

Feedback Form

Proposed revisions to the Accreditation Standards for Australian Law Courses

ABOUT YOU

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I am currently a Professor in the UNSW Faculty of Law and Justice and an External Assessor for the NSW Legal Profession Admissions Board. I am making my submission in this capacity.

I was a consultant and member of the Australian Law School Standards Committee from its inception until its disbandment this year and undertook the primary assessment of most application schools. I have been a Pro Vice Chancellor Education, Director Teaching Strategy and Director AI Strategy Education at UNSW. I have been directly involved in the higher education sector's response to the implications of generative AI. I was a co-author of the 2015 CALD Good Practice Guide to Statutory Interpretation which built on the LACC Statement.

YOUR FEEDBACK

Consultation Question 1: Do you support the drafting of the proposed revisions set out in the Draft Revised Standards? We are interested in the reasons for your view and suggestions for improved drafting.

Please provide your feedback below:

1.1	Online delivery of law courses Refer to Draft Revised Standards: - New clause 4.1 (The delivery of the law course) - Ancillary adjustments to clause 4.6 (Teaching of the law course and active learning) for synchronous online learning - Clause 2.1 adjusted and new definitions for “online”, “delivery mode”, “in-person” and “synchronous online learning” - Clause 2.1 deletion of the “face-to-face” definition <i>Active learning.</i> This is generally understood to include three dimensions: behavioural, cognitive and social. That is, the student's learning involves the social element of engaging in dialogue and debate with peers to test legal reasoning, the behavioural element of participating in tasks such as moots or drafting exercises, and the cognitive element of critically analysing cases, statutes, and legal principles to construct coherent arguments. However the Standards definition is currently restricted to cognitive aspects, there is no requirement that the student communicate their ideas to anyone, nor be involved in class activities. This means a law school can satisfy the Standard by merely setting students problem questions where written answers are accompanied with a reflective note. Including the behavioural and social aspects of active learning is important because although the Standards focus on the prescribed areas, a competent lawyer needs to be able to apply those knowledge areas to novel situations, to have the skills to
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	engage in critical thinking, research and writing, and to be able to communicate and collaborate with a range of persons (these are core outcomes of the AQF Levels 7 and 9, Threshold Learning Outcomes and the Higher Education Threshold Standards). While LACC has identified skills associated with statutory interpretation as needing special attention, these other skills are also critical, and arguably implicit in idea of a <i>competent</i> understanding of the prescribed areas. These skills are most effectively learnt in active learning situations that apply the prescribed areas to real-world situations. It would also be helpful if the Standards recognised that achieving depth of learning in these broader skills in a crowded curriculum will mean that the depth of treatment of each element of knowledge of the prescribed areas will necessarily vary. Law schools will have a well-articulated understanding of how they achieve this that may not necessarily be apparent from long lists of course outlines. The proposed wording in 4.6 that a class can be either active learning or direct interaction undercuts the aim of the Standard. Direct interaction can be as minimal as allowing questions at the end of a lecture or in a revision session. Direct interaction is helpful way to describe synchronous classes but misplaced in a standard on active learning. It is recommended that: • The beginning of the definition of active learning be reworded to be: “active learning involves student engagement in class or online ...” • Reference to “direct interaction” be removed from Standard 4.6 and replaced with dual requirements of active learning and synchronicity. • There be clarification in the commentary that merely encouraging students to ask questions in a lecture does not amount to active learning, and that active learning requires that the class or online session be based around student interaction.
1.2	Teaching hours, active learning and student engagement Refer to Draft Revised Standards: • Revisions to clauses 4.5 (Content of the law course) and 4.6 (Teaching the law course) • Clause 2.1 new definitions for “delivery mode” and “teaching method”, as well as for “active learning” and “direct interaction” <i>Teaching.</i> The scope of the term “teaching” is uncertain in the current Standards and will be further complicated by proposed insertions. It is not clear whether teaching hours are a proxy for determining the quantum of structured learning opportunities that students are provided with, or the quantum of content provided to students. It may indeed be both. To avoid confusion it is preferable to instead use the term <i>facilitated learning</i> in light of the fact that: • there is a proposed definition of <i>synchronous online learning</i> (rather than online teaching) • teaching appears to include time spent in <i>active learning</i> and <i>direct interaction</i> in the proposed 4.6 – neither of which need be ‘teaching’. • the explanation to proposed 4.6 further requires 18 hours of <i>active learning</i> or <i>synchronous online learning</i> and this is presumably not intended to be in addition to the 36 hours of <i>teaching</i>.

