Internationalising the Australian law curriculum for enhanced global legal education and practice

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Internationalisation and Standards

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'Come, give us some of your quality…'

— Hamlet, Act II, Scene 2

Introduction

It is always a challenge to be the last speaker. You are all tired, and so much has been said. But it has been said in a very stimulating way, so may I, as one of the partners in this law curriculum project,[1] add my thanks for your participation today.

May I also, in the spirit of the reminiscences we heard this morning respectively from Chief Justice French and Professor Gillian Triggs, briefly mention my own first brush with internationalisation in a legal context. As a young articled clerk with one of Sydney's leading maritime law firms in the 1960s,[2] I often had the unnerving task of serving writs and other documents on distinctly unwelcoming seamen and wharfies

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1 The three partners are Curtin University (lead partner), ANU, and the University of Sydney. The project was initiated and is supported by the International Legal Services Advisory Council (ILSAC) (http://www.ilsac.gov.au/), with funding from the Australian Learning and Teaching Council (ALTC), now the Australian Government Office of Learning and Teaching (http://www.olt.gov.au/).

2 Norton Smith and Co, reputed to have been the oldest law firm in Australia, but regrettably no longer in existence.

down on the Sydney docks. On one occasion, I was given the rather unusual task of arresting a ship.[3] Armed with the latest technology to attach the writ to the mast (sticky tape, replacing hammer and nails), I set out for Wollongong, where the ship was berthed.

Unfortunately, my car broke down just north of Wollongong,[4] and I had to call the sheriff to come and collect the writ and serve it on my behalf. In the meantime, to my horror, the ship sailed! Assuming I still had a job on my return to the office, I knew that, in order to retrieve the situation, I would have to research the law of the country to which the ship was steaming. Perhaps this could be added to all the other examples we have heard today of the pervasiveness in legal practice of international dimensions to transactions and events that at first blush seem innocuously local.

May I also endorse Sally Kift's remarks this morning, in the context of standards, about the critical difference between inputs and outcomes. I heard the same point made vividly by a speaker a couple of years ago at the annual meeting of the Association of American Law Schools. He related how he had a $100 bet with his colleague, a torts teacher, that he could teach his dog the law of torts in an hour. The colleague sensed some easy money and took the wager on. The speaker then related that he took down from the shelf a leading textbook on the law of torts and read excerpts from it to the dog for an hour. 'Now', he said to his colleague, 'ask the dog anything you like about the law of torts'. The

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3 I am interested to see that this is still a live topic; see Matthew N C Harvey, 'Arresting a "ship": Boats, bunkers and barometers' (2012) 86 *Australian Law Journal* 189. See also Veronica Ruiz Abou-Nigm, *The Arrest of Ships in Private International Law* (OUP, 2011).

4 Can you believe it, the car broke down right outside the (no longer in existence) Golden View Lookout Restaurant, where it seemed only natural to stop for lunch and a coffee. Unfortunately, back in Sydney, my supervising solicitor, the renowned maritime lawyer Colin Yuill, couldn't believe it either.

colleague duly asked the dog a question. Predictably, the dog was silent. 'I have clearly won the bet', the colleague proclaimed, 'give me the $100.' 'Not so fast', the speaker retorted, 'I bet that I would *teach* my dog the law of torts, not that he would *learn* the law of torts!'

Some imponderables about standards

I have been asked to talk to you about standards. Most of the earlier speakers have focused their remarks on the imperatives and desirability of internationalisation,[5] though some reference has been made to standards. I want to connect the two, and talk about standards *in the context of internationalisation*.

The standards I am talking about — the standards in our discipline — are of course, to put it simply, the standards for being a good lawyer, or for good 'lawyering', and for the education they receive that makes them so. One key question that has crystallised in my mind in the course of the day is, 'are these standards good for the internationalisation of legal practice and legal education or are they an obstacle?' It would be dismaying if the latter were the case — but I come to this later.

To begin, I want to mention some imponderables in the debate around standards. I do so, not because I necessarily have the answers, but because there are some intractable issues of which we would do well to be aware. I put them on the table and let them sit there, just so that you have them in the back of your minds when confident, even dogmatic, assertions are made, in this fertile area in which everyone has an opinion.

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5 For a recent comment on developments in this area in the United States, see Robert E Lutz, 'Reforming Approaches to Educating Transnational Lawyers: Observations from America' (2012) 61 *Journal of Legal Education* 449.

