



Chair: Professor Carolyn Evans
Dean
Harrison Moore Professor of Law
Melbourne Law School
The University of Melbourne

Council of Australian Law Deans
Room 1146, St James Campus C13
The University of Sydney
173-175 Phillip Street
SYDNEY NSW 2006
Tel: +61 2 9351 0212
Email: c.evans@unimelb.edu.au

Executive Director: Lynette Cucinotta
Tel: + 61 2 9351 0212
Email: lynette.cucinotta@sydney.edu.au

**Council of Australian Law Deans
Submission
to the Admissions Committee of the Legal Services Council
on the Consultation Draft, Legal Profession Proposed Admission Rules
released November 2014**

1. Background

1.1 The Council of Australian Law Deans (**CALD**) is the peak body of Australian law schools. The Deans of all the law schools in Australia are members. CALD's objectives include consultation on matters of mutual concern to members or their institutions and where appropriate the adoption of common policies.

1.2 This submission on the *Legal Profession Proposed Admission Rules* (**Proposed Rules**) reflects the accumulated experience of members in the jurisdictions of Victoria and New South Wales in complying with the current Admission Rules in those jurisdictions. It also reflects the interest of all members in the consultation process due to CALD's objective of adopting common policies where appropriate and in acknowledgement that the Proposed Rules may apply more widely if further States opt in to the national scheme.

1.3 CALD is supportive of most of the Proposed Rules as appropriate to the Law Admissions Consultative Committee's stated objective of developing Uniform Admission Rules that are 'facilitative rather than prescriptive'. Most of the rules reflect current practice or sensible modifications of existing rules to facilitate a national scheme. However, proposed rules 7 and 18 raise some questions and concerns for CALD.

ANU College of Law, The Australian National University; Thomas More Academy of Law, Australian Catholic University, Faculty of Law, Bond University, School of Law, Charles Darwin University; Curtin Law School, Curtin University, School of Law, Deakin University; School of Law and Justice, Edith Cowan University; Flinders Law School, Flinders University; School of Business and Law, CQUniversity; Griffith Law School, Griffith University; College of Business, Law and Governance, James Cook University; La Trobe Law School, La Trobe University; Macquarie Law School, Macquarie University; Faculty of Law, Monash University; School of Law, Murdoch University; Faculty of Law, Queensland University of Technology; School of Law and Justice, Southern Cross University; Adelaide Law School, The University of Adelaide; School of Law and Justice, University of Canberra; Melbourne Law School, The University of Melbourne; School of Law, University of New England; UNSW Law, UNSW Australia; Newcastle Law School, University of Newcastle; School of Law, University of Notre Dame Australia; TC Beirne School of Law, The University of Queensland; School of Law and Justice, University of Southern Queensland; School of Law, University of the Sunshine Coast; Graduate School of Business and Law, RMIT University; School of Law, University of South Australia; Sydney Law School, The University of Sydney; Faculty of Law, University of Tasmania; Faculty of Law, University of Technology, Sydney; Faculty of Law, The University of Western Australia; School of Law, University of Western Sydney; School of Law, University of Wollongong; College of Law and Justice, Victoria University

2. Proposed rule 7 on Monitoring and Reviewing Accredited Law Courses and Practical Legal Training Providers

2.1 Proposed rule 7(3) provides that in conducting a review of any aspect of the performance of an accredited law course in providing the academic qualifications specified under the Rules, the Board must take into account any appraisal criteria for law courses endorsed for use in other Australian jurisdictions, and may have regard to any other matter it considers material.

2.2 The Explanatory Paper on the Proposed Rules (**Explanatory Paper**) states at 7(b) that the reference to ‘appraisal criteria’ in proposed rule 7(3) is intended to include the CALD Standards for Australian Law Schools (the **Standards**).

2.3 As stated in the ‘Introduction and Context to the CALD Standards for Australian Law Schools’, the Standards were developed as a self-regulatory aspirational framework to enhance the quality of Australian law schools, and explicitly not as a set of standards designed for the purposes of accreditation of law courses. Law schools can apply to the Australian Law Schools Standards Committee for certification as compliant with the Standards, but are not obliged to do so.

2.4 CALD recognises, however, that at various times during their development the Standards were intended to play a role in accreditation and that some jurisdictions have found recourse to some elements of the Standards useful. CALD also recognises that elements of the Standards may provide a useful guide to accreditation bodies to ensure that accreditation is not simply based on the capacity to teach the Priestley 11 subjects. There is, therefore, cautious support for inclusion of a reference to the Standards in their current implicit fashion in the Proposed Rules.

