

JURIS DOCTOR
THRESHOLD LEARNING OUTCOMES

Endorsed by the Council of Australian Law Deans, March 2012

Background

In 2010, the Australian Government commissioned the Australian Learning and Teaching Council (**ALTC**) to define minimum discipline-based learning outcomes (known as Threshold Learning Outcomes, or **TLOs**) as part of the development of the Learning and Teaching Academic Standards (**LTAS**).

In the discipline of law, 6 TLOs were developed for the Bachelor of Laws degree (**LLB TLOs**). The LLB TLOs represent what a graduate of a Bachelor of Laws (**LLB**) is expected to *'know, understand and be able to do as a result of learning'* in their degree.¹ The starting point for the development of the LLB TLOs was the Australian Qualification Framework (**AQF**), and specifically the Levels Criteria for AQF Levels 7 and 8, and the Qualification Type Descriptors for the (AQF Level 7) Bachelors Degree and the (AQF Level 8) Bachelor Honours Degree.²

The LLB TLOs were developed after consultation with a wide range of stakeholders including academics, students, members of the judiciary, admitting authorities, legal professionals and regulators.³ The process of drafting the LLB TLOs was also informed by national and international experts and projects, and the TLOs were developed in accordance with a set of drafting principles agreed to by the Expert Advisory and Discipline Reference Groups for Law.⁴

The LLB TLOs were endorsed by the Council of Australian Law Deans (**CALD**) at its November 2010 meeting. At that meeting, CALD also supported the development of TLOs for the Juris Doctor (**JD TLOs**). The JD TLOs were endorsed by CALD at its March 2012 meeting.

Development of the TLOs

In February 2011, Professor Sally Kift⁵ called for expressions of interest from members of the Associate Dean's Law Network (**AD Law Network**), and in particular members of the AD Law Network at law schools with a direct interest in the JD, in forming a sub-committee for the development of the JD TLOs. The JD TLO Sub-committee was formed with 14 members.⁶

¹ *Bachelor of Laws – Learning and Teaching Academic Standards Statement December 2010 (LLB Standards Statement)*, accessible online at http://www.altc.edu.au/system/files/altc_standards_LAW_110211.pdf, page 1.

² LLB Standards Statement, page 3.

³ LLB Standards Statement, page 3.

⁴ LLB Standards Statement, page 3.

⁵ Professor Kift is joint Law Discipline Scholar for the LTAS project with Professor Mark Israel.

⁶ The members of the JD TLO Sub-committee are as follows: Associate Professor Alex Steel (UNSW), Alperhan Babacan (RMIT), Professor Andrew Kenyon (Melbourne), Ms Bronwyn Olliffe (UTS), Ms Celeste Black (Sydney), Dr Claire Macken (Deakin), Mr Craig Collins (ANU), Professor Mike Robertson (USQ), Associate Professor Pam O'Connor (Monash), Professor Peter Handford (UWA), Professor Sally Kift (QUT), Ms Susan Priest (University of Canberra) and Professor Patrick Keyzer (Bond University). Thanks to Lucy Quinn (Melbourne) who provided extensive support to the Sub-committee's work on the JD TLOs.

The JD TLO Sub-committee recognised that a significant amount of the work undertaken and knowledge accumulated for the purposes of development of the LLB TLOs would be similarly relevant to the JD TLOs. The sub-committee also recognised that the JD TLOs would need to reflect the fact that the JD is a masters level course. It is categorised under the AQF as a Level 9 Masters Degree (Extended) (**Masters Degree (Extended)**), while the LLB is a bachelors' level course (categorised as AQF Level 7, or AQF Level 8 if completed at the honours level).

All this meant the JD TLO Sub-committee felt that the most appropriate approach to developing the JD TLOs was to examine the LLB TLOs, adapting and building on them to ensure they reflected the AQF requirements for a Masters Degree (Extended) qualification.

