

1-1-2011

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Recommended Citation

Cooper, Donna; Jackson, Sheryl; Mason, Rodalind; and Toohey, Mary (2011) "The Emergence of the JD in the Australian Legal Education Marketplace and its Impact on Academic Standards," *Legal Education Review*: Vol. 21 : Iss. 1 , Article 3.

Available at: <https://epublications.bond.edu.au/ler/vol21/iss1/3>

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THE EMERGENCE OF THE JD IN THE AUSTRALIAN LEGAL EDUCATION MARKETPLACE AND ITS IMPACT ON ACADEMIC STANDARDS

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AND MARY TOOHEY****

I INTRODUCTION¹

Since the 1960s, legal education in Australia has been provided in three separate stages: academic study at university, practical legal training and continuing legal education.² In this article, we will focus on the academic phase of legal education.³ The traditional route to legal practice was through an undergraduate Bachelor of Laws (LLB) degree, but in recent years the options have broadened significantly. They now include a wide range of courses, including single degree, combined degree and graduate-entry programs.

In this article we focus on what might fairly be viewed as the most controversial option, the Juris Doctor (JD). At the outset, we

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¹ This article relates to a research project funded by the Australian Learning and Teaching Council (ALTC). The authors would like to acknowledge the assistance of Sarah Jones, research assistant on the project, and Joann Cattlin, research assistant and one of the authors of the final report. Full details of this research and research findings are set out in Margaret Jackson et al, ALTC, *Graduate Professional Entry Courses in Accounting and Law: Final Report* (forthcoming at <http://www.rmit.edu.au/teaching/altc/professionalpathways>).

² David Weisbrot, *Australian Lawyers* (Longman Cheshire, 1990) 124–5, cited in Richard Johnstone and Sumitra Vignaendra, *Learning Outcomes and Curriculum Development in Law* (Department of Education, Science and Training, 2003) 2.

³ It remains possible to meet the academic requirements through workplace learning and study through the Diploma in Law course run by the Legal Profession Admission Board in New South Wales: see Law Society of New South Wales, *Academic Qualifications* (2009) <<http://www.lawsociety.com.au/ForSolicitors/practisinglawinnsw/becomingasolicitor/qualifications/index.htm>>. The Admission Board option is outside the scope of this article.

discuss the emergence of the JD in the Australian legal education marketplace. We then explore issues relating to academic standards across JD courses. Across the board, the JD is graduate-entry, but it is currently being delivered in undergraduate, postgraduate and 'hybrid' forms.⁴ The broad range of available models has led to questions about the academic standards of such courses. In particular, concerns have been expressed about whether some JDs badged as postgraduate courses have in fact been operating with higher-level learning outcomes and assessment regimes than those in undergraduate LLB degrees.⁵

These issues will be examined in light of recent research in which we were involved as part of an Australian Learning and Teaching Council grant. The section of the project which this article explores is whether JD courses in Australia were applying different and higher-level academic standards than those operating in LLB degrees.⁶ To consider this research question, we interviewed a number of JD course coordinators and employers of JD graduates.⁷ Our analysis of the responses has provided a rich source of data about the various JD course models currently being offered around Australia. It has also revealed inconsistencies which lend support to concerns raised about the academic standards in some JD courses, particularly in the context of 'hybrid' courses where masters-level students are being taught alongside their undergraduate counterparts.

Reflecting on our interviews with employers, we gained some insight into perceptions in the marketplace of JD graduates. Many employers had positive perceptions of JD graduates and considered that they were operating at a higher level than their LLB colleagues. However, generally, our respondents could not specifically attribute this to the particular law course that their employees had completed. Although our research findings are subject to some limitations, the

⁴ By 'hybrid', we mean where masters-level students undertake either all of their course or only the core 'Priestley 11' subjects alongside their undergraduate LLB counterparts. The term was used in Bernard Lane, 'New Juris Doctor to Dodge Fee Ban', *The Australian* (Australia), 12 November 2008, 1. The 'Priestley 11' is a list of compulsory areas of knowledge contained in the Law Admissions Consultative Committee, *Uniform Admission Rules 2008* (2008) Law Council of Australia, sch 1, 5–11 <http://www.lawcouncil.asn.au/lacc/documents/admission_policies.cfm>. These areas determine the compulsory units of study in all law courses in Australia for graduates seeking admission to legal practice.

⁵ Bernard Lane, 'JDs Must Be Masters Degrees', *The Australian* (online), 24 November 2010 <<http://www.theaustralian.com.au/higher-education/jds-must-be-masters-degrees/story-e6frgcjx-1225959754755>>.

⁶ Jackson et al, above n 1, 59–76.

⁷ Interviews with JD course coordinators were conducted by telephone and represented a selection of courses around Australia. Our interviews with employers were conducted either in person or by telephone. The Queensland authors interviewed employers in the southeast Queensland area, although some worked for national firms and were also able to comment on the experience of branches of their firms in other locations.

responses provide insights that should be of interest to all Australian law schools.

Finally, the future viability of the JD will be considered against the backdrop of recent revisions to the Australian Qualifications Framework (AQF).⁸ These changes specifically address concerns about inconsistencies around Australia in relation to the academic standards of JD courses. The revisions potentially raise significant resource implications for some law schools.

II REASONS FOR THE EMERGENCE OF THE JD IN AUSTRALIA

There are numerous factors which have combined, in recent years, to favour the emergence of the JD in the Australian legal education marketplace. The most significant are identified below.

A Demand for Law Graduates

In recent years, there has been increased demand in the workplace for people with higher education qualifications⁹ and ‘growth in employment in professional occupations’.¹⁰ There are predictions that, in the future, employment levels will be stronger for the highly skilled professions than for other occupations,¹¹ and that there will be solid prospects in the legal services industry, with growth projected in this sector over the next five years.¹² This has led to strong demand for courses described as ‘career specific’, which allow graduates entry into professions such as law.¹³

In addition, for some students, the law degree has been viewed, not only as a pathway to legal practice, but as a ‘generalist’ degree

⁸ Australian Qualifications Framework Council, *Australian Qualifications Framework* (1st ed, 2011) <<http://www.aqf.edu.au/>>.

⁹ Denise Bradley et al, Department of Education, Employment and Workplace Relations (DEEWR), *Review of Australian Higher Education: Final Report* (December 2008) 9 <http://www.deewr.gov.au/HigherEducation/Review/Documents/PDF/Higher%20Education%20Review_one%20document_02.pdf>.

¹⁰ Bob Birrell et al, DEEWR, *Higher Education in Australia: Demand and Supply Issues: A Report for the Review of Australian Higher Education* (September 2008) 1, 3 <<http://www.deewr.gov.au/HigherEducation/Review/Pages/Research.aspx>>.

¹¹ *Ibid* 6.

¹² The professional, scientific and technical services areas are expected to experience growth in employment of 17.7 per cent over the next five years, with the majority of new jobs expected in the architectural, engineering and technical services and legal and accounting services sectors: DEEWR, *Australian Jobs 2011* (2010) 21 <<http://www.deewr.gov.au/Employment/ResearchStatistics/Pages/AustralianJobs.aspx>>.

