

26 March 2025

Legal Services Council Admissions Committee and the
Law Admissions Consultative Committee

Submission: submissions@legalservicescouncil.org.au

Dear Members of the LSC Committees,

Regarding: Consultation on proposed revisions to the Accreditation Standards for Australian Law Courses

My name is David Spencer and I am a Solicitor of 33 years standing (in NSW and Victoria). I am Deputy Dean of the Thomas More Law School at the Australian Catholic University (ACU) and a member of the Victorian Legal Services Board, Academic Course Appraisal Committee however, I do not write in either of those capacities. I have been a member of the legal academy for 29 years having worked at three NSW and two Victorian universities. In my time as an academic I have designed and delivered many core units of study in accredited law degrees and in my various management roles (Professor and Associate Dean Academic of the Faculty of Law and Management at La Trobe University, 2008-2012 and Professor and Deputy Provost at ACU, 2012-2018) have been responsible for mapping and ensuring curricula are constructively aligned and embrace active learning techniques.

First, let me commend the Council and Committees on responding to the changing environment in which law qualifications are designed and delivered. The rise of generative artificial intelligence (GenAI) has caught many by surprise including the national higher education regulator and universities. Assuring law qualifications that lead to admission is critical for each university law school, TEQSA, accrediting authorities and the profession. This has become highly problematic given the recent advent of undetectable GenAI.

I have read the *Consultation Paper* and the draft proposed amendments to the *Accreditation Standards for Australian Law Courses (Standards)*. I do not wish to comment on every element of the proposed *Standards* as largely, they go some way to updating the approaches to the design and delivery of law qualifications leading to admission in Australia. However, I would like to make a submission on the active learning and assessment elements of the proposed amended *Standards*.

Standard 4.6 - Active learning

- (a) I submit that the amended definition of 'active learning' is a little restrictive and should be redrafted. The current definition is centred on knowledge acquisition. Active learning is not just about engagement in knowledge acquisition. It is about engaging with the entire curriculum including doctrinal knowledge of law that should be taught and learned through the lens of each universities graduate attributes or capabilities (ie., the skills of being a lawyer). Importantly, these skills usually form part of the intended learning outcomes (ILOs) for courses and concomitant units of study leading to the awarding of the requisite legal qualification. Further, knowledge acquisition is assumed given the standards and the teaching and learning of the prescribed areas of knowledge required of all accredited law qualifications; it does need to be stated in this definition. This definition should be more about the process of teaching and learning.

May I suggest the following:

active learning involves the design and delivery of law curriculum that ensures that students actively engage as participants in their own learning. It requires evidence that the focus of the teachers is on what the students are doing before, during and after the teaching and learning sessions. It requires that less emphasis is placed on content delivery by the teacher and more

emphasis is placed on designing learning activities that will engage students and make them active participants in their own learning.

- (b) I commend the Committees for suggesting a threshold of 18 hours of active learning in each prescribed area of knowledge although, paragraph 4.6(b)(iii) does not state that expectation as being part of each unit delivering the prescribed areas of knowledge. The current definition suggests that the 18 hours can be spread across the entire course, which I do not think is the intent of this part of the standard. Can I suggest, “(iii) the design of the law course and its program of instruction provides for at least 18 hours in each prescribed area of knowledge of either or both of – ...”.

Further, I would encourage the Committees to consider a greater number than 18 hours of active learning out of the recommended requirement of 36 hours of teaching, noting that large amounts of passive learning occur when students acquire the knowledge/doctrinal rules component in each unit of study (not always but mostly). The ‘teaching’ component of each course is the actual contact students have with each other and the academic staff and in my view, should be skewed towards active learning techniques which higher education research tells us, is a more effective way to learn compared to passive modes of learning.

Standard 4.7 - Assessment

- (a) Regarding standard 4.7 Assessment, I submit that the Committees should consider a higher percentage of invigilated assessment in the prescribed areas of knowledge.