The purpose of this paper is to illustrate the ways in which the JD TLOs have been adapted to ensure they are reflective of the requirements under the AQF for a Masters Degree (Extended) qualification, and to provide some guidance as to interpretation. Detailed non-prescriptive guidance on interpretation of the LLB TLOs appears in the ALTC publication entitled *Bachelor of Laws – Learning and Teaching Academic Standards Statement December 2010 (LLB Standards Statement)*.⁷ To the extent that the JD TLOs overlap with the LLB TLOs the two should be interpreted consistently, and as such the LLB Standards Statement provides useful guidance on interpretation for the JD TLOs. For ease of reference, the LLB Standards Statement has been drawn upon and in some parts reproduced here.

The JD TLOs

JD TLO 1: Knowledge

Graduates of the Juris Doctor will demonstrate an advanced and integrated understanding of a complex body of knowledge that includes:

- (a) The fundamental areas of legal knowledge, the Australian legal system and underlying principles and concepts, including international and comparative contexts;
- (b) The broader contexts within which legal issues arise;
- (c) The principles and values of justice and of ethical practice in lawyers' roles; and
- (d) Contemporary developments in law, and its professional practice.

JD TLO 2: Ethics and professional responsibility

Graduates of the Juris Doctor will demonstrate:

- (a) An advanced and integrated understanding of approaches to ethical decision making;

⁷ The LLB Standards Statement is accessible online at http://www.altc.edu.au/system/files/altc_standards_LAW_110211.pdf.

- (b) An ability to recognise and reflect upon, and a developing ability to respond to, ethical issues likely to arise in professional contexts;
- (c) An ability to recognise and reflect upon the professional responsibilities of lawyers in promoting justice and in service to the community; and
- (d) A developing ability to exercise professional judgment.

JD TLO 3: Thinking skills

Graduates of the Juris Doctor will be able to:

- (a) Identify and articulate complex legal issues;
- (b) Apply legal reasoning and research to generate appropriate jurisprudential and practical responses to legal issues;
- (c) Engage in critical analysis and make reasoned and appropriate choices amongst alternatives; and
- (d) Demonstrate sophisticated cognitive and creative skills in approaching legal issues and generating appropriate responses.

JD TLO 4: Research skills

Graduates of the Juris Doctor will demonstrate the intellectual and practical skills needed to justify and interpret theoretical propositions, legal methodologies, conclusions and professional decisions, as well as to identify, research, evaluate and synthesise relevant factual, legal and policy issues.

JD TLO 5: Communication and collaboration:

Graduates of the Juris Doctor will be able to:

- (a) Communicate in ways that are effective, appropriate and persuasive for legal and non-legal audiences; and
- (b) Collaborate effectively.

JD TLO 6: Self-management

Graduates of the Juris Doctor will be able to:

- (a) Learn and work with a high level of autonomy, accountability and professionalism; and
- (b) Reflect on and assess their own capabilities and performance, and make use of feedback as appropriate, to support personal and professional development.

Explanatory statements

JD TLO 1 – Knowledge

TLO 1: Knowledge

Graduates of the Juris Doctor will demonstrate an advanced and integrated understanding of a complex body of knowledge that includes:

- (a) The fundamental areas of legal knowledge, the Australian legal system and underlying principles and concepts, including international and comparative contexts;
- (b) The broader contexts within which legal issues arise;
- (c) The principles and values of justice and of ethical practice in lawyers' roles; and
- (d) Contemporary developments in law, and its professional practice.

JD TLO 1 develops 2.3.2 and 2.3.3 of the CALD Standards for Australian Law Schools (**CALD Standards**),⁸ which have been endorsed by the Law Admissions Consultative Committee (**LACC**). CALD Standards 2.3.2 and 2.3.3 set out the requirements for curriculum content for law courses leading to admission to practice, and include reference to:⁹

- knowledge and understanding of the fundamental doctrines, concepts, principles and values of Australian law;
- the broader context in which legal issues arise;
- international and comparative perspectives on Australian law; and
- the principles of ethical conduct and the role and responsibility of lawyers.

JD TLO 1 does not reproduce the relevant CALD Standards in their entirety, as those standards have been described as a mixture of threshold and aspirational inputs and outcomes.¹⁰

JD TLO 1 is intended to encompass the 'Priestley 11' subjects that law graduates seeking admission in Australia are currently required to have studied. It is also intended to be flexible enough to incorporate any areas of law that may become prescribed areas of study in the future.