¹³ Birrell et al, above n 10, 16.

that may lead to employment in a range of occupations.¹⁴ It has been described as having the potential to lead to ‘a broad range of careers where analytical skills and high-level oral and written language ability would be valued’, including legal practice.¹⁵

B *Increased Interest in Postgraduate Study by Mature-Aged Students*

Sainsbury has noted that, because of an ageing population, the ‘potential undergraduate student population is shrinking’.¹⁶ Such a buoyant employment climate for law graduates, combined with competition among the 32 law schools around Australia¹⁷ for students, has provided incentives to create legal study options which will attract new student markets, such as mature-age graduate students.¹⁸ This has been complemented by a marked rise in postgraduate course student numbers.¹⁹ At present, most are undertaking coursework studies²⁰ and their numbers are expected to continue to grow at a higher rate than undergraduate numbers.²¹

There has also been increased interest in postgraduate coursework study by mature age graduates, many of whom are already in the

¹⁴ Eugene Clark, ‘Australian Legal Education a Decade after the Pearce Report’ (1997) 8(2) *Legal Education Review* 213, 216. See also Anthony J Connolly, ‘What Are the Goals and Objectives of Law Schools in Their Primary Role of Educating Students? What Are We Educating Our Students For?’ (Paper presented at the Role of Law Schools and Law School Leadership in a Changing World, Australian National University, College of Law, Canberra, 25–27 May 2009) 1 <[http://www.ialsnet.org/meetings/role/papers/ConnollyAnthony\(Australia\).pdf](http://www.ialsnet.org/meetings/role/papers/ConnollyAnthony(Australia).pdf)>.

¹⁵ Vivienne Brand, ‘Decline in the Reform of Law Teaching? The Impact of Policy Reforms in Tertiary Education’ (1999) 10(2) *Legal Education Review* 109, 128.

¹⁶ Maree Sainsbury, ‘Intensive Teaching of Graduate Law Subjects: McEducation or Good Preparation for the Demands of Legal Practice?’ (2008) 1 *Journal of the Australasian Law Teachers Association* 247, 248.

¹⁷ Council of Australian Law Deans, *Legal Education in Australia* <<http://www.cald.asn.au/slia/Legal.htm>>.

¹⁸ Johnstone and Vignaendra, above n 2, 56–59, 81–87.

¹⁹ Access Economics, DEEWR, *Future Demand for Higher Education* (18 November 2008) i, 8 <<http://www.deewr.gov.au/HigherEducation/Review/Documents/AccessEconomics.pdf>>. For example, 36 144 students commenced a coursework masters in 2004, compared with 84 536 in 2010: DEEWR, *Higher Education Statistics: Commencing Students by Level of Course* (2004); DEEWR, *Summary of Student Numbers* (2010). See also Jill Rowbotham, ‘Coursework Masters Soar in Popularity’, *Higher Education, The Australian* (online), 7 September 2011 <<http://www.theaustralian.com.au/higher-education/coursework-masters-soar-in-popularity/story-e6frgjcjx-1226130879704>>.

²⁰ In 2009, there were 790 810 undergraduate students and 307 973 postgraduate students. Of the postgraduate students, 255 288 were masters by coursework students: DEEWR, *Higher Education Report 2009* (2011) IX <<http://www.deewr.gov.au/HigherEducation/Publications/HEReports/Documents/HigherEdReport2009.pdf>>.

²¹ The number of postgraduate students is projected to increase by an average of 1.4 per cent per annum over the next decade, compared with 1.1 per cent per annum for undergraduate students, and 1.2 per cent per annum for advanced diploma students and diploma students: Access Economics, above n 18, ii.

workforce.²² Some of the motivations for graduates undertaking legal study include enhancing existing career prospects,²³ implementing a career change, or simply a desire to ‘improve themselves and keep stimulated through further study’.²⁴ As many graduate-entry students are seeking to balance study with family, finances and existing careers, JD courses often cater for the needs of mature-aged students by offering after-hours classes, intensive teaching delivery,²⁵ and accelerated summer and part-time study options.²⁶

C Full Fee-Paying JD Students Help Fill Funding Shortfalls

The postgraduate full fee-paying JD can also be seen, in part, as a response to federal government higher education funding policies that have effectively led to law schools being ‘chronically underfunded’.²⁷ Generally, when Australian domestic students undertake undergraduate study, they are entitled to places which are partly subsidised by the federal government as Commonwealth Supported Places (CSPs).²⁸ However, compared to other fields of study, law students contribute to universities at the highest level,²⁹ while the federal government contributes to the cost of undergraduate law courses at the lowest level.³⁰ As a CSP brings in less than half the income of a privately-funded place,³¹ full fee-paying students provide

²² Bradley et al, above n 9, 21,69 ,70, 21; Sainsbury, above n 16, 247.

²³ Sarah Whyte, ‘Laying Down the Law’, *Sydney Morning Herald* (Sydney), 17 April 2010, 1.

²⁴ Sainsbury, above n 16, 249.

²⁵ Ibid.

²⁶ Alistair Jones, ‘Handy Degree of Flexibility’, *The Australian* (Australia), 25 April 2010, 1.

²⁷ Council of Australian Law Deans, *Review of Higher Education Base Funding: Submission* (2011) 3 <http://www.deewr.gov.au/HigherEducation/Policy/BaseReview/Submissions/AtoF/Documents/Council_of_Australian_Law_Deans.pdf>.

²⁸ The federal government contributes to the cost of the education of students in CSPs for a maximum of seven years of full-time study, known as the ‘student learning entitlement’ (SLE).

²⁹ The current range in which universities can require law students to contribute to their undergraduate courses is defined in ‘Band 3’ as being in the range of \$0–9080 per annum: DEEWR, *Information for Commonwealth Supported Students* (2010) 17, Table 2: 2011 Student Contribution *bands and ranges* <http://www.goingtouni.gov.au/NR/rdonlyres/06523655-0868-4623-B3E9-BE53220E9AA5/0/2011_HECSHELP_booklet.pdf>.

³⁰ Law is positioned in the lowest, ‘[l]aw, accounting, administration, economics, commerce’, funding cluster. Federal government funding is allocated on the basis of Equivalent Full Time Student Load (‘EFSTL’). One EFSTL is the equivalent of one student undertaking a full-time study load. In 2011, for each law student undertaking a full-time study load, universities receive \$1793 per annum from government funding and \$9080 from each law student. In effect, the private/public split of contribution is 84 per cent/16 per cent for law, in comparison to the split for the nursing course, which is 19 per cent/81 per cent: *ibid* 16.

³¹ Luke Slattery, ‘Fee Upheaval is a Major Threat to Quality, Say Law Deans’ (2008) 46 (July) *Law Society Journal* 20.

a valuable source of alternative income.³² These funding models have been widely criticised and are currently under review.³³

The pressure to attract full fee-paying postgraduate students increased when the federal government banned universities from taking on any further domestic full fee-paying undergraduate students, effective from 2009.³⁴ This policy change eliminated full fee-paying domestic undergraduate students as a potential means to compensate for law school funding shortfalls.³⁵ It also appears to have accelerated the introduction of the JD into more Australian law schools.³⁶ Some have questioned this policy decision, and at least one law school dean has made it clear that the ‘underfunding of legal education generally’ led to the decision to add a postgraduate JD to their course offerings.³⁷

These funding difficulties also encouraged law schools to turn to international and postgraduate student markets to attract full fee-paying law students.³⁸ Although some institutions have transferred a proportion of places at postgraduate level to CSPs, generally postgraduate students pay full tuition fees.³⁹ International students undertaking both undergraduate and postgraduate law courses are

³² Fee-paying students contribute a much larger proportion of their education, with no contribution from the Commonwealth. However, as with CSPs, there are financing options to help cover their contributions.

³³ DEEWR, *Terms of Reference: Higher Education Base Funding Review* <<http://www.deewr.gov.au/HigherEducation/Policy/Documents/BaseFundingReviewTerms.pdf>>.