Why standards?

The first question — what are standards and what are they for? — is relatively easy. In essence, standards are designed to ensure quality, and to assure the public of quality. Yet there is a subtle relationship between standards and quality. I also come to this later.

Whose responsibility?

Secondly, whose responsibility are our standards for good lawyering? Currently, everyone has a finger in the pie:

- the law schools, and the universities in which they are embedded, are concerned with academic standards;
- the practical legal training (PLT) providers are concerned with PLT standards;
- the Law Admissions Consultative Committee (LACC), and the individual admitting authorities, are concerned with standards for admission to practice;[6]
- the legal profession and its governing bodies are concerned with the maintenance of standards during the life of the lawyer, including misconduct and continuing legal education;
- the courts are concerned with overall supervision (frequently based on legislated standards, so the legislatures also have a role);
- and a range of other regulatory bodies, including those new to the scene such as the Tertiary Education Quality and Standards Authority (TEQSA)[7] and the Australian Qualifications Framework Council (AQFC),[8] are also concerned with the formulation, application and enforcement of standards — not to mention the

6 For the very useful collection of documents that LACC has promulgated on this issue, see http://www.lawcouncil.asn.au/lacc/lacc_home.cfm.
7 See http://www.teqsa.gov.au/.
8 See http://www.aqf.edu.au/.

newly-formed Council of Australian Law Deans (CALD)[9] Standards Committee, to which I come in a moment.

As we have heard already today, the big challenge will be to coordinate these various roles and perspectives, and to ensure that all of those with a finger in the pie work together to make the pie palatable rather than indigestible.

Minimum vs. aspirational — and the tendency to generalise from the best

Thirdly, are we talking about minimum standards or aspirational standards? We had this debate within CALD and decided, ultimately, that we simply had standards — though one standard rather cheekily states that laws schools 'seek to exceed the requirements of these standards'.[10]

We know that our graduates reach the set standards, whatever they are, to different degrees — so one interesting aspect of this is whether we should judge how well our standards are met by reference to some overall measure, or whether we may do so by reference to a more select group.

We all have a tendency, do we not, to celebrate quality by reference to a handful of top achievers. The success of Australian lawyers in London's 'magic circle' law firms proves the quality of Australian legal education, so it is said. The success of my Jessup International Law Moot team in winning the international final of the competition in Washington DC in 2010[11] proves the quality of legal education at ANU — or so I say (often).

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9 See http://www.cald.asn.au/home.

10 *CALD Standards for Australian Law Schools*, section 1.2.1; see http://www.cald.asn.au/docs/CALD%20-%20standards%20project%20-%20final%20-%20adopted%2017%20November%202009.pdf.

11 See http://news.anu.edu.au/?p=2050.

We all make assertions this. And they have an element of truth. But should we not be looking at broader measures, comparable perhaps to, say, post-law school bar examination pass rates, where that measure is applicable? Or to employment rates? Or to broadly canvassed peer opinion? And so on.

Quantifiable — or just certifiable?

This lead to a fourth imponderable: is the achievement of quality, or the attainment of standards, measurable and quantifiable, or simply certifiable? We have all encountered the view that if something cannot be measured and quantified, it does not exist, or at least is impervious to any meaningful assertion about quality. Moreover, we are in the era of ratings and rankings. This is not the occasion to delve into that subject,[12] but it is worth observing that, whatever the utility of and justification for comparison based on a single measure, the justification for, and indeed meaning of, a composite measure, averaging scores across a wide variety of disparate measures, is rather more elusive.[13]

Relationship between standards and quality

Fifthly, and perhaps most controversially, what is the connection between standards and quality anyway? Do standards ensure quality? Does the absence of standards lead to a lack of quality? Is there a causal

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12 All numerical rankings are contentious and one needs to drill down to understand and evaluate the methodology, but see, for example, http://www.topuniversities.com/university-rankings/world-university-rankings/2011 and http://www.topuniversities.com/university-rankings/world-university-rankings/2011/subject-rankings/social-sciences/law.

13 One example of this might be the *US News and World Report* rankings of American law schools; see http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools. The current Australian approach to measuring research quality (the Australian Research Council's 'Excellence in Research Australia') lacks any metric measures in relation to law and relies exclusively on peer review, but in the end is quantified on a scale of 1 to 5 in accordance with where it is judged to sit by comparison with world standards; see http://www.arc.gov.au/era/era_2012/era_2012.htm.

connection of any kind between standards and quality? Do our top graduates succeed because of, or in spite of, their legal education?