	These proposed insertions indicate that <i>teaching</i> is not just direct instruction via lectures, etc and that collaborative and active learning is included. As mentioned above active learning and direct interaction are separate elements of learning and should not be set out in the Standards as alternatives. It is recommended that: • “Teaching” be replaced with the term “facilitated learning” throughout the Standard and be defined to be: ○ “Facilitated learning is a synchronous process in which a teacher guides and supports students in constructing understanding through real-time engagement, either face-to-face or online. Examples include lectures, workshops, seminars, tutorials, flipped classrooms, group discussions, group work, problem solving, moots, role-play, programmed sessions and simulations (but not student preparation or self-directed study). • Learning be rephrased as “independent learning” and defined to be: ○ Independent learning is a self-directed process in which learners take primary responsibility for managing, regulating, and engaging with their own learning activities, typically outside of real-time interaction with a teacher. Examples include class preparation, self-directed study, completion of assessments.
1.3	Invigilated assessments Refer to Draft Revised Standards: • Revisions to clause 4.7 (Assessing understanding and competence), • Clause 2.1 new definitions for “assessment method” and “invigilation” <i>Invigilation.</i> The term ‘supervision’ should be used throughout the Standards. Invigilation is the wrong term to use and that is clear from the definition which immediately describes it as supervision. Supervision is a broader and more suitable term. This is because invigilation assumes a passive independent observer of a controlled and time-limited task. Supervision is however a term that extends to broader oversight of a student’s work and can include support and assistance. The aim is to assure that students are completing the assessment as intended, and this can be done in a range of ways beyond mere invigilation. Two examples may be helpful. Class participation is a supervised activity where students’ learning is assessed across a teaching period. It not easily described as invigilated because the student is often being prompted and challenged by the teacher, and by peers in the classroom. It is however, an assessment that has very high integrity. Similarly, a supervised research project where the student has regular meetings with a supervisor and multiple drafts are sighted and discussed is a highly supervised assessment with integrity. It could not easily be described as invigilated. Across the sector, disciplines are looking to move to a focus on assessing students learning processes rather than just final products. Assessment of processes – such as interpretation skills, research skills, drafting skills, negotiation preparation can be

	based around ongoing supervision of student work to build integrity and to avoid outsourcing to AI. It would be beneficial if the Standards permitted that exploration. It is recommended that: - the term 'invigilation' be replaced with 'supervision' throughout the Standards - the examples in the definition of supervision include class participation and supervised project work. I address other broader issues concerning Standard 4.7 in the general comments below.
1.4	Intensives and block learning models Refer to Draft Revised Standards: - Revisions to clause 4.3 (The duration of the law course) <i>Intensive or block delivery.</i> It would be helpful to define these terms. Law is taught across a range of term, semester and other time frames and there will be uncertainty as to whether particular approaches require further approval. It is recommended that - A specified length of time be set out, below which a course is intensive. That might be 6 weeks.
1.5	Other minor revisions Refer to Draft Revised Standards: - Clause 2.1 new definitions for "law course" and "unit" and accompanying revisions - Updates to the definition of "prescribed areas of knowledge" at clause 2.1 and elsewhere to include statutory interpretation The complexity of the definition of 'law course' is necessitated by the existence of the LPAB Diploma. It is not a law course in the same way that a law degree is, nor is it a law school. Two fundamental differences are: - the teaching of the diploma is separated from the assessment of it, and under the current processes the Examination Committee is not directly accredited. - The Diploma is not accredited by TEQSA or the AQF, yet the Standards implicitly assume such accreditation by indicating the Standards complement other standards, and by requiring consideration of them in 2.2(e). It would be preferable to have non-law school, non-law degree programs separately defined.

Consultation Question 2: Do you agree with the proposed transitional period for the final Revised Standards? If not, why not?