³⁴ Bradley et al, above n 9, 150. Law schools were allowed to accept a certain proportion of domestic full fee-paying students between 1997 and 2009. Initially, 25 per cent of undergraduate student places could be full fee-paying. In 2003, this was raised to 35 per cent: see Slattery above n 31, 20. In 2007, the cap on the number of full-fee undergraduate paying places was lifted but universities still had to fill their quota of CSPs before taking on full fee-paying domestic undergraduate students: see ‘Cap Lifted but Local Students Won’t Wear It’, *The Australian* (Australia), 16 May 2007, 1-2.

³⁵ The present system of limiting the number of CSPs is about to change. The federal government has announced that, as from 2012, the limits on these places (known as ‘caps’) will no longer be in force, meaning that law schools will be able to accept as many undergraduate domestic students as their universities permit: see Commonwealth of Australia, *The Higher Education Base Funding Review: Consultation Paper* (December 2010) 4 <http://www.deewr.gov.au/HigherEducation/Policy/Documents/BFR_ConsultationPaper.pdf>.

³⁶ Lane, ‘New Juris Doctor to Dodge Fee Ban’, above n 4, 1.

³⁷ Professor David Dixon (Dean of Law Faculty at UNSW), quoted in *ibid* 2.

³⁸ Brand, above n 15, 120.

³⁹ Unless, for example, a Commonwealth scholarship has been awarded: DEEWR, *Going to Uni: Postgraduate* <<http://www.goingtouni.gov.au/Main/FeesLoansAndScholarships/Postgraduate/Default.htm>>. Full-fee arrangements apply in most areas of postgraduate coursework study: Universities Australia, *Submission to the Higher Education Base Funding Review* (2011) DEEWR <http://www.deewr.gov.au/HigherEducation/Policy/BaseReview/Submissions/TtoZ/Documents/Universities_Australia.pdf>.

also required to pay full fees.⁴⁰ In JD courses, some charge full fees, some have CSPs, but the majority have a combination of both.⁴¹

The Council of Australian Law Deans has recently expressed concerns about the role of full fee-paying JD students:

Apart from the places at postgraduate level which institutions have had transferred to Commonwealth Supported Places, these students pay fees and fund themselves. In that way they presently subsidise the undergraduates, mostly enrolled in combined degrees alongside law.⁴²

D *The JD is an Internationally Recognised Degree*

The JD is perceived to be an internationally recognised law qualification which will allow law schools to attract more full fee-paying international student enrolments.⁴³ It is the major academic pathway to legal practice in the United States of America, where students are required to complete their college education before entering law school. In contrast, the LLB has traditionally been the primary law qualification in common law countries such as England, Scotland, South Africa and Australia.⁴⁴ In the early 2000s, one law school considering developing a JD aimed at off-shore students, commented:

[I]t's much more saleable [off-shore] than an LLB [...] simply because there's much more name recognition in some areas, particularly Asia, where we have significant networks.⁴⁵

III ACADEMIC STANDARDS

Traditionally, in Australia, universities have been self-accrediting institutions, exercising autonomy to decide what and how to teach and who will be admitted to learn. This has been described as one of 'the icons of university life, a legacy in Australia from the British system'.⁴⁶ However, in recent times, the higher education sector has experienced rapid growth and diversification, leading to concerns

⁴⁰ Study in Australia, *Tuition Fees*, Australian Trade Commission <<http://www.studyinaustralia.gov.au/Sia/en/StudyCosts/TuitionFees.htm>>.

⁴¹ Michael Coper, 'Recent developments in Australian legal education' (2010) Australian National University College of Law Research Paper No. 10-85.

⁴² Council of Australian Law Deans, *Review of Higher Education Base Funding: Submission*, above n 27, 9.

⁴³ Amy De Lore, 'New Legal Degrees Are Keeping Pace with the International Job Market', *Sydney Morning Herald* (Sydney), September 2007, 1-2; Donalee Moulton, 'LLB Giving Way to JD', *Lawyers Weekly* (Australia), 3 July 2009.

⁴⁴ John O Sonsteng, *A Legal Education Renaissance: A Practical Approach for the Twenty-First Century* (Vandeplas Publishing, 2008) 19.

⁴⁵ Johnstone and Vignaendra, above n 2, 84.

⁴⁶ Peter Coaldrake and Lawrence Stedman, *On the Brink: Australia's Universities Confronting Their Future* (University of Queensland Press, 1998) 174.

about the quality of some courses and their academic standards. These concerns have contributed to increasing external regulation.

Early attempts to provide some consistency in relation to academic standards were provided when the AQF was first established by the Ministerial Council on Education, Employment, Training and Youth Affairs in 1995. For masters degrees, the objectives and academic requirements of courses were to be set by universities, having regard to the requirements of such groups as professional bodies. The only articulated learning outcomes for the qualification at that time were:

The enhancement of specific professional or vocational skills which may be undertaken by directed coursework and/or research, and the acquisition of in-depth understanding in a specific area of knowledge which is usually undertaken through research.⁴⁷

In 2000, a framework to oversee quality assurance was introduced. The higher education system was to be monitored by the Australian Higher Education Quality Assurance Framework and overseen by the Ministerial Council for Tertiary Education Quality and Employment. The framework included the Australian University Quality Agency and the AQF.⁴⁸ A discussion paper released in 2002, 'Higher Education at the Crossroads: An Overview Paper', referred to the benefits of developing more detailed academic standards which could be applied uniformly across the sector.⁴⁹

The AQF standards were updated regularly.⁵⁰ The 2007 edition,⁵¹ in effect when our research was conducted, was far more extensive than the initial version. The learning outcomes articulated for masters degrees were as follows:

Characteristics of learning outcomes at this level include the mastery or overview of the relevant field of study or area of professional practice and the emphasis may range from the acquisition or enhancement of specific professional or vocational skills and knowledge, usually undertaken in a combination of coursework and research, through to the acquisition of in-depth understanding in a specific area of knowledge which is usually undertaken through research.⁵²

⁴⁷ Ministerial Council on Education, Employment, Training and Youth Affairs, *Australian Qualifications Framework: Implementation Handbook* (1st ed, 1995) 65 [3.2] <<http://www.aqf.edu.au/PoliciesPublications/tabid/196/Default.aspx>>.

⁴⁸ Department of Education, Training and Youth Affairs, *The Australian Higher Education Quality Assurance Framework* (2000).

⁴⁹ Department of Education, Science and Training, *Higher Education at the Crossroads: An Overview Paper* (2002).

⁵⁰ There was a second edition in 1998, a third edition in 2002 and fourth edition in 2007: see Australian Qualifications Framework Council, *Policies and Publications* (2011) <<http://www.aqf.edu.au/PoliciesPublications/tabid/196/Default.aspx>>.

⁵¹ Australian Qualifications Framework Advisory Board, *Australian Qualifications Framework: Implementation Handbook* (4th ed, 2007) <http://www.aqf.edu.au/Portals/0/Documents/Handbook/AQF_Handbook_07.pdf>.

⁵² *Ibid* 69 [3.2].