Again, we love success stories, and it is a very Australian characteristic, is it not, across diverse fields of human endeavour, including the arts, sport, business and politics, to 'punch above our weight' in international competition and to extrapolate from those successes. Legends are built on these stories: Dr Evatt as the first President of the General Assembly of the United Nations; Joan Sutherland as one of the world's greatest operatic divas; and countless examples of sporting triumphs (of which I mention only my favourite, for its spectacular vindication of patience and perseverance — Steven Bradbury's transformation from last to first, and thus to the Olympic gold medal in speed skating, when all ahead of him fell over).[14] To these we can now add Justice Slattery's touching story earlier today of Paul Cronin's key role in averting disaster in the Iraq war.

What do these examples, and the Australian successes in securing positions in overseas law firms and winning international mooting competitions, tell us? Do the legal success stories speak to the quality of Australian legal education? Interestingly, these assertions of the quality of our Australian law graduates need to be seen against an historical background of fairly minimal standards and, as we have heard repeatedly today, 'light-handed' regulation. So perhaps neither the absence of standards (or at least of strong regulation) precludes quality, nor does its presence ensure it. Here is arguably another example (though with a warning that it is manifestly self-serving). I regard my law school, the ANU College of Law,[15] as one of Australia's leading law schools; yet it operates in a jurisdiction in which it is accredited by

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14 Australia's first ever gold medal in a winter Olympics: Salt Lake City, Utah, 2002. See http://www.youtube.com/watch?v=-DHgMiN6Nlc.

15 http://law.anu.edu.au/.

legislative fiat, with no provision for review, regular or otherwise. Other jurisdictions have regular reviews and quite intrusive processes; yet that has not shielded some accredited institutions from concerns about quality. So we do need to ask questions about, and perhaps better articulate, the role and function of standards, especially in a context in which there are other drivers of excellence and, no doubt, other factors that inhibit excellence.

From light-handed regulation to a proliferation of standards

I mention these imponderables just as background to our thinking about quality and standards. We tend to know what we mean, or at least to assume we know what we mean, when we talk about good lawyering. We know that a good lawyer has a sound knowledge of legal principle, especially of core general principles; good skills, especially in applying that core knowledge to new situations; good values, especially ethical values; and good personal skills, such as understanding a client's real needs. Other speakers have teased out these general points in much more detail this morning; and in recent times they have been hugely expanded and translated into even more detailed 'graduate attributes', 'learning outcomes', and the like. I come to these in a moment, but reiterate that it is fair to observe that, to date, we have been distinctly 'light-handed' both in setting standards and in enforcing them, on both the academic front, where universities have been self-accrediting under a relatively light regulatory framework, and the professional front, where admitting authorities have been concerned only with certification that the law school's curriculum covers the core knowledge areas (the 'Priestley Eleven')[16] and does so in a program of a minimum duration of the equivalent of three years of full-time study.

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16 See http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uuid=07812379-D1A2-1252-4084-11841B12FC10&siteName=lca, Schedule1.

This is not to diminish the importance of the core knowledge requirements of the Priestley Eleven, which have been widely praised by a range of speakers today as having played a significant role in the production of good lawyers and yet, at the same time, as having not inhibited law schools from engaging in educational innovation and experimentation, not only in the coverage of areas of knowledge but also in teaching skills and embedding values.[17] It is merely to make the point that knowledge requirements, by themselves, are only a limited part of what is necessary to good lawyering, and that for the regulatory framework for the academic component of becoming a lawyer[18] to confine itself to this is not going as far as it might (though admitting authorities in some jurisdictions may — with or without clear criteria or justification — subject law schools to more scrutiny than in others).

Today, the whole area of standards for lawyers and lawyering is undergoing tremendous change. We are in the midst of massive regulatory churn. In relation to universities, with the introduction of TEQSA we are moving to a national system, and one with real teeth, though the important principle of self-accreditation of courses has been retained (but not without intense lobbying). Sally Kift explained the TEQSA environment in some detail this morning. Interestingly, I was at a presentation last week by TEQSA Chief Executive Carol Nicholl, who was about to leave on an overseas trip. She made it clear that one aim of her trip was to promote the quality of Australian education overseas — and

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17 This is rather ironic, as, in the past, the knowledge requirements of the Priestley Eleven have sometimes been perceived quite differently and widely criticised for exactly the opposite reasons, that is, for not dealing with what is really involved in becoming a good lawyer (skills and values), and yet, at the same time, for stifling curricular innovation.