The phrase '*advanced and integrated understanding of a complex body of knowledge*' in JD TLO 1 is intended to reference the AQF requirement that graduates of a Masters Degree (Extended) have an 'advanced and integrated understanding of a complex body of knowledge in one or more disciplines

⁸ The CALD Standards, adopted by CALD on 17 November 2009, can be found online at <http://www.cald.asn.au/docs/CALD%20-%20standards%20project%20-%20final%20-%20adopted%2017%20November%202009.pdf>.

⁹ CALD Standard 2.3.3(a).

¹⁰ LLB Standards Statement, page 12.

or areas of practice'.¹¹ The phrase '*contemporary developments in law and its professional practice*' is intended to reflect the requirement that Masters Degree (Extended) graduates possess a body of knowledge that includes 'extended understanding of recent developments in a discipline and its professional practice'.¹² More broadly, the reference to knowledge of '*professional practice*' in JD TLO 1(d) is reflective of the emphasis in the AQF on preparing Masters Degree (Extended) students for professional practice.

In respect of the Masters Degree (Extended) the AQF states:¹³

The [qualification] is designed so that graduates will have undertaken a program of structured learning with some independent research and 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* (emphasis added).

For law as a discipline, also relevant is the context that Legal Admissions Committees require three full years of legal study including the Priestley 11, with the implication these three years not include Practical Legal Training (PLT). On this point, it is notable that the AQF uses the words *practice related* rather than *practice based* or *practical*. This differentiates this form of learning from that provided by PLT which is more *practical* in nature.

The very nature of legal study is such that much of what is studied is *practice related* learning. The Priestley 11 prescribes, for example, study of criminal and civil procedure, evidence and ethics and professional responsibility which are all studies of legal practice. In addition, much learning of law in other areas is heavily practice oriented and law schools also increasingly emphasise practical skills in assessment. It is also relevant that curriculum is accredited by professional admitting authorities, and the practice related learning is developed in collaboration with a relevant professional, statutory and regulatory body.

Terminology¹⁴

Integrated understanding:¹⁵ as noted above the reference to an '*integrated understanding*' reflects the requirement that graduates of a Masters Degree (Extended) have an 'advanced and integrated understanding of a complex body of knowledge in one or more disciplines or areas of practice'.¹⁶ In the context of JD TLO 1, the term '*integrated understanding*' is intended to mean an understanding of interconnections between and across different areas of law.

¹¹ Refer levels summary for the Masters Degree (Extended), 'knowledge'.

¹² Refer level outcomes descriptors for the Masters Degree (Extended), knowledge, bullet point 1.

¹³ *Australian Qualifications Framework – First Edition July 2011*, page 59, accessible online via <http://www.aqf.edu.au>.

¹⁴ Commentary in relation to LLB TLO 1 appears on pages 13-14 of the LLB Standards Statement.

¹⁵ The term '*integrated understanding*' does not appear in the LLB TLOs.

¹⁶ Refer levels summary for the Masters Degree (Extended), 'knowledge'.

*Fundamental areas of legal knowledge:*¹⁷ this term, adopted from the CALD Standards, is intended to cover those areas from time to time prescribed by the relevant Australian admitting authorities.

Underlying principles and concepts: this term is intended to include legal history, the evolution of the legal system, legal theory and jurisprudence.

International and comparative contexts: this phrase is not intended to mean graduates should demonstrate an understanding of international and comparative contexts across all areas of law. Nor does it mandate the separate study of international law or comparative law. It intends that graduates will have awareness of these contexts at a general level, and a deeper knowledge in relation to selected areas of law depending on the options made available in their legal education. Comparative law could also include comparisons amongst the Australian states and territories, and between the states/territories and the Commonwealth in a federal system.

Broader contexts: The CALD Standards refer to the 'political, social, historical, philosophical, and economic context' as examples of the broader, pluralist context within which legal issues arise. This list can easily be extended to encompass contexts that reflect, for example, social justice, gender-related issues, Indigenous perspectives, cultural and linguistic diversity, commercial or business environments, globalisation, public policy, moral contexts, and issues of sustainability.