A graduate of a masters degree program must be able to:

- provide appropriate evidence of advanced knowledge about a specialist body of theoretical and applied topics;
- demonstrate a high order of skill in analysis, critical evaluation and/or professional application through the planning and execution of project work or a piece of scholarship or research; and
- demonstrate creativity and flexibility in the application of knowledge and skills to new situations, solve complex problems and think rigorously and independently.⁵³

Recently, the Bradley Review of Higher Education recommended that more diligent measures be implemented to achieve quality and consistency in the higher education sector. It was thought that heightened regulation of the tertiary sector would assist it to remain internationally competitive.⁵⁴ The federal government's response to the Bradley Review included a commitment to strengthening the AQF and establishing a new regulatory body to accredit and regulate providers and monitor standards.⁵⁵

IV THE RESEARCH PROJECT

The aims of the Australian Learning and Teaching Council project, 'Graduate Professional Entry Courses in Accounting and Law', were 'to examine the academic standards of existing professional entry courses in accounting and law and to identify the academic standards that could differentiate the bachelor and masters degrees'.⁵⁶

Our contributions to the project involved the investigation of law courses. In effect, we were seeking to determine whether the academic standards for JD courses around Australia were at a higher level than those for LLB degrees.⁵⁷ We sought to identify:

- how the capabilities, generic skills and related assessment differs between masters and undergraduate courses and whether these would lead to measuring different student outcomes;⁵⁸

⁵³ Ibid 10, Table 3: Characteristics of Learning Outcomes.

⁵⁴ Bradley et al, above n 9, 128.

⁵⁵ DEEWR, *Transforming Australia's Higher Education System* (2009) <<http://home.deewr.gov.au/Budget/documents/TransformingAusHigherED.pdf>>. This will be discussed in more detail in the last section of our article.

⁵⁶ Jackson et al, above n 1, 45.

⁵⁷ Ibid 6.

⁵⁸ It has been said that:

Graduate attributes are the qualities, skills and understandings a university community agrees its students should develop during their time with the institution. These attributes include, but go beyond, the disciplinary expertise or technical knowledge that has traditionally formed the core of most university courses. They are qualities that also prepare graduates as agents for social good in an unknown future.

John Bowden et al, *Generic Capabilities of ATN University Graduates, Executive Summary*, Centre for Learning and Teaching <<http://www.clt.uts.edu.au/ATN.grad.cap.project.index.html>>.

- the differences in academic standards between professional entry, undergraduate and masters courses; and
- how the differences in academic standards relate to the qualification descriptions in the Australian Qualification Framework (AQF).⁵⁹

Discussions in the literature regarding academic ‘standards’ in higher education have tended to focus on certain elements. It has been noted that ‘it is important to distinguish between the *measurement* of learning, the *external referencing* of measurements, and the *reporting* of such outcomes’.⁶⁰ In our research project, we sought to identify what the academic standards were for JD courses in relation to the ‘measurement of learning’. We adopted the meaning of academic standards enunciated by James, McInnes and Devlin:

We use ‘standards’ to refer to the nature and levels of learning outcomes that students are expected to demonstrate in the university studies. This places the onus for setting and monitoring standards squarely with academics and academic communities within fields of study and disciplines. Standards are neither absolute nor timeless; standards are continually being re-defined and created as knowledge grows in existing fields and as new fields emerge.⁶¹

At university course level, ‘standards’ are described in terms of qualification level and student learning outcomes. The AQF sets out generic learning outcomes for masters degrees, termed ‘learning outcome descriptors’.⁶² At the time of writing, specific learning outcomes for Australian JD courses are also in development.⁶³

V INTERVIEWS WITH COURSE COORDINATORS

Every course coordinator of the 11 JD courses identified at the time of our research was invited to participate in the project. Ten course coordinators agreed to participate; however, only seven actually completed an interview. Some indicated at the outset that they did not wish to participate due to the sensitive nature of the

⁵⁹ Jackson et al, above n 1, 45.

⁶⁰ Kerri-Lee Harris, Centre for the Study of Higher Education, *International Trends in Establishing the Standards of Achievement in Higher Education: An Independent Report and Analysis* (August 2009) University of Melbourne, 3 <http://www.cshe.unimelb.edu.au/people/harris_docs/Intl_trends_standards_Harris_Aug09.pdf>.

⁶¹ Richard James, Craig McInnes and Marcia Devlin, Centre for Higher Education, *Options for a National Process to Articulate and Monitor Academic Standards Across Australian Universities: Submission to the Higher Education Review* (2002) University of Melbourne, 2 <http://www.cshe.unimelb.edu.au/assessinglearning/docs/Crossroads_submission.pdf>.

⁶² Australian Qualifications Framework Council, *Australian Qualifications Framework*, above n 8, 17.

⁶³ The ALTC had approved funding to facilitate the development of ‘Threshold Learning Outcomes’ for the JD by the newly created Network of Law Associate/Assistant Deans for Teaching and Learning (the Law AD Network). For information on the network, see ALTC, *Discipline Setting Standards Newsletter* (November 2010) <http://www.altc.edu.au/system/files/Standards_101103.pdf>.

issues involved or as their JD courses were in a state of flux due to course reviews.

We conducted telephone interviews from April to May 2010 centred around 15 interview questions.⁶⁴ Several participants were reluctant to answer some of the questions or to talk about specific issues. In some cases, they would only provide information ‘off the record’. Interviews were conducted within a framework of confidentiality, so our research findings must be discussed with that constraint in mind.

The undergraduate LLB continues to be the predominant law course in Australia, offering the academic requirements for admission to legal practice. Our survey conducted in December 2009 and January 2010 revealed the following undergraduate, graduate-entry and JD courses being offered by Australian universities.

University	Under-graduate LLB	Graduate-Entry LLB	JD
Australian National University	✓		✓
Bond University	✓		✓
Charles Darwin University	✓	✓	
Deakin University	✓		
Edith Cowan University	✓	✓	
Griffith University	✓	✓	
James Cook University	✓	✓	
La Trobe University	✓	✓	
Macquarie University	✓	✓	
Monash University	✓		✓
Murdoch University	✓		✓
Queensland University Technology	✓	✓	
RMIT University			✓
Southern Cross University	✓	✓	

continued

⁶⁴ Participants were provided with a copy of the interview questions and statements complying with ethics requirements (assuring confidentiality) prior to the interviews. The interview questions are set out in Jackson et al, above n 1, 111.

University	Under-graduate LLB	Graduate-Entry LLB	JD
University of Adelaide	✓		
University of Canberra	✓		✓
University of Melbourne			✓
University of Newcastle	✓	✓	
University of New England	✓	✓	✓
University of Notre Dame	✓	✓	
University of New South Wales	✓		✓
University of Queensland	✓	✓	
University of South Australia	✓		
University of Southern Queensland	✓		✓
University of Sydney	✓	✓	
University of Technology Sydney	✓		✓
University of Tasmania	✓		
University of Western Australia	✓	✓	
University of Western Sydney	✓	✓	
University of Wollongong	✓	✓	
Victoria University	✓	✓	
TOTAL:	29	16	11

Of the 11 JD courses in existence at the time of the interviews, our discussions with course coordinators confirmed that 10 were officially badged at postgraduate and one at undergraduate level. Since this research was conducted, the number of institutions offering JD courses has risen to 13 with the introduction of JD courses at the University of Sydney and the University of Western Australia.⁶⁵ This is a significant increase from when Johnstone and Vignaendra

⁶⁵ Both are postgraduate courses: see University of Sydney, *Juris Doctor* (2011) <<http://sydney.edu.au/courses/Juris-Doctor>>. The University of Western Australia has stated that its first intake of JDs will be in 2013 and the last intake of LLB students will be in 2011: see Faculty of Law, University of Western Australia, *Our Law Degree Goes Postgraduate* (28 July 2011) <<http://www.law.uwa.edu.au/students/JD>>.

reported, in 2003, that '[f]our law schools have introduced a JD program, and two others have introduced such programs in all but name'.⁶⁶

Most JD courses were of the equivalent of three years duration; in some, however, accelerated completion times were possible, with intensive teaching delivery and summer semesters. We also noted some double degree offerings; for example, the University of Melbourne offers a JD and master of business administration as a postgraduate double degree.⁶⁷

Some programs offered students a choice of subjects from groups of undergraduate and postgraduate elective offerings. In a number of programs, after completing the core compulsory law subjects, students can undertake postgraduate electives, although these may be limited in number. In several models, JD students were required to complete research-intensive subjects.