18 There are also of course the practical training and good character requirements.

that in doing so she would rely heavily on the theory and practice of having rigorous standards.

In relation to law schools in particular, we now also have the CALD Standards for Australian Law Schools ('the CALD standards'),[19] Threshold Learning Outcomes (TLOs) for the LLB,[20] draft TLOs for the new Juris Doctor (JD) degree, and a new Australian Qualifications Framework (AQF).[21] We heard a thorough explanation of the TLOs this morning from Sally Kift, though precisely how they will be implemented and monitored, and in particular who will have responsibility for that, remains an open question. And in relation to admission to practice, we have had for some time the national legal profession project,[22] though hopefully it is inching closer to becoming a reality. Michael Lavarch spoke about this project this morning. Under the proposed scheme, a new National Legal Services Board will apply a single national law — at least in those jurisdictions that decide to be a part of it.

As I noted earlier, the big challenge is to mesh these multiple initiatives, to harness their synergies rather than succumb to their far-from-fanciful potential for duplication, confusion, and dysfunction.

The Council of Australian Law Deans (CALD) Standards

I want to make some general observations about standards, but, before doing so, to say a little about the CALD standards and the role they may play, as this was a project I championed during my tenure as Chair of

19 http://www.cald.asn.au/education.
20 http://www.olt.gov.au/resources?text=threshold+learning+outcomes+law.
21 See http://www.aqf.edu.au/.
22 http://www.lawcouncil.asn.au/programs/national_profession/national_profession_home.cfm.

CALD from 2005 to 2007 and continued to have responsibility for as Chair of the relevant CALD Standing Committee.

History

The development of the CALD standards has a long history,[23] and did not achieve any momentum in CALD until it extracted itself from the context of another long-standing and hotly contested debate, namely, the debate about accreditation. A substantial body of opinion on CALD, characterising the regulation of law schools to be relatively 'light-handed' in the sense adverted to earlier, eschewed any involvement in the matter and wanted to 'let sleeping dogs lie'. In due course, however, it was agreed that there were strong reasons for CALD to address the question of standards, and that how this might feed into the vexed question of accreditation could be deferred and dealt with separately.

Drivers

In essence, it was agreed that there was significant value in the law schools themselves — that is, the institutions, after all, with the relevant expertise in matters of legal education — articulating a set of standards that would underlie and guide the quest for quality. Far from feeling threatened by this, many law schools, including (perhaps especially) the smaller and thus superficially the most vulnerable, saw particular value in having benchmarks to use in internal negotiations within their universities for better funding. Developing our own standards was also seen as an important part of seeking to be masters of our own destiny rather than have our agenda entirely set by external bodies, or at least as having some ownership in a context in which there was admittedly a range of stakeholders with a legitimate interest in the matter.

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23 For more detail, see http://www.cald.asn.au/docs/Standards_History.pdf.

I should add that there were two important external drivers. First, there was a growing concern in LACC and the admitting authorities that, although the national legal profession project had a long way to go, early milestones such as mutual recognition of admission to practice (that is, admission in one jurisdiction allowing reciprocal admission in any other jurisdiction), and the concept of the travelling practising certificate, opened the door to the lowest common denominator when it came to standards. Secondly, internationalisation exerted further pressure: without a set of standards to point to as part of quality assurance, it was becoming increasingly difficult to be credible in our assertions and persuasive in our advocacy in other countries for Australian law degrees to be recognised there for the purpose of admission.[24] The combined force of the external and internal drivers made a compelling case for CALD to embrace standards.

Adoption

Following a comprehensive report by the ubiquitous Christopher Roper,[25] with much valuable material on how other comparable professions set their standards, and following the famous 'Coogee Sands' resolution adopting the standards in principle in 2008,[26] the CALD standards were finalised and adopted in 2009.[27]

Content

The standards are in two parts: the standards themselves (Part A, sections 1-10), and application of the standards (Part B, sections 11-14). The standards range widely not only over curriculum matters

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24 I felt this particularly in relation to our Legal Services Missions to India in 2004 and the United States in 2006.