*The principles and values of justice and of ethical practice in lawyers' roles:*¹⁸ the 'ethical practice' component of JD TLO 1 deals with graduates' knowledge acquisition of ethical principles and values; what graduates 'need to know about the ethical nature and dimensions of the lawyers' role'.¹⁹ This includes an understanding of the professional codes of conduct, and the ethical rules and responsibilities of the legal profession. The skilled and attitudinal dimensions of ethical reasoning and legal professionalism – what graduates need to be able to *do* to reason ethically and exercise professional judgment – are covered by JD TLO 2. The 'justice' component of this TLO refers to the relationship between law and justice and the significance of each for the rule of law.

Lawyers' roles: this term should be understood in a broad sense to refer to the roles in which law graduates might serve, including, but not limited to, roles of representation, advocacy and negotiation as barristers, solicitors, government counsel, in-house commercial counsel, community sector lawyers, academics and legal publishers.

*Contemporary developments in law, and its professional practice:*²⁰ this phrase reflects the requirement stated above that Masters Degree (Extended) graduates possess 'extended understanding of recent developments in a discipline and its professional practice'. It indicates an expectation that graduates will demonstrate a general understanding of the evolving nature of law,

¹⁷ The LLB Standards Statement contains further discussion in respect of this term.

¹⁸ The LLB Standards Statement contains further discussion in respect of this phrase.

¹⁹ M Robertson, 'Providing Ethics Learning Opportunities throughout the Legal Curriculum' (2009) 12(1) Legal Ethics 59 at 67, as cited in the LLB Standards Statement page 13.

²⁰ The phrase 'contemporary developments in law, and its professional practice' does not appear in the LLB TLOs.

and a particular knowledge of contemporary developments in relation to selected areas of law depending on the options made available in their legal education. Contemporary developments in professional practice may include such matters as changes to professional regulatory environments and continuing legal education obligations. Again, this phrase indicates an expectation that graduates will demonstrate a general understanding of the evolving nature of law as a profession.

JD TLO 2 – Ethics and professional responsibility

TLO 2: Ethics and professional responsibility

Graduates of the Juris Doctor will demonstrate:

- (a) An advanced and integrated understanding of approaches to ethical decision making;
- (b) An ability to recognise and reflect upon, and a developing ability to respond to, ethical issues likely to arise in professional contexts;
- (c) An ability to recognise and reflect upon the professional responsibilities of lawyers in promoting justice and in service to the community; and
- (d) A developing ability to exercise professional judgment.

JD TLO 2 is consistent with the CALD Standards which promote a curriculum that ‘seeks to develop ... the values of ethical legal practice, professional responsibility and community service’²¹ and ‘awareness of and sensitivity to, and, so far as is practicable, internalisation of, the values that underpin the principles of ethical conduct, professional responsibility, and community service’.²² Part of the TLO (*‘developing ability’*) is pitched below the level required for professional admission and recognises CALD’s and LACC’s view that law graduates need the support of a PLT program and professional practice in order to develop further their ability to address ethical issues in professional contexts and exercise professional judgment.

The reference to demonstration of an *‘advanced and integrated understanding of approaches to ethical decision making’* in JD TLO 2 is reflective of the AQF requirement that graduates of a Masters Degree (Extended) have an ‘advanced and integrated understanding of a complex body of knowledge in one or more disciplines or areas of practice’.²³ In the context of JD TLO 2, this is applied specifically to the understanding of ethical approaches to decision making.

Terminology²⁴

JD TLO 2 Heading - Ethics and professional responsibility: the heading of this TLO reflects the related academic area of legal knowledge prescribed for the purposes of admission to practice.²⁵

²¹ CALD Standards 2.3.2.

²² CALD Standards 2.3.3(d).

²³ Refer levels summary for the Masters Degree (Extended), ‘knowledge’.

²⁴ Commentary in relation to LLB TLO 2 appears on pages 13-14 of the LLB Standards Statement.

Advanced and integrated understanding of approaches to ethical decision making: The understanding referred to in this phrase reflects the requirements for Masters Degree (Extended) graduates to have understanding at an advanced and integrated level. The concept of approaches to ethical decision making is not intended to limit law schools and their curriculum to the theoretical bases of ethical decision-making. Rather, it provides scope to cover these perspectives as well as practical approaches. This element of the TLO should, therefore, not be taken as restricting how ethics might be taught.