2.5 At present, however, it does not appear that the Standards are being used by all admission bodies or consistently by those who are referring to it. Some of the Standards are patently inappropriate for accreditation purposes, while others would provide useful guidance. We therefore recommend that this matter be discussed by LACC in consultation with Australian Law Schools Standards Committee. CALD would be supportive of the use of the Standards in accreditation so long as this was done in a cooperative fashion with the Australian Law Schools Standards Committee to ensure that law schools were not being subject to overlapping regulatory regimes and that those elements of the Standards that were most appropriate to accreditation were the ones that were the focus of reviews by admissions bodies.

2.6 At present, the Standards are being applied for the first time by the Australian Law Schools Standards Committee in an ‘on the paper’ review. This is a first test of the Standards and after it is completed, a determination will be made by CALD as to how best to undertake evaluations of law schools against the Standards. CALD is open to a discussion with LACC as to whether elements of future reviews should be undertaken in conjunction with accreditation by admissions bodies in order to avoid regulatory overlap.

3. Proposed rule 18 on Student Conduct Reports

3.1 Proposed rule 18 ‘Student Conduct Reports’ provides that an application to the relevant Board for a compliance certificate must attach a conduct report from every tertiary institution attended by the applicant. The report is required to reveal whether or not the applicant was the subject of any disciplinary action taken by the institution and the outcome of any such disciplinary action.

3.2 Proposed rule 18 essentially adopts the current Victorian practice of requiring local applicants for admission to provide a report from the institution from which they received their law degree on any disciplinary action arising out of the applicant's conduct in attaining that degree (*Legal Profession (Admission) Rules 2008* (Vic), rule 5.02(c)(v)).

3.3 It also extends this requirement to include reports from institutions at which applicants undertook study other than law.

3.4 Student conduct reports are not required from every applicant for admission in New South Wales. In that jurisdiction, an applicant is required to declare that they are not and have never been the subject of tertiary disciplinary action that involved an adverse finding. The Board has the power to request further information in relation to an applicant's conduct as a student, including reports from any tertiary institution they have attended (*Legal Profession Admission Rules* (NSW), rule 99(1) and Form 10). This is consistent with the Victorian approach and the approach in the Proposed Rules with respect to other forms of dishonesty or relevant information (for example, it is not expected that every applicant provides a police report and it is assumed that applicants will honestly disclose any relevant legal matters.)

3.5 All members of CALD understand the importance of ensuring that academic honesty and ethical standards are taken into account in determining whether a person should be admitted to practice. Several members were supportive of requiring universities to supply a certificate on the basis that students who had committed misconduct that calls into question their honesty could not be relied on to self-report.

3.6 On balance, however, CALD submits that the NSW and not the Victorian practice should be adopted, and that student conduct reports should not be required from every applicant for admission for the following reasons:

- 1) applicants for admission are required under proposed rule 16 'Disclosure Statement' to disclose any matter which a reasonable applicant would consider that the Board might regard as not being favourable to the applicant. The LACC Disclosure Guidelines stipulate that academic misconduct and general misconduct are matters that must be disclosed in this statement. The Proposed Rules thus duplicate means by which information on student conduct is made available to the Board.
- 2) there seems to be no evidence that materially different outcomes in terms of disclosure of academic misconduct are occurring in NSW compared with Victoria. The Proposed Rules therefore create administrative and financial burdens with no evidence of benefit;
- 3) the proposed requirement that tertiary institutions produce a student conduct report for every applicant for admission places significant administrative burdens not only on law schools but on any other faculties students may have attended, and thus on tertiary institutions in general. With an increasing number of students studying law at graduate level and undertaking parts of their degree overseas, the number of universities/faculties that may be required to produce evidence for the purposes of the report will also increase. The cost to the community and the applicant of requiring institutional certification as well as applicant disclosure of student conduct appears

disproportionate to the limited benefit gained to the overall probity of the admissions process; and

- 4) the proposed requirement that institutions report on *any* disciplinary action taken in relation to an applicant regardless of the outcome of that action significantly expands the potential consequences of undertaking discretionary inquiries related to the conduct of law students, in comparison to students in other academic faculties. This requirement inevitably factors in decision-making processes in law schools on how best to implement their disciplinary policies and those of their institutions in a manner that does not necessarily complement the probity of the admissions process.

4. Summary

4.1 CALD supports most aspects of the Proposed Rules. It has concerns about the following:

- the proposed requirement in rule 7 that the CALD Standards be taken into account in any review of the performance of an accredited law course in providing the specified academic qualifications requirements requires further discussion between admissions bodies, the Australian Law Schools Standards Committee and CALD to ensure that this requirement is understood and applied consistently and with consideration for the administrative burden on law schools; and
- the proposed requirement in rule 18 that every applicant provide a student conduct report from every tertiary institution attended outlining any disciplinary action taken regardless of the outcome places an unnecessary administrative burden on tertiary institutions and applicants without clear evidence of benefit. The NSW practice of requiring applicant disclosure of any disciplinary action in which an adverse finding was made, and giving the Board the discretionary power to request further information, should be adopted in place of this requirement.

Council of Australian Law Deans
January 2015