25 See http://www.cald.asn.au/docs/Roper_Report.pdf.

26 See http://www.cald.asn.au/docs/Standards_History.pdf, Appendix 1.

27 See http://www.cald.asn.au/docs/CALD%20-%20standards%20project%20-%20final%20-%20adopted%2017%20November%202009.pdf.

(incorporating the core knowledge requirements of the Priestley Eleven), but also over the law school's mission, assessment of students, staffing arrangements, library, physical and electronic infrastructure, governance and administration, research, and processes for evaluation and review. As far as curriculum is concerned, section 2.3.2 of the standards emphasises the importance not only of legal knowledge and understanding but also of skills and values, and has been the platform for the very detailed explication of essential graduate attributes embedded in the TLOs[28] canvassed by Sally Kift this morning.

Internationalisation

Importantly, both the CALD standards and the TLOs embrace internationalisation. Section 2.3.3 of the standards requires law schools to seek to develop knowledge and understanding of 'international and comparative perspectives on Australian law and of international developments in the law'.

Inputs vs. outcomes

One of the most interesting aspects of the debate around standards is whether they should be couched in terms of required inputs or desired outcomes. This takes us back to my point about the complex relationship between standards and quality. It is easy to criticise, even lampoon (as in my story of the dog who failed to learn the law of torts),[29] input-based standards as not guaranteeing quality; clearly, we cannot be sure that a graduate is of a satisfactory standard simply because the library shelves are stocked with a certain number of books.

On the other hand, the challenge of otherwise compelling outcome-based standards is to have robust ways of judging whether those outcomes

28 Above n 21.
29 See Introduction above.

have in fact been achieved. (The post-law school universal bar examination is arguably one way, but this morning's discussion showed no enthusiasm for that, and in any event the bar exam is no doubt better suited to testing knowledge requirements than the acquisition of skills and values.)

In theory, a focus on outcomes rather than inputs is undoubtedly superior in the quest for quality assurance, and it is entirely appropriate that this has been the approach of the TLOs. But the input-based approach cannot be entirely written off. Some argue that input requirements for things like infrastructure, governance, review and evaluation, and so on, may be necessary, even if not sufficient, for the achievement of quality. That is, they may create, or assist in creating, the conditions in which this will occur, or make it likely to occur, even if they do not guarantee it. And the converse might also be asserted: their absence might ensure, or make it likely, that the desired outcomes will *not* occur.

The CALD standards are, I think, a mixture of inputs and output measures, but even in relation to the inputs, they generally turn not on some problematic fixed criterion, such as the number of books in the library (which, even if this were appropriate in the first place, could scarcely remain so over time, or even remain relevant at all in the electronic environment), but on the judgment of the reviewers of whether the law school has made adequate or appropriate provision for whatever objective is embodied in the relevant standard. This approach may be thought to blend inputs and outcomes. Also, one should not underestimate the value of the self-assessment exercises that law schools will undertake as part of the application of the standards (section 14.4 of the standards).

Application of the CALD standards

That brings me, finally on the CALD standards, to their application. Part B provides for the establishment of a Standards Committee, and I am delighted that such a committee has been put together and indeed had its inaugural meeting, by teleconference, in December 2011. In my view, it is a strong committee, which is likely to approach its task with insight and sensitivity. It is chaired by former Federal Court Chief Justice the Hon Michael Black, and includes ILSAC Chair and former Law Council President Tim Bugg, Victorian Court of Appeal Justice Marcia Neave, and a number of distinguished academics, including an international perspective from Professor Kim Economides, formerly of Exeter and now at Otago University.[30] The committee will meet again in the first half of 2012, and begin the process of calling for applications from law schools for certification that they are compliant with the standards. As noted earlier, the challenge will be to run the process[31] in a way that assists rather than impedes law schools in their multiple other compliance tasks, including the as yet untested TEQSA process, local admitting authority scrutiny and accreditation[32] (in whatever form that may take in a particular jurisdiction or become in the national scheme), and the regular reviews that universities do of their constituent parts.

Standards in the context of internationalisation

The developments I have canvassed could have occurred wholly domestically and are important in their own right, but the focus of our

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30 There are eight members in all. In addition to those mentioned in the text, the other members are Professor Sally Kift, JCU; Professor Richard Johnstone, Griffith University; Professor Paul Redmond, UTS; and Professor Michael Coper, ANU

31 The process is a voluntary one (section 14.1 of the standards), but it is expected that law schools generally will take up the opportunity — producing a further logistical issue in sequencing multiple applications.