Please provide your feedback below:

2	Transitional period These are issues for law schools.
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Consultation Question 3: Do you have any other comments in relation to this work that you would like to provide to the Committees?

Please provide your feedback below:

3	Other comments Introduction It may be appropriate to remove the explanation of the creation of the Standards as being a response to the lack of specificity of the CALD Standards, given significant time has now passed. 2.2 Interpretation Clause 2.2 (e) asks Authorities to have regard to the AQF level 7 criteria and the Threshold Learning Outcomes (TLOs) in assessing an element or area of knowledge. This creates difficulties for Assessors in that the AQF and TLOs are • overall graduate outcomes and so do not map onto individual elements of knowledge • require the acquisition and application of skills and dispositions in addition to demonstration of knowledge. It is also noted that JD degrees must comply with AQF level 9. It is recommended that • the sub-clause be deleted until such time as the Standards move from examination of individual subject/units to an examination of degrees as a whole. 3 Purposes of the Standards Currently 3(a)(i) requires students in a law course to demonstrate appropriate understanding and <i>competence</i> in <i>each element</i> of a prescribed area of knowledge. This is in line with the Uniform Admission Rules (Rules). 'Competence' is not a defined term in either place. However, in light of its detailed use in the Rules to describe the outcomes of Practical Legal Training (PLT) it would appear that its inclusion here implies broader knowledge-based professional skills such as the ability to critically analyse the prescribed knowledge, to apply the knowledge to novel situations and to maintain currency in the area of knowledge. These would complement the PLT competencies. An alternative reading is that 'competence' in this clause refers to what the Standards describe as a 'pass grade'. This might be an interpretation in line with the focus of the prescribed areas, but seems to make the preceding word 'understanding' redundant. The Standards, following the wording of the Rules, require that students can demonstrate this across <i>each</i> element. Literal interpretation of this requirement
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would be a difficult task for law schools. While all elements will be taught in a course, direct assessment of each is unlikely. Examinations only assess sampled aspects, and in all assessment there is a trade-off between coverage and depth of assessment.

By comparison, 3(a)(ii) does not require assessment of statutory interpretation, but it does require the development of skills in students which are absent in 3(a)(ii).

The Rules allow the Admissions Committee to 'otherwise determine' the requirements (cl 5(1)(3)) and so alternative wording is possible.

It is recommended that clause 3(a) be rewritten as follows:

(a) to assist an Admitting Authority, when accrediting, monitoring, reviewing or reaccrediting a law course, to determine whether that law course –

(i) will ensure adequate coverage through facilitated and independent learning [ie teaching and learning] of each element of the prescribed areas of knowledge and the LACC Statement on Statutory Interpretation, and

(ii) will assure a student's understanding of those elements and skills of application through appropriate assessment. [noting that what is appropriate is covered later in the Standards]

4.3 The duration of the law course

Explanatory note (a) requires a course to be at least 3 EFTSL. Courses not accredited by TEQSA will not define themselves by EFTSL. It would be helpful to have an explanation as to how the duration of those courses should be assessed.

4.7 Assessing understanding and competence

As noted above, what is required by an acquisition of *competence* for areas of knowledge is unclear. Presumably this is application of knowledge in particular ways. Again, why statutory interpretation involves skill but not competence is also unclear. I have suggested an alternative wording above.

The proposed wording on quality assurance is welcomed. As discussed above it would be helpful if the term supervision was used instead of invigilation.

The second dot-point in 4.7 identifies that admission to practice requires a student to have passed units on each prescribed area. This is reinforced in Explanatory Note (a).

However, the proposed third dot-point speaks about 'grades that accurately reflect their level of acquired acquisition and competence'. This is currently a requirement of law schools via TEQSA and not clearly one with which Admitting Authorities are concerned. It would simplify accreditation of law schools via the Standards if the focus was firmly on identifying the minimum required knowledge for a pass, and quality assurance on that level of achievement.

It is recommended that the proposed third dot-point in 4.7 be replaced with:

- In determining whether a student has achieved a pass grade the Admitting Authority may consider for each unit that covers a prescribed area of knowledge and statutory interpretation, the allocation of assessments, the

	assessment methods and whether a sufficient proportion of assessments are conducted by invigilation.
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