For decades, universities have had in place policies and procedures for student academic misconduct that includes plagiarism and unauthorised collaboration. These rules apply to all assessment tasks, not just 50% of assessment tasks. Why? Because TEQSA takes the view that:

Methods of assessment are consistent with the learning outcomes being assessed, are capable of confirming that all specified learning outcomes are achieved and that grades awarded reflect the level of student attainment; and, on completion of a course of study, students have demonstrated the learning outcomes specified for the course of study, whether assessed at unit level, course level, or in combination.

(Higher Education Standards Framework (Threshold Standards) 2021 (Cth) Sch 1, Pt A, Standard 1.4 Learning Outcomes and Assessment)

Assuming all assessment is valid (that is, they assess ILOs), given the undetectable nature of GenAI, universities and accrediting authorities can no longer be confident that assessments that are not invigilated are trustworthy in terms of being able to satisfy the *Higher Education Standards*. If only 50% of valid assessments are to be invigilated, then it leaves open the possibility that the remaining 50% are not trustworthy in terms of assuring that the assessments are the students’ own work and hence whether students have achieved all the ILOs for the units and the course. For the prescribed areas of knowledge in a legal qualification leading to admission, this would surely be an unacceptable and risky outcome for the university sector, accrediting authorities, the profession and the administration of justice.

- (b) Further, I submit that the definition of ‘invigilated’ is deficient. Proctored exams are no longer secure and therefore untrustworthy unless they are expertly supervised (for example, conducting proctored exams in-person with expert supervision checking for students’ accessing GenAI. Monash University conduct such exams). The current definition speaks of ‘supervision’ potentially being ‘online, by technological or other means ...’. In this respect, online cannot be used in the same breath as invigilated. For example, ‘Chrome Extensions’ advertise how they help students cheat on Canvas quizzes and I am sure that the Committees are aware of TEQSA commencing proceedings against Chegg, a study help website that the TEQSA alleges has breached the academic anti-cheating provisions in s 114A(3) of the *Tertiary Education Quality and Standards Agency Act 2011* (Cth). There may come a day when online proctored assessment is

secure but we have not arrived at that day yet and the *Standards* should be very careful of allowing that door to remain open.

I submit that instead of defining 'invigilated', the Committees consider adopting the Sydney University inspired TEQSA two-lane approach to assessment defined as:

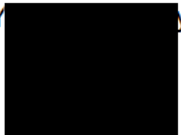
- 'Lane 1' assessments: These are designed to ensure students have mastered the skills and knowledge our programs require. They are in-person, supervised and designed for the 'assessment *of* learning' (summative assessment).
- 'Lane 2' assessments: These are designed to ensure students understand the skills and knowledge our programs require. They need not be supervised and are designed for the 'assessment *for* learning' (formative assessment)

The following table may be of some assistance to the Committees:

	Lane 1	Lane 2
Role of assessment	Assessment of learning (Largely summative assessment)	Assessment for and as learning (formative and summative assessment)
Assessment security	Secured, in person	'Open'/unsecured
Role of generative AI	May or may not be allowed by examiner (but not as part of the summative result of the assessment; eg., students produce an AI document and the assessment is for students to critique that document)	As relevant, use of AI scaffolded and supported
TEQSA alignment	Principle 2 – forming trustworthy judgements of student learning	Principle 1 – equip students to participate ethically and actively in a society pervaded with AI
Examples	In person interactive oral assessments; viva voces; in-class assessments and skill development; tests and exams.	Essays, reports, recorded presentations, in-person presentations that aren't interactive, online quizzes, take-home exams

From all indications, it seems that the two-lane approach will become the standard of categorising assessments in the sector and the Committees should consider adopting that nomenclature to describe the requirements for assessment in the *Standards*. The Committees could adopt the position, consistent with current information from TEQSA, that formative and summative assessments in any given unit of study can be a combination of both lane 1 and 2 style assessments, but that all assessments in the prescribed areas of knowledge should be trustworthy in terms of students demonstrating that they have achieved the ILOs for that unit of study; this means that such assessments need to be certified as being lane-1 assessments.

Thank you for the opportunity to make a submission to the *Consultation on Proposed Revisions to the Accreditation Standards for Australian Law Courses*. I hope the above is of use in your deliberations.

Y  y,

David Spencer.