32 In order to facilitate coordination, it has been agreed in principle that any panel set up by the CALD Standards Committee (section 14.3 of the standards) should include a member of LACC or the local admitting authority.

symposium is, what has been, and what is likely to be, the impact of internationalisation? So the question is, how should we think about standards in an international context?

There are four observations I would like to make, or questions I would like to raise, in this context:

- First, robust standards are important in promoting Australian legal services and Australian legal education overseas
- Secondly, these standards should themselves embrace and reflect internationalisation
- Thirdly, our focus today has been on Australian standards, but should we not also begin to think about international or global standards?
- Fourthly, if standards alone are not enough to achieve their goal of quality, what else is needed?

Standards are good for business

First, then, I have already noted that having good robust standards for legal education can be important in promoting the Australian product overseas. In our discipline, with its professional practice dimension as well as its educational dimension, this cuts two ways. First, it underscores the quality of Australian lawyers and Australian lawyering and thus assists the export of Australian legal services. Secondly, it makes an Australian legal education attractive to overseas students and thus assists the export of Australian legal education. It is a myth, I think, that lower standards might attract more international students. Certainly, there are multiple factors at work in the student choice of a study destination (including, for example, relative cost), but it is well understood that a quality degree is more valuable, and more widely deployable, than one with a poor reputation.

Interestingly, the recognition of Australian law degrees overseas is relevant to both of these aspects of the export of Australian expertise. Such recognition clearly assists in the export of Australian legal education, because it makes the Australian law degree more portable; international students can go back to their home countries with a qualification for legal practice there, not just in Australia. But it also assists in the export of Australian legal services, because it provides Australian law firms with ways into the domestic law of foreign countries. Admittedly, most firms operating overseas are in the market for fly-in/fly-out services, or advise only on foreign rather than local law (and indeed are generally restricted to advising on foreign law), but to have lawyers who are admitted, or capable of being admitted, in the local jurisdiction may open many doors (for example, to smoother collaboration with local firms).

To grasp this point, that standards are good rather than bad for business, should be to resolve any lingering tension between respective roles of ILSAC,[33] which promotes business, and LACC, which promotes standards. I did observe such a tension when, as Chair of CALD from 2005-2007, I was in the unusual and I think unique position of being a member of both bodies.[34] Admittedly, that tension was mainly in the context of the recognition in Australia of foreign qualifications — a subject of intense interest, because of the perceived importance of 'reciprocity', in those countries in which Australia was arguing for the recognition of Australian degrees. In other words, the tension was

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33 The International Legal Services Advisory Council, sponsor of this curriculum project; see above n 2 and http://www.ilsac.gov.au/.

34 The tension, incidentally, was not without irony; both bodies were the progeny of Sir Laurence Street, but developed with different missions and different cultures. Sir Laurence was himself the inaugural and long-standing Chair of ILSAC, whereas NSW Supreme Court Justice Bill Priestley was the inaugural Chair of LACC — hence the 'Priestley Eleven'.

between perceptions on ILSAC that LACC was making it harder to offer reciprocal recognition, and perceptions on LACC that ILSAC was wanting to lower standards. One can scarcely argue, however, with a system that has the same or comparable standards for the admission of local and foreign lawyers, and recent experience suggests some welcome flexibility in the way that this general principle might be applied in practice.

Standards should themselves embrace internationalisation

Secondly, I have already noted that both the CALD standards and the TLOs incorporate an international dimension, although in very general terms. Nevertheless, this is an important step, in both legitimising this perspective and in providing a platform for further development.

This takes us directly into curriculum issues, such as the relative merits of 'mainstreaming' an international perspective into all courses, or at least the core courses, and 'pigeonholing' or 'quarantining' this perspective into specialist courses, usually into advanced electives. I have no time to explore these issues, and would just observe that an international or comparative perspective is not just about knowing some public international law or the law of private business transactions; it is also, and arguably more importantly, about achieving a greater depth of understanding of the core general principles that underlie the operation of our own legal system.[35]

From Australian to global standards

Thirdly, I am optimistic that we in Australia can make a significant contribution to the development, not just of Australian standards but

[35] The 'employer round tables', held in the lead-up to this symposium, strongly emphasised the importance of students developing a deep understanding of core principles, and strongly advocated the use of international and comparative perspectives (mainstreamed into core courses) to achieve that goal.

also of international or global standards for lawyers, lawyering, and legal education.