When conducting our interviews with course coordinators, there were a range of responses to the question, 'what are the learning outcomes for this program?' Only two JD course coordinators reported that their course had a specific set of learning outcomes which documented the skills and knowledge that students should possess on completion. Some respondents stated that their JD course had the same set of learning outcomes as their LLB, and had been developed around the core 'Priestley 11' areas of knowledge.⁶⁸ Several coordinators stated that, in their courses, university-specific graduate attributes were used to articulate course learning outcomes. Only one respondent revealed that their course did not have any expressed learning outcomes.

The responses to the question, 'in what ways is this program taught at a masters level?', revealed that four of the course coordinators did not have completely identifiable JD programs that stood apart from their LLB courses. Some respondents then chose to discuss this topic 'off the record'. However, some participants could articulate ways in which their JD students were expected to achieve higher-level learning outcomes than their LLB counterparts. One example was that the JD in question focused more on developing and assessing research skills. Another example was that JD students were expected to achieve greater depth in their analysis of cases and legal issues.

When respondents were asked, 'in what ways does this masters program differ to the undergraduate program?', it became clear that only a minority of JD students were taught separately to undergraduate students. Several course coordinators related that their students were

⁶⁶ Johnstone and Vignaendra, above n 2, 81.

⁶⁷ Offered at the University of Melbourne: see University of Melbourne, *The Melbourne JD/MBA* (20 June 2007) <<http://jdmba.unimelb.edu.au/>>.

⁶⁸ Law Admissions Consultative Committee, above n 4.

being taught alongside LLB students for all of their subjects and others indicated that this occurred only in core units.⁶⁹

In relation to assessment, some interviewees stated that JD students completed the same assessment tasks as undergraduate students and others indicated that their JD students were set different or extended assessment tasks.⁷⁰ In some courses, JD students completed the same assessment as LLB students in the core 'Priestley 11' units and only in electives was assessment different.

Some course coordinators indicated that, generally, there was a higher expectation of JD students. In one JD course in which the LLB and JD students were taught together, the interviewee said that, in their classes, there were different expectations of the JD students, and that they were required to undertake further assessment tasks with longer word limits for essays. However, at this institution, this practice varied across subjects and staff members.

The remainder of the interview questions were based on the AQF learning outcomes descriptors at the time for a masters degree⁷¹ and asked about the ways in which the JD course developed:

- mastery or advanced knowledge;
- high order analytical skills;
- creativity and flexibility;
- complex problem solving; and
- rigorous and independent thinking.⁷²

The majority of respondents stated that their JD courses addressed most of the skills required in the AQF descriptors, and provided clear examples of how they developed and assessed these skills. These included participating in mooting to develop creativity and flexibility and working on research tasks that developed analytical and problem-solving skills. They also related expectations in their courses that students would exercise rigorous and independent thinking. However, many interviewees stated that, while the JD met these skills, it was only to the same extent as the LLB.

The main area in which respondents conceded that their course was deficient was 'mastery or advanced knowledge'. This was said to be due to:

the fact that the content was the same as undergraduate law and that without prior study of law, an advanced level of understanding could not be achieved in the three years. The small number who felt the course achieved some higher level of knowledge indicated that this happened in

⁶⁹ For example, at one institution, masters students shared classes with LLB students in the core subjects but undertook masters level electives: Jackson et al, above n 1, 60.

⁷⁰ Ibid.

⁷¹ This was prior to the latest version of the AQF, which added in a new qualification, 'Masters Degree (Extended)'. See Australian Qualifications Framework Advisory Board, above n 51, 17. This will be discussed later in this article.

⁷² Jackson et al, above n 1, 61.

some units or in some more complex tasks, but not to the extent that it could be considered ‘mastery’.⁷³

One course coordinator explained:

We call our JD courses advanced, but that’s really only to meet university requirements.⁷⁴

By necessity, JDs and LLBs share substantial topic content.⁷⁵ Both curriculums must be designed around a set of core subjects that cover the compulsory areas of knowledge for admission to legal practice, known as ‘the Priestley 11’.⁷⁶ It is clearly more cost-effective for law schools to place JD students in the same classes as LLB students, particularly for these core subjects. However, it is this practice that has particularly raised concerns about academic standards and whether masters students learning alongside their undergraduate counterparts are able to achieve postgraduate-level learning outcomes⁷⁷ and, indeed, comply with AQF standards.

Our interviews appear to reinforce concerns that ‘[t]here are a number of apparent models for the JD which appear to depend on when they were established and reflect the confusion over the status of the degree’:⁷⁸

The majority of those interviewed felt that the course was similar to the LLB, and could not confidently say it was a masters. Only two course coordinators clearly stated that they considered their course to be at masters level. Most acknowledged it as a postgraduate degree which assumed some level of general graduate skills, but had not been specifically designed on this basis.⁷⁹

It was clear too that some program coordinators did not regard their program as a ‘real’ masters degree, although it was badged at postgraduate masters level. One course coordinator stated:

They (JD and LLB) have the same course content, the same expectations, the same everything.⁸⁰

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ In some courses, students not wanting to practise law are not required to complete some of the ‘Priestley 11’ subjects. For example, at Monash University, study in the professional responsibility and ethics area is optional: see Monash University, *Monash University 2012 Handbook*, 3387 — *Masters of Laws (Juris Doctor)* (2011) <<http://monash.edu/pubs/handbooks/courses/3387.html>>.

⁷⁶ Law Admissions Consultative Committee, above n 4, 5-11.

⁷⁷ Lane, ‘JDs Must Be Masters Degrees’, above n 5.

⁷⁸ Jackson et al, above n 1, 60.

⁷⁹ Ibid.

⁸⁰ Ibid.

Another course coordinator explained:

It's a graduate course but that doesn't necessarily mean that it's going to fulfil all of the expectations that people commonly have of a masters degree and that's what we've been emphatic in saying, it's a first degree in law ...⁸¹

In contrast, some courses were clearly separate masters level programs:

Ours is a fully graduate program.⁸²

Since this research was conducted, the revised AQF has introduced a third category into their level 9 masters degrees. This category covers the JD course and is termed a 'Masters Degree (Extended)'.⁸³ The learning outcomes descriptors of this qualification are different to those in operation when our research was conducted. However, most of the skills we have discussed remain relevant, although some may be differently phrased. In our discussions with course coordinators, some acknowledged that their university was conscious that the AQF was being revised and would impact on JD course requirements.⁸⁴ Several also pointed out that their courses had been designed before the 2007 requirements came into force.⁸⁵ Some indicated that they were aware that, in the future, strict compliance would be required with the AQF and that they would be revising their courses accordingly.

VI THE INTERVIEWS WITH THE EMPLOYERS OF JD GRADUATES

To obtain some insight into the perspectives of employers, from October 2010 to January 2011 we interviewed⁸⁶ 12 legal practitioners who were supervisors of JD graduates.⁸⁷ All respondents also currently, or previously, supervised LLB graduates. Our respondents ranged from employers in small and medium-sized firms to practitioners in large firms, some of whom were also able to compare graduates⁸⁸ in Queensland and in their offices in other Australian states.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Australian Qualifications Framework Council, *Australian Qualifications Framework*, above n 8, 17.

