TLO itself need not be very detailed as long as guidance on how to interpret the TLO was contained in a non-binding Commentary. While this raises the question of what should go in the Commentary, it does take much of the heat out of the debate, allows for greater flexibility in the final statement of TLOs, and should make it possible for the Discipline Scholars to complete the work in the available time. It should also ensure that the TLOs developed do not make it more difficult for Law Schools to negotiate their curricula with the Admitting Authorities.

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How can you be involved?

Law academics' engagement in this project is crucial to ensure that the TLOs drafted are relevant, appropriately pitched and accurately articulate what academics, the profession and admitting authorities agree should be the minimum requirements for law graduates. We are committed to producing a document that can protect the reputation of Australian law schools, without adversely affecting their diversity and autonomy. By exceeding and customising the minimum national standards, individual law schools can demonstrate distinctiveness.

As part of our plan for consulting with and learning from **law academics**, Sally is running a session at the **ALTA Conference**. We shall also conduct a series of regional hubs across Australia for **legal academics** in late August and early September, and will send out invitations via the Law Schools.

In addition to the discipline-based standards as articulated in the TLOs, the project also aims to produce a **peer-reviewed repository of useful resources** on learning outcomes and resources related to the standards quality and regulatory environment. The idea is that higher education providers and TEQSA will be able to access the repository for assistance in developing standards related processes. The Discipline Scholars have been asked to help identify resources that might support the both the development and assessment of TLOs. We have already started to list the major Australian and international statements of Standards in Law at:

<http://www.altcexchange.edu.au/book/resources-law-standards>

Contributions to the repository are sought from legal educators. If you are aware of other useful documents and/or resources, please either leave a comment on the project website (to do so, please see the instructions at the bottom of the webpage requiring registration with the ALTC Exchange) or alert our Project Officer, Ms Rachael Field r.field@gut.edu.au. It would be extremely helpful if you could either provide a link to the webpage (url) or a digital copy of any resource identified. Thank you.

You can find out more about our work at <http://www.altcexchange.edu.au/group/ltas-project-law>

For a broad overview of the project go to <http://www.altc.edu.au/standards>

Abbreviations

Australian Learning and Teaching Council (ALTC)

Australian Universities Quality Agency (AUQA)

Council of Australian Governments (COAG)

Council of Australian Law Deans (CALD)

Department of Education, Employment and Workplace Relations (DEEWR)

Law Admissions Consultative Committee (LACC)

Learning and Teaching Academic Standards (LTAS)

Tertiary Education Quality and Standards Agency (TEQSA)

Threshold Learning Outcomes (TLOs)

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Draft Threshold Learning Outcomes (TLOs) for the LLB

Graduates of the Bachelor of Laws will...

Draft 2.1 of TLO 1: Knowledge

... demonstrate an understanding of a coherent body of knowledge that includes –

- a. the fundamental areas of law, the Australian legal system and underlying principles and concepts,
- b. the broader contexts within which legal issues arise, including international and comparative contexts, and
- c. the principles and values of ethical practice in lawyers' roles

Draft 2.1 of TLO 2: Ethical Reasoning

... demonstrate

- a. the ability to recognise and reflect upon ethical issues and dilemmas that are likely to arise in the contexts of professional legal practice,
- b. an understanding of approaches to ethical decision-making, and
- c. the developing ability to
 - i. respond appropriately to ethical issues and dilemmas and
 - ii. exercise professional judgement.

Key discussion points remaining –

- *Inclusion at the threshold level of a 'developing ability to exercise professional judgement'. What is appropriate for the LLB and what should be left to PLT?*
- *Should (b) and (c) be combined in some way, with or without the aspect of professional judgement*

TLO 5: Communication and Collaboration

TLO covers areas of:

- communication
- collaboration

Option 1

... communicate effectively with lawyers and non-lawyers and collaborate constructively with others.

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Option 2

...demonstrate the ability to

- a. use appropriate means, including technology, to engage and communicate effectively in technical and plain English, both orally and in writing, with lawyers and non-lawyers
- b. collaborate effectively and constructively with others.

Option 3

...will

- a. use appropriate means of engaging and communicating with lawyers and non-lawyers;
- b. work/collaborate effectively and constructively with others

Option 4

- a. ...communicate effectively and persuasively information, advice and argument to lawyers and non-lawyers in oral and written forms, and
- b. work effectively and constructively with others.

Major discussion points

- *Do these two areas (communication and collaboration) belong together?*
- *How do we ensure that communication is inclusive in terms of both form (oral, written and/or technological) and audience (e.g. lawyers and non-lawyers)? Does the ability to use information technology need to be spelled out? Do we need to be explicit in the TLO or can we leave this for the Commentary?*
- *Is the concept of 'collaboration' sufficient, or do the requirements of group work need to be identified?*

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