There is an interesting development here, via the International Association of Law Schools (IALS).[36] This relatively new, but promising, body began with an understandable emphasis on learning from each other's differences. The modest goal was to open our minds to alternative experiences and alternative ways of thinking, and to escape from the trap of thinking that our own way was the best or even the only way (reinforcing the point made above about the importance of an international and comparative perspective in the curriculum). Over time, interest has grown in moving beyond learning from each other's differences to exploring what we have in common, or, in other words, to identifying any 'universals' about good practice in legal education and the concept of being a lawyer. This may develop further into global standards or statements of best practice, or at least good practice — though any notion of international 'enforcement' (even if that were thought to be desirable) is undoubtedly a long way off.[37]

There is an opportunity here, though, for Australian leadership, as exemplified by our characteristic determination to excel and punch above our weight in international circles. Australian law schools have a participation rate in the IALS second only to that of the United States, both in absolute and relative terms. Australians have been prominent in the IALS conferences. And our own recent experience of developing

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36 http://www.ialsnet.org/.

37 See generally on these developments my columns on the IALS in the Australasian Law Teachers Association (ALTA) Newsletters 2009-2011, at http://www.alta.edu.au/alta_newsletters.html , most recently at http://www.alta.edu.au/pdf/newsletters/2011_alta_newsletter_edition_two.pdf at pp 45-46.

standards — though the story is far from over — may be readily transferable to the international sphere.

The vexed question of the JD

In the context of global benchmarks,[38] one of the most interesting developments in Australian legal education in recent times is the emergence of the graduate-entry Juris Doctor or JD degree.[39] There are strong views on both sides of the debate, as we heard in the passionate views from the floor in discussion earlier this afternoon. There is no time to go into this complex subject today, except to note that, for law schools sympathetic to internationalisation, one of the attractions of the JD has been the growing international currency of the nomenclature. The spread of the JD is not just US imperialism. It has a foothold in Japan, Korea, Hong Kong, and Canada, as well as Australia. There are many motivations and many drivers, including revenue concerns for cash-strapped law schools. But the main educational driver has been to tailor a law degree to the particular and distinctive characteristics of the entering cohort, namely, (mature) graduates of another discipline rather than (immature) school leavers.

One might think that the key issue, therefore, should be the general question of whether law is better taught at the undergraduate or graduate level. Indeed, a general shift from the former to the latter

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38 In another twist on internationalisation, I should also mention that in 2011 the ANU College of Law commissioned an independent review of its operations by an entirely international panel: five experts respectively from the US, the UK, Canada, Singapore and New Zealand. See http://law.anu.edu.au/news/webdocuments/ReviewTeam.pdf ; report available on request.

39 See Donna M Cooper, Sheryl Jackson, Rosalind F Mason, and Mary Toohey, 'The Emergence of JD in the Australian Legal Education Marketplace and its Impact on Academic Standards' (2011) 21 *Legal Education Review* 23-48; http://eprints.qut.edu.au/48192/2/48192.pdf ; Michael Coper, 'Recent Developments in Australian Legal Education' (2011) 8 *Chuo Law Journal* 19-36 (in Japanese (trans. Hisaei 'Chuck' Ito)), 53-69 (in English); also available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1715262.

(followed by a change in the nomenclature from LLB to JD) is exactly what occurred in the US over a period of years in the mid-20th century. The same judgment that this was an appropriate shift underpinned what happened in Japan, Korea, and three law schools in Australia. Yet the Australian scene is extremely diverse, even incoherent, with these three law schools offering only the JD,[40] other law schools offering both the JD and the LLB, others offering only the LLB, and, amongst those offering the JD, some simply rebadging the LLB and others making it truly different from the LLB. The new Australian Qualifications Framework (AQF)[41] now requires the JD to be at masters level; but, even with this differentiation, Australia is unique in the world in having law schools that run the LLB and the JD side by side. It is difficult to judge whether, or for how long, this will be sustainable.

International standards would not necessarily dictate one model for the study of law leading to admission as a practitioner, and it may be that the different pathways in Australia usefully cater for different markets and different kinds of students. Certainly, Australian successes won overseas to date have been won on the basis of the LLB — though often in the context of combined degrees, which, at the end of the combined program, arguably yield graduates of comparable breadth and maturity to the JD graduates. Nevertheless, prospective students are nervous about whether the two degrees will retain parity of esteem; perhaps, ultimately, the market will decide. But a debate around international standards and international benchmarks, or at least international experience, might make a useful contribution.