An ability to recognise and reflect upon: This element of the TLO includes academic and scholarly skills of recognition and reflection that enable graduates to engage deeply with both the substantive ethical issues encountered by lawyers in a range of professional contexts and the professional responsibilities of lawyers in promoting justice and in service roles.

A developing ability: The ability to respond to ethical issues and exercise professional judgment is not fully formed at the law school phase of legal education but should have commenced development. Development will extend through PLT, and through a graduate's professional career and continuing legal education (CLE).²⁶ 'Developing' points to an early, emergent standard of ability as opposed to the potential for that ability or, alternatively, a measure of change in that ability.

*Professional responsibilities of lawyers in promoting justice and in service to the community:*²⁷ This element of the TLO goes beyond knowledge of 'the principles and values of justice and of ethical practice in lawyers' roles' referred to in JD TLO 1 and requires graduates to recognise and reflect upon the professional responsibilities of lawyers to act in their public role. It points to lawyers' roles in promoting justice and the values of fairness, legitimacy, efficacy, and equity in the legal system. JD TLO 2 also requires that graduates understand the principles and values associated with service to the wider community, an area that encompasses and extends beyond pro bono work. The National Pro Bono Task Force calls for 'the active promotion of a strong pro bono culture in Australia, commencing at law school and continuing through all levels and styles of professional practice'.²⁸ This TLO includes recognition and reflection on the goal of public service and pro bono legal work as a key incident of professional responsibility,²⁹ and also as a possible 'source of meaning and satisfaction in a stressful professional life'.³⁰

While there is certainly overlap between 'ethical' and 'justice' issues, there are also clear differences. The inclusion of 'justice' in this ethics-oriented TLO is not intended to give ethics a political

²⁵ LACC, *Schedule 1: Prescribed Academic Areas of Knowledge* (2009) as cited in LLB Standards Statement, page 15.

²⁶ K Economides and J Rogers, *Preparatory Ethics Training for Future Solicitors*, London: Law Society (2009), as cited in the LLB Standards Statement on page 15.

²⁷ The LLB Standards Statement contains further discussion in respect of this phrase.

²⁸ National Pro Bono Task Force, *Report of the National Pro Bono Task Force*, Australian Law Reform Commission (2001), as cited in the LLB Standards Statement on page 16.

²⁹ D Weisbrot, response to TLOs, 2010, as cited in the LLB Standards Statement on page 16.

³⁰ P Redmond, 'The Place of Justice Within Law Programs', as cited in the LLB Standards Statement on page 16.

complexion. The TLO deliberately leaves open a wide interpretation of 'justice' to provide opportunities for diverse curricular responses by different law schools.

Professional judgment:³¹ This term includes the application of knowledge, skills and professional values to serve the interests of clients, justice, the profession, and the public good (after AQF, American Bar Association Standards and MacCrate Report). It is notable in the context of the JD TLOs that the AQF at Masters Degree (Extended) level explicitly engages with the concept of knowledge and skills for *professional practice*. The 2007 Carnegie Report³² refers to professional practice as 'judgment in action', in the sense that:

Skillful practice ... means involvement in situations that are necessarily indeterminate from the point of view of formal knowledge. Professional practice ... [therefore] depends on judgment in order to yield an outcome that can further the profession's intended purposes.³³

In this regard, the exercise of professional judgment includes an understanding of the consequences of professional decisions. The professional codes of conduct will also support and help inform the developing ability of a graduate to exercise professional judgment.

JD TLO 3 – Thinking skills

TLO 3: Thinking skills

Graduates of the Juris Doctor will be able to:

- (a) Identify and articulate complex legal issues;
- (b) Apply legal reasoning and research to generate appropriate jurisprudential and practical responses to legal issues;
- (c) Engage in critical analysis and make reasoned and appropriate choices amongst alternatives; and
- (d) Demonstrate sophisticated cognitive and creative skills in approaching legal issues and generating appropriate responses.