⁸⁴ This acknowledgment came from course coordinators across a range of JD course models.

⁸⁵ Australian Qualifications Framework Advisory Board, above n 51.

⁸⁶ Semi-structured interviews were used, with the interview questions being grouped around four key areas. The interview questions are available at Jackson et al, above n 1, 114.

⁸⁷ Employers of JD graduates were identified by contacting law firms — particularly human resource officers — and enquiring whether they employed JD graduates. Some employers were also identified by web searches for employers of solicitors whose published qualifications included a JD. The employers were then invited by telephone and email to participate in the study.

⁸⁸ As many as 24 graduates in one case.

As part of the investigation into academic standards, these legal practitioners were asked to compare the knowledge and skills of the JD graduates they had supervised with those of their LLB graduate employees. They were also asked whether, if hiring staff in the future, they would have a preference for graduates with a particular qualification.

There were some limitations to the methodology regarding the interviews of employers. Firstly, as our interviews were limited to employers located in southeast Queensland, we cannot know whether employers' perceptions, opinions and experiences are shared by those in other jurisdictions, or are peculiar to Queensland.⁸⁹ However, the responses from supervisors who were able to comment on their employees in interstate offices were generally consistent with the findings reported by smaller local employers. Secondly, the sample size is obviously extremely small and, as such, the research findings cannot be considered representative of the experiences of all employers of JD graduates across Queensland and statistical generalisations cannot be made.⁹⁰ Nevertheless, the research findings provide some indication of the perception in the marketplace of persons likely to employ JD graduates, and this will obviously weigh into the decision-making process for any law school considering introducing the JD.

When asked whether the JD graduates they had employed possessed the skills, knowledge and abilities they expected, nine of the 12 employers answered this question in the affirmative. Only two gave a negative response. One of these respondents had found that his JD graduate had needed considerable support at the outset. This lawyer had exhibited poor letter-writing and document drafting skills, and difficulty in relating effectively to clients and in client interviewing. The second employer had hired three JD graduates in the past two years. She reported that all of these graduates lacked research skills (both in respect of hard copy and online resources), and that two of the three graduates possessed 'exceptionally poor' writing skills.

The response of the remaining employer was divided. He had employed two JD graduates in the last two years, and reported that only one of those graduates possessed the expected level of skills, knowledge and abilities. This employer believed, however, that the general lack of skills and knowledge demonstrated by the other graduate probably related to the personal characteristics of that

⁸⁹ The universities currently offering the JD in Queensland are Bond University and the University of Southern Queensland. The University of Queensland has offered that qualification and several of the employer respondents had employed University of Queensland JD graduates; however, that university has discontinued the degree and no longer accepts new enrolments.

⁹⁰ Some difficulties were experienced in locating employers of recent JD graduates in our geographic region, because JD graduates form a small percentage of Queensland law graduates.

individual rather than being attributable to the training received in their JD.

The employers were also questioned as to whether the LLB graduates they had supervised had exhibited the expected knowledge, skills and abilities. All of the nine respondents who had answered in the affirmative about their JD graduates expressed the same views about their LLB graduates. However, three of these respondents qualified their answers in a way that suggested that they may not have expected the same level of performance from LLB graduates in comparison to JD graduates. For example, one respondent indicated that the LLB graduates would need to develop a range of practical skills relating to working in a law firm and understanding a business.

Several employers considered that JD graduates had a clearer focus in their work and a heightened ability to apply the law to real-life situations:

JDs outperform LLBs in terms of their wisdom, breadth of application to work and strategic approach. They are more able to assess a problem and work out an appropriate strategy themselves ... not sure whether the high performance of JDs is purely attributable to being older, having completed a prior degree and worked, and greater life experience or whether their course also taught them at a higher level.

Some respondents spoke of the difficulties that some LLB graduates faced when required to apply the law to novel situations and to synthesise their legal advice into a succinct client advice letter. One respondent encapsulated these sentiments as follows:

It's about being able to research and conceptualise outside your commonplace and I see older entry level solicitors being more efficient at that because they have more life experience. I wouldn't say that necessarily relates to a JD vs a Bachelors but it certainly helps to have that degree under you. Having studied something other than law gives a broader base from which to approach unfamiliar problems.

Another employer commented:

JD graduates seem to be more skilled at being able to apply the law to real life. Also they seem to remember more about what they have studied as their course is shorter. They have greater focus and greater recall of what they have learnt. I view it as a good thing that they have done something else prior to law and they have more real world life experience.

Several employers spoke of the greater commitment of JD graduates to a legal career and the perception that they would be more stable employees:

The attractiveness of the JD graduate is that they have done something else and then decided law is for them. So committed in terms of career choice as opposed to falling into it. And has life experience as a result.

When comparing the two cohorts, disappointment about research and writing skills was a common theme. For example, the employer

who had been dissatisfied with the attributes of the three JD graduates she had employed reported that her three LLB graduates also exhibited poor research and writing skills. However, this respondent added that the performance of the LLB graduates in these areas was ‘even worse than the JD graduates’.

Based on their experiences, seven of the employers interviewed indicated that they would have a general preference to employ a JD graduate over an LLB graduate, although two of these employers indicated this preference was only slight:

Because of their other degree I would have a preference to hire them as opposed to a straight lawyer.

JD graduates are older and have more life experience.

Slight preference for the JD only because they are likely to be older and have worked somewhere else and may be more likely to stay with the firm.

Another common theme, along with the mostly positive perceptions of JD graduates, was that the majority of employers could not attribute any higher level knowledge or skills to the qualification level of the employee. Most attributed the higher level performance of the JD graduates to their personal attributes in terms of one or more of the following characteristics: the completion of a prior degree; their mature age; prior work experience; and greater life experience.

The other five respondents indicated that they did not have a preference for graduates of either course, and would make their employment decisions based on the other attributes of the applicants.

Most of the employers who indicated their preference for the JD graduate were then asked whether they would maintain that preference if faced with a choice of a JD graduate over an LLB graduate who had undertaken either a graduate entry LLB or a double degree, and was of the same age as the JD graduate. It became apparent that many employers were not aware of the existence of the three-year (full-time) graduate entry LLB offered by most Queensland universities which do not offer the JD.⁹¹ However, once the nature of

⁹¹ In Queensland, three year full-time graduate-entry LLB courses are offered at the University of Queensland: TC Beirne School of Law, University of Queensland, *Bachelor of Laws (LLB)* (2010) <<http://www.law.uq.edu.au/bachelor-of-laws>>; at the Queensland University of Technology: Queensland University of Technology, *Course Details: Bachelor of Laws (Graduate Entry) (LW35)* (31 October 2011) <<http://www.courses.qut.edu.au/cgi-bin/WebObjects/Courses.woa/wa/selectMajorFromMain?pres=sf&courseID=14117>>; at Griffith University: Griffith University, *Degree Finder* <<http://www130.griffith.edu.au/view/degreeFinder.php>>; and at James Cook University: James Cook University, *Bachelor of Laws (Graduate)* (21 November 2011) <http://www-public.jcu.edu.au/courses/course_info/index.htm?userText=60110>.

that course was explained, none of those respondents indicated they would maintain their expressed preference for the JD graduate.

VII IMPLICATIONS OF OUR RESEARCH AND THE REVISIONS TO THE AQF

A Not All JDs Are Equal

Our interviews with course coordinators revealed that, at the time the research was conducted, one JD course did not have a clearly articulated set of learning outcomes and some masters level JD courses were operating with the same learning outcomes as their LLB courses. The responses of course coordinators also demonstrated that not all JD courses the subject of our study were in strict compliance with the relevant AQF learning outcome descriptors, although it should be noted that these have subsequently been revised.⁹² Although the AQF was operating at the time that our interviews were conducted, subsequent regulatory developments will impact on the level of compliance required of universities offering JD courses.