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40 Melbourne, UWA, and RMIT.
41 See http://www.aqf.edu.au/.

Are standards alone enough to achieve quality?

My fourth general observation, or question, is whether standards alone are sufficient to achieve quality. I have already noted that, although standards are *conducive* to quality, and may serve wider purposes, strictly speaking they may be neither necessary nor sufficient to achieve quality. Perhaps the least contentious aspect of this proposition is that standards are insufficient, by themselves, to achieve quality. That does not mean that standards are not important or do not achieve a range of goals — merely that, to ensure quality, something more may be required. What is that something more?

This fascinating question could take us into endless speculation about what motivates human beings to strive for success and what factors contribute to the achievement of that success; about the relative importance of, and interaction between, intrinsic ability and extrinsic circumstances; and about the various (and not necessarily consistent) insights that might be gleaned from the diverse disciplines of psychology, economics, history, neuroscience, and others. Indeed, we might first have to address the even more challenging questions of what is success, what is quality, and what is excellence. But I just want to mention one factor: resources.

Like standards, resources may also be thought to be insufficient by themselves to ensure quality — and quality might be sometimes, perhaps in special circumstances, achievable with less than optimal resources. But in our context, that is, the production of quality lawyers, I would say that there is a direct relationship between the resources that are invested and the quality of the outcomes. Generally speaking, quality law schools have more faculty, better student-staff ratios, broader course offerings, more opportunities for students (and better support to enable students to

take them up) such as internships, clinics, placements and other experiential learning opportunities, more international exchange arrangements and other international programs, and so on — not to mention more quality research opportunities and outputs, and more international engagement. Even online programs, to be quality programs, require serious investment in technology and training. Curriculum development requires expertise, research, reflection, and time.[42] And so on.

The funding question is a large and difficult one, with particularly sensitive and potentially divisive issues around the relative balance of public and private funding, but it is ignored at our peril. CALD has made a number of strong submissions on the subject, pointing to the danger, and cost, to the community of inadequately trained lawyers.[43] There may be some hope for the future if the recommendations of the recent base funding review[44] are taken seriously — but while the demand for law places is so strong, and the supply of places is so generous, there is little incentive for enhanced public funding — yet at the same time there are natural limits on the capacity of students to dig deeper and deeper into their own pockets. That Australian lawyers have achieved what they have overseas, and enhanced the reputation of Australian lawyering generally, may be, at least in part, a factor of the human tendency I referred to earlier of generalising from the achievements of the best.

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42 As noted earlier, even this symposium is supported by external funds: see above n 2.

43 See http://www.cald.asn.au/docs/Bradley%20Submission.pdf, http://www.cald.asn.au/docs/CALD%20submission%20on%20DEST%20review%20of%20HESA%20-%20final.pdf, http://www.deewr.gov.au/HigherEducation/Policy/BaseReview/Submissions/AtoF/Documents/Council_of_Australian_Law_Deans.pdf.

44 http://www.deewr.gov.au/HigherEducation/Policy/BaseReview/Pages/default.aspx.

Conclusion

I would just briefly make two, related, points in conclusion. First, the phenomenon of internationalisation is not entirely new, but has been embraced, with varying enthusiasm, and in many fields of endeavour, over many centuries. In our field of endeavour, traditionally a rather parochial one so perhaps rather late to the caravan of internationalisation, we need to embrace it and use the platforms we currently have to accentuate the international dimensions of legal practice and legal education. Secondly, standards are only a part of this, but they can play a very positive role — and one that accentuates and promotes internationalisation rather than holds it back.

I was asked in this paper to address the question of how we 'maintain' standards, so I suppose I should conclude by doing so, although this is but a slice off the top of the various thoughts expressed above. I have a threefold answer, rather like champion golfer Nick Faldo's cheeky answer to a novice reporter who once asked him innocently for his secret of success in golf. 'Well', he said, with contrived seriousness, observing that the reporter was dutifully writing down everything he was saying, 'I have a three-step approach: first, I hit the ball; then I find it; and then I hit it again'. So, in the spirit of Nick Faldo, first, we need to *have* standards in the first place (and we are developing them so fast we perhaps have more now than we know what to do with); secondly, we need to develop a sensible and *coordinated* approach to applying them, given the number of fingers in the pie; and thirdly, we need to *invest* in quality, that is, we need to invest in the resources that are necessary to make the aspirations of the standards a reality.