JD TLO 3 is reflective of the fact that Masters Degree (Extended) graduates are expected to have

³¹ The LLB Standards Statement contains further discussion in respect of this term.

³² W M Sullivan, A Colby, J W Wegner, L Bond, and L S Shulman, *Educating Lawyers: Preparation for the Profession of Law*, San Francisco, CA: Jossey-Bass, 2007 ['Carnegie Report'] at 9. Summary available at: <http://www.carnegiefoundation.org/sites/default/files/publications/elibrary_pdf_632.pdf> at 3 December 2010.

³³ CD Cunningham and CS Alexander, 'Developing Professional Judgment: Law School Innovations in Response to the Carnegie Foundation's Critique of American Legal Education' in M Robertson, L Corbin, F Bartlett and K Tranter (eds), *The Ethics Project in Legal Education*, London: Routledge-Cavendish, 2010 <http://teachinglegalethics.org/content/developing-professional-judgment>, as cited in the LLB Standards Statement, page 15.

developed sophisticated thinking skills. They are required to have cognitive, technical and creative skills to *'investigate, analyse and synthesise complex information, problems, concepts and theories and to apply established theories to different bodies of knowledge and practice'*,³⁴ as well as to apply their knowledge and skills *'with creativity and initiative to new situations in professional practice'*.³⁵

The reference to *'jurisprudential and practical responses'* in JD TLO 3(b) is intended to reflect the fact that the Masters Degree (Extended) has a focus on preparing students for professional practice, while at the same time requiring them to *'have the cognitive, technical and creative skills to generate and evaluate complex ideas and concepts at an abstract level.'*³⁶

Terminology³⁷

*Identify and articulate complex legal issues:*³⁸ Law graduates should be able to examine a text and/or a scenario (for example, a set of facts, a legal document, a legal narrative, a statute, a case report, or a law reform report), find the key issues (for example, unresolved disputes, ambiguities, or uncertainties), and articulate those issues clearly as a necessary precursor to analysing and generating appropriate responses to the issues.³⁹ This skill includes the ability to discriminate between legal and non-legal issues, and between relevant and irrelevant issues.⁴⁰ Graduates should know that not every issue is a legal issue, and that not every legal issue warrants a legal response.⁴¹ The emphasis in this TLO is on the application of thinking skills to legal issues. In the context of this TLO, *'legal issues'* should be understood as including factual and policy issues. This is because the identification and articulation of factual and policy issues are frequently necessary in order to identify and articulate legal issues accurately. JD TLO 4 specifically refers to factual, legal and policy issues as threshold areas of research capability. As stated above, JD TLO 3 is also intended to reflect the requirement that Masters Degree (Extended) graduates have expert specialised skills to *'investigate, analyse and synthesise complex information, problems, concepts and theories'*.

*Apply legal reasoning and research to generate appropriate...responses to legal issues:*⁴² *'legal reasoning'* is typically understood to be the practice of identifying the legal rules and processes of relevance to a particular legal issue and applying those rules and processes in order to reach a reasonable conclusion about, or to generate an appropriate response to, the issue. Students are often introduced to the practice of legal reasoning by being taught the *'IRAC'* or *'ILAC'* method: issue, rule/law, application, conclusion. The reference to *'research'* links this element of JD TLO 3 with JD

³⁴ Refer learning outcomes descriptors for the AQF Level 9 Masters Degree (Extended), *'skills'*, bullet points 2 and 3.

³⁵ Refer learning outcomes descriptors for the AQF Level 9 Masters Degree (Extended), bullet point 1.

³⁶ Refer learning outcomes descriptors for the AQF Level 9 Masters Degree (Extended), bullet point 2.

³⁷ Commentary in respect of LLB TLO 3 appears on pages 17-19 of the LLB Standards Statement.

³⁸ The LLB Standards Statement contains further discussion in respect of this phrase.

³⁹ United Kingdom Quality Assurance Agency (QAA), *Subject Benchmark Statement: Law* (2007), as cited in the LLB Standards Statement, page 18.

⁴⁰ United Kingdom Quality Assurance Agency (QAA), *Subject Benchmark Statement: Law* (2007), as cited in the LLB Standards Statement, page 18.