B The New AQF Standards Are Higher for JDs

To ensure compliance with the AQF, and quality and consistency in the higher education sector, the federal government has recently established the Tertiary Education Quality and Standards Agency (TEQSA) as a national regulatory agency.⁹³ It commenced operations in July 2011 and is due to assume regulatory functions on 30 January 2012. TEQSA will regulate all tertiary institutions and have the power to register and accredit tertiary education providers and courses.⁹⁴ It will enforce a five-part Higher Education Standards Framework developed by a Higher Education Standards Panel, an independent body appointed by the relevant minister to develop standards in consultation with universities.⁹⁵

At the time of writing, only two sets of standards are available, the Qualifications Standards and the Provider Standards.⁹⁶ These

⁹² Australian Qualifications Framework Council, *Australian Qualifications Framework*, above n 8.

⁹³ *Tertiary Education Quality and Standards Agency Act 2011* (Cth) and *Tertiary Education Quality and Standards Agency (Consequential Amendments and Transitional Provisions) Act 2011* (Cth). See also Tertiary Education Quality and Standards Agency (TEQSA), *TEQSA* <<http://www.teqsa.gov.au>>; Jeanette Bird, 'Regulating Quality and Standards in Higher Education: How Does Australia Stack Up?' (2011) 34 *Research and Development in Higher Education* 28, 29.

⁹⁴ TEQSA, above n 93.

⁹⁵ TEQSA, *Higher Education Standards Framework* <<http://www.teqsa.gov.au/higher-education-standards-framework>>.

⁹⁶ The 'Provider Standards' are currently in draft form for consultation: see TEQSA, *Draft Provider Standards — Consultation Draft* (April 2011) DEEWR <<http://www.deewr.gov.au/HigherEducation/Policy/teqsa/Documents/DraftProviderStandards.pdf>>.

two sets of standards are collectively known as the ‘Threshold Standards’,⁹⁷ with which providers must comply in order to operate and obtain and maintain registration and accreditation.⁹⁸

Most relevant to our current discussion are the recently revised AQF, also known as the ‘Qualifications Standards’.⁹⁹ Recent amendments to the AQF include provisions to specifically address concerns that have been raised about the inconsistent state of masters degrees around Australia, particularly in relation to the duration of degrees, academic standards, varying blends of coursework and research, and the presence of undergraduate curricula in postgraduate courses.¹⁰⁰

Significantly for the JD, a third form of masters degree has been added to the two existing qualification types at this level: the masters degree (research) and the masters degree (coursework). This third masters qualification is termed a ‘Masters Degree (Extended)’. Its purpose is ‘to qualify individuals who apply an advanced body of knowledge in a range of contexts for professional practice and as a pathway for further learning’.¹⁰¹ The AQF now specifically states that the title ‘Juris Doctor’ can be used for a ‘Masters Degree (Extended)’ qualification.¹⁰²

Learning outcomes at level 9 have been articulated, placing them at a significantly higher level than the level 7 learning outcomes required at bachelor’s level. For example, LLB graduates are required to ‘have *broad and coherent* knowledge and skills for professional work and/or further learning’.¹⁰³ In contrast, graduates of a JD ‘will have *specialised* knowledge and skills for research and/or professional practice and/or further learning’.¹⁰⁴ The term ‘specialised’ was in use when our research was conducted, in the

⁹⁷ Ibid. The other sets of standards are currently in development and are in the areas of ‘Teaching and Learning’, and ‘Research and Information Standards’.

⁹⁸ Senate Standing Committee for Education, Employment and Workplace Relations, Parliament of Australia, *Report on Tertiary Education Quality and Standards Agency Bill 2010 and the Tertiary Education Quality and Standards Agency (Consequential Amendments and Transitional Provisions) Act 2011* (2011) <http://www.aph.gov.au/Senate/committee/eet_ctte/teqsa/report/index.htm>.

⁹⁹ Australian Qualifications Framework Council, *Australian Qualifications Framework*, above n 8. See also Lane, ‘JDs Must Be Masters Degrees’, above n 5.

¹⁰⁰ John Buchanan et al, Australian Qualifications Framework Council, *Impact Analysis of the Proposed Strengthened Australian Qualifications Framework* (July 2010) 31–32 <[http://www.aqf.edu.au/Portals/0/Documents/AQFC%20-%20impact%20analysis%20-%20final%20Oct10%20\(3\).pdf](http://www.aqf.edu.au/Portals/0/Documents/AQFC%20-%20impact%20analysis%20-%20final%20Oct10%20(3).pdf)>.

¹⁰¹ Australian Qualifications Framework Council, *Australian Qualifications Framework*, above n 8, 57.

¹⁰² Ibid 70. It is provided that, in such cases, ‘the qualification title and a statement that the qualification is an “AQF level 9 Masters Degree” will appear on relevant certification documents, on any national, state/territory or institutional registers of qualifications, and in institutional information and promotional materials’: at 71.

¹⁰³ Ibid 16, 18 (emphasis added).

¹⁰⁴ Ibid 16, 17 (emphasis added).

context of being able to ‘provide appropriate evidence of advanced knowledge about a specialist body of theoretical and applied topics’.¹⁰⁵

In the same vein as the descriptors that were in place when our research was conducted,¹⁰⁶ there remains a requirement for JD graduates to be able to ‘apply an advanced body of knowledge’ and to ‘demonstrate mastery of theoretical knowledge’.¹⁰⁷ In our interviews with course coordinators, these were the areas that appeared to pose the main problem in some JD courses. The references to ‘professional practice’ are also continued. Graduates should now be able to ‘apply an advanced body of knowledge in a range of contexts for professional practice and as a pathway for further learning’.¹⁰⁸

The current descriptors further state that ‘graduates will have undertaken a program of structured learning with some independent research’.¹⁰⁹ They are also required ‘to plan and execute a substantial research-based project, capstone experience and/or professionally focused project’.¹¹⁰ This seems far more onerous, in the use of the word ‘substantial’, than the requirement in the previous AQF edition that students had to ‘[d]emonstrate a high order of skill in analysis, critical evaluation and/or professional application through the planning and execution of project work or a piece of scholarship or research’.¹¹¹

The necessity to demonstrate ‘creativity’ continues; however, previously, graduates were required to ‘[d]emonstrate creativity and flexibility in the application of knowledge and skills to new situations’.¹¹² They are now required to ‘demonstrate the application of knowledge and skills: with creativity and initiative to new situations in professional practice and/or for further learning’.¹¹³

The requirements for this revised qualification also include that graduates undertake:

a significant proportion of practice-related learning. As this qualification is designed to prepare graduates to engage in a profession the practice-related learning must be developed in collaboration with a relevant professional, statutory or regulatory body.¹¹⁴

¹⁰⁵ Australian Qualifications Framework Advisory Board, above n 51, 69.

¹⁰⁶ Ibid 10, 69.

¹⁰⁷ Australian Qualifications Framework Council, *Australian Qualifications Framework*, above n 8, 17.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid 59.

¹¹⁰ Ibid 17.

¹¹¹ Australian Qualifications Framework Advisory Board, above n 51, 10.

¹¹² Ibid.

¹¹³ In the LLB degree, students must demonstrate the application of knowledge and skills ‘with responsibility and accountability for own learning and professional practice and in collaboration with others within broad parameters’: Australian Qualifications Framework Council, *Australian Qualifications Framework*, above n 8, 16, 17.