⁴¹ D Weisbrot, response to TLOs, 2010, as cited in LLB Standards Statement page 18.

⁴² The LLB Standards Statement contains further discussion in respect of this phrase.

TLO 4. Students use the research skills described in JD TLO 4 to locate the relevant legal sources, rules and processes required to conduct the legal reasoning described in JD TLO 3. The reference to ‘appropriate’ responses to legal issues acknowledges that not every legal issue requires a legalistic or adversarial response. Graduates should have an understanding of the full spectrum of available and appropriate responses to legal issues (for example, conciliatory, non-adversarial options, as well as adversarial, court-oriented options; and commercial as well as legal options) and be able to choose among them.

Engage in critical analysis and make reasoned and appropriate choices amongst alternatives: ‘Critical analysis’ is the practice of examining a text, claim or argument and identifying structures: for example, legal and non-legal issues; premises and hypothesis; factual, theoretical and ideological assumptions; undisclosed biases and prejudices; and so on. The word ‘critical’ emphasises that analysis is a high-level, conceptually analytical activity; it does not mean simply being confrontational or negative – the outcome of critical analysis can be agreement with the text, claim or argument. JD TLO 3 requires students to engage in critical analysis (as described above) to evaluate arguments and responses to complex legal issues.

Making ‘reasoned and appropriate choices’ involves critical evaluation of a text, claim, argument or response to a legal issue. It requires identification of the strengths and weaknesses, advantages and disadvantages, accuracies and flaws in a text, claim, argument or response (usually by comparing the text, claim, argument or response with one or more criteria such as truth value, doctrinal correctness, practicality, or consistency with an ideological standard such as the rule of law or social justice). The use of the word ‘reasoned’ emphasises that the choice must be justified, supported by evidence, and consistent with the critical analysis. Graduates must be able to explain the basis for adopting a particular point of view. The inclusion of the word ‘appropriate’ in JD TLO 3 underlines the emphasis in the AQF for the Masters Degree (Extended) on preparing students for professional practice, and asks that graduates make choices that are not only reasoned, but also contextually appropriate.

*Sophisticated cognitive and creative skills:*⁴³ as noted above, JD TLO 3 is intended to align with the AQF requirements for graduates of a Masters Degree (Extended). JD TLO 3 requires graduates to have well-developed cognitive skills relating to legal reasoning and thinking, while at the same time having the ability to approach legal issues, and generate responses to those issues, creatively.

Creative thinking requires a capacity to think laterally and engage in transferable problem-solving. It includes an understanding of inductive and deductive reasoning. This element of the TLO, therefore, requires graduates to be familiar with a range of alternative dispute resolution processes, such as negotiation and mediation. Graduates should be able to appreciate the benefits of alternative and non-adversarial approaches, as well as formal adversarial approaches, and be able to use that appreciation to generate tailored responses to legal issues.

⁴³ The phrase ‘sophisticated cognitive and technical skills’ does not appear in the LLB TLOs. The commentary set out here does, however, build on commentary in the LLB Standards Statement relating to creative thinking.

In asking that students demonstrate creative skills in approaching legal issues and generating appropriate responses, JD TLO 3 is not asking them to ignore appropriate precedent and practice. Instead, 'creativity' should be interpreted in the context of the JD TLOs as relating to the development of appropriate and well-reasoned responses to legal issues.

JD TLO 4 – Research skills

TLO 4: Research skills

Graduates of the Juris Doctor will demonstrate the intellectual and practical skills needed to justify and interpret theoretical propositions, legal methodologies, conclusions and professional decisions, as well as to identify, research, evaluate and synthesise relevant factual, legal and policy issues.

JD TLO 4 reflects the requirements of the CALD Standards that seek to develop 'the intellectual and practical skills needed to research and analyse the law'⁴⁴ and those of the AQF for the Masters Degree (Extended) that graduates have 'knowledge of research principles and methods applicable to the discipline and its professional practice'.⁴⁵ JD TLO 4 also reflects the fact that graduates of a Masters Degree (Extended) are required to have 'technical research skills to justify and interpret theoretical propositions, methodologies, conclusions and professional decisions'.⁴⁶

Terminology⁴⁷

Intellectual and practical skills: 'Intellectual and practical skills' include information literacy skills and an expectation that graduates are able to identify the need for research, select and use appropriate information sources, and determine their authority. These skills also include the ability to read, comprehend, and paraphrase a range of legal and non-legal documents; as well as legal referencing skills; an understanding of the requirements of academic integrity; and the ability to manage, organise, and retrieve information effectively.

*Skills needed to justify and interpret theoretical propositions, legal methodologies, conclusions and professional decisions:*⁴⁸ to the extent that JD TLO 4 requires students to demonstrate the skills needed to 'justify and interpret' theoretical propositions, legal methodologies, conclusions and professional decisions this TLO reflects the AQF wording quoted above and links with the thinking skills set out in JD TLO 3 and the communication skills set out in JD TLO 5. In the context of research skills specifically, requisite skills will include the ability to locate, identify, understand and utilise the

⁴⁴ CALD Standard 2.3.3.

⁴⁵ Refer learning outcomes descriptors for the AQF Level 9 Masters Degree (Extended), 'knowledge', bullet point 1.

⁴⁶ Refer learning outcomes descriptors for the AQF Level 9 Masters Degree (Extended), 'skills'.

⁴⁷ Commentary in respect of LLB TLO 4 appears on pages 19-20 of the LLB Standards Statement.

⁴⁸ The phrase 'skills needed to justify and interpret' does not appear in the LLB TLOs.

materials needed to explain and rationalise the propositions, methodologies, conclusions and decisions at hand.

Identify ... factual, legal and policy issues: the skill of identifying and distinguishing between factual, legal and policy issues includes the ability to recognise both relevant and irrelevant issues, and to be able to provide reasons for that distinction. Fact identification is to be distinguished from fact finding, which is not a threshold-level skill and is more a matter of professional practice. The LTAS project's consultation with the legal profession indicated that understanding and working with policy issues is now a regular aspect of legal practice and should be reflected in this TLO.

Research ... factual, legal and policy issues: Research skills include the ability to find and use (up-to-date) primary and secondary legal sources in order to locate relevant material. Graduates also need to be able to identify and retrieve appropriate sources of non-legal information to support subsequent evaluation and synthesis of relevant factual and policy issues.

Evaluate ... factual, legal and policy issues: An ability to evaluate at the threshold level refers to a graduate's ability to appraise carefully and assess the value of the factual, legal and policy material that is retrieved from their research activity.⁴⁹

Synthesise factual, legal and policy issues: Skills of synthesising factual, legal and policy issues relate to a graduate's ability to recognise and isolate the key relevant elements or components of an issue from a range of sources, and link or collate them in a logical way, in order to develop a more detailed and complex understanding and treatment of those issues.

JD TLO 5 – Communication and collaboration

TLO 5: Communication and collaboration:

Graduates of the Juris Doctor will be able to:

- (a) Communicate in ways that are effective, appropriate and persuasive for legal and non-legal audiences; and
- (b) Collaborate effectively.

JD TLO 5 is compatible with the CALD Standards requirement that curricula develop graduates' ability to communicate findings 'both orally and in writing'.⁵⁰ The requirement that graduates be able to communicate to '*legal and non-legal audiences*' reflects the criterion that graduates of a Masters Degree (Extended) have 'communication ... skills to justify and interpret theoretical

⁴⁹ D Weisbrot, n41, as cited in LLB Standards Statement page 20.

⁵⁰ CALD Standards, 2.2.3(c).

propositions, methodologies, conclusions and professional decisions to specialist and non-specialist audiences'.⁵¹

Terminology⁵²

Communicate: the term includes both oral and written communication. Communication includes an ability to understand verbal and non-verbal cues and also to engage with culturally diverse audiences; for example, through the use of active listening skills (such as questioning, summarising, and paraphrasing).

Communicate in ways that are effective, appropriate and persuasive:⁵³ 'appropriate' communication will address the audience's needs and the communication context. In order to ensure 'effective' and 'persuasive' communication, graduates must also be able to choose the means or form of communication that suits the context and respects the cultural, linguistic, and educational