¹¹⁴ Ibid 59.

C Some Universities May Struggle to Resource Their JDs

The requirement that a JD include ‘a significant proportion of practice-related learning’ may potentially have resource and logistical implications for law schools.¹¹⁵ This issue will depend on whether ‘practice-related learning’ is interpreted to require that students are provided with work-integrated learning opportunities, as this can be resource-intensive.¹¹⁶ In the alternative, we argue that ‘practice-related learning’ could be interpreted as being satisfied by the participation of students in activities that simulate the work that they will perform in legal practice, such as through problem-based learning, mooted and role-play activities related to legal interviewing, negotiation and mediation.¹¹⁷ This interpretation will rely on the attitude of the profession and also on how these generic descriptors are articulated into JD course-specific learning outcomes.¹¹⁸

D The Emergence of the JD May Further Entrench Inequality

A concern has been the trend for some law schools to either replace or consider replacing their LLB with a postgraduate JD.¹¹⁹ This practice has faced criticism, such as from the then Minister for Education, Julia Gillard, as being a way for law schools to circumvent the financial impacts of the federal government ban on full fee-paying domestic places.¹²⁰ Faculties have also faced criticism from

¹¹⁵ Ibid.

¹¹⁶ Council of Australian Law Deans, *Review of Higher Education Base Funding: Submission*, above n 27, 9. The Engaging Students in Work Placement (ESiWP) Working Party has defined work-integrated learning as ‘the integration of academic learning experiences with those in professional practice through workplace experience (including work placement, work experience, practicum, clinical placement, internships etc) that secures learning outcomes that are both transferable and applied’: L Cooper et al, *Workplace Learning Management Manual: A Guide for Establishing and Managing University Work Integrated Learning Courses* (Flinders Press, 2003), cited in Melinda Shirley et al, ‘The Challenge of Providing Work-Integrated Learning for Law Students — The QUT Experience’ (2006) 9 *International Journal of Clinical Legal Education* 134, 135–6.

¹¹⁷ See, eg, Marlene Le Brun and Richard Johnstone, *The Quiet (R)evolution — Improving Student Learning in Law* (Lawbook Company, 1994), citing G L Ogdan, ‘The Problem Method in Legal Education’ (1984) 34 *Journal of Legal Education* 654.

¹¹⁸ ALTC, *Discipline Setting Standards Newsletter*, above n 63. Note that course-specific learning outcomes have been articulated for the LLB: see ALTC, *Learning and Teaching Academic Standards Project: Bachelor of Laws: Learning and Teaching Academic Standards Statement* (December 2010) <http://www.altc.edu.au/system/files/altc_standards_LAW_110211.pdf>.

¹¹⁹ ‘Law Degree Change Runs into Flak’, *Inner-West Weekly* (Sydney), 11 March 2010, 1.

¹²⁰ Lane, ‘New Juris Doctor to Dodge Fee Ban’, above n 4.

their own students,¹²¹ including allegations that the motivations of some law schools to offer stand-alone JD programs have been based purely on financial incentives rather than having any pedagogical basis.¹²²

It has been argued that the high costs involved in undertaking law courses discriminates against students from low socio-economic backgrounds and makes it difficult for them to study law.¹²³ This is supported by recent evidence that students from such backgrounds are less likely to apply for places in courses such as law and medicine than students from other backgrounds.¹²⁴ If institutions continue to move away from the LLB in favour of the postgraduate JD, there is potential to further reduce the numbers of such students able to undertake law. Although JD courses often contain a combination of students that pay full fees and those that have been able to secure CSPs, a large number of JD students are full fee-paying.¹²⁵ The Council of Australian Law Deans has recently expressed fears in this regard:

While the JD is a popular path for post graduates interested in career development, there is a danger that reserving the gaining of a law degree for fee-paying postgraduates will further entrench inequality.¹²⁶

VIII CONCLUSION

In recent times, there has been an expansion in the number of JD courses in Australia. There is also a potential favourable marketplace for law graduates in future years. Universities that do not currently offer the JD may be considering whether the climate is right for introducing this course, but each institution will need to assess its potential feasibility.

Postgraduate full fee-paying JD students provide obvious financial advantages for law schools.¹²⁷ Such commercial incentives need to be balanced out against a number of other considerations.

¹²¹ Australian Law Students' Association, *Higher Education Policy* (2008) ch 5.

¹²² Rashmi Kumar, Sydney University Postgraduate Representative Association, *Position Paper: Juris Doctor at the University of Sydney* (23 February 2010) <http://www.supra.usyd.edu.au/assets/file/Submissions/SUPRA_SRC_Positionpaper_JD.pdf>.

¹²³ Council of Australian Law Deans, *Review of Higher Education Base Funding: Submission*, above n 27, 9. See also Australian Law Students' Association, above n 121, 71.

¹²⁴ Students from such backgrounds were more likely to apply for courses in education or nursing: see DEEWR, *Undergraduate Applications, Offers and Acceptances* (2010) 43 <<http://www.deewr.gov.au/HigherEducation/Publications/HEReports/Documents/UndergradAppsOffersAccept2010.pdf>>.

¹²⁵ Council of Australian Law Deans, *Review of Higher Education Base Funding: Submission*, above n 27.

¹²⁶ *Ibid* 9.

¹²⁷ However, it is noted that most JDs at present consist of a combination of full-fee paying students and students with CSPs.

The most significant of these is whether the law school in question will be able to attract sufficient numbers of full fee-paying students to ensure the financial viability of a JD course. This assessment must take place in the context of the geographic region of the particular university and the level of competition from other providers.¹²⁸

Our research findings, although subject to obvious limitations, reveal that among our sample there were positive perceptions of JD graduates in the marketplace and that employers were enthusiastic and sometimes overtly favoured JD over LLB graduates. However, the preference for JD graduates was marginal, and overall our employers attributed the higher-level performance of JD graduates to their mature age and work and life experience, rather than to the specific knowledge and skills acquired during their law course.

Depending upon their geographic region, universities may conclude that significant work remains to be undertaken to persuade the student market that the quality of training and their potential career prospects will be so enhanced as to justify the higher costs associated with a full fee-paying JD. Equity implications must also be considered, particularly if the institution in question is considering entirely replacing its undergraduate with a postgraduate course.

Our research findings, which highlight inconsistencies in academic standards in some courses, together with the implications of the revised AQF, also require some reflection. It is clear that JD course coordinators will need to review their course and subject learning outcomes to ensure that they address the level 9, 'Masters Degree (Extended)', requirements. They will also have to determine whether these academic standards can be adhered to if JD students are being placed in the same classes as undergraduates.¹²⁹ In particular, there are more onerous requirements for the development of independent research skills, the planning and execution of a substantial project and the completion of a significant amount of 'practice-related learning'.

Where law schools have replaced their undergraduate courses with JDs, the issues may not be as challenging. However, where they are running both courses, offering core units in completely separate classes is highly resource intensive. Law schools will need to assess whether they have sufficient financial and staff capacity to offer a model where JD students are taught separately to their undergraduate counterparts in all classes.

It is clear that Australian institutions offering the JD will need to review their current curriculums and that, for some law schools,

¹²⁸ Johnstone and Vignaendra, above n 2, 81–86.

¹²⁹ It is noted here that one of the employers interviewed advised that the JD graduate he had employed reported that she much preferred the units she had undertaken exclusively with other JD students over those undertaken concurrently with LLB students.

future compliance with the AQF, which will now be enforced by TEQSA, may involve a significant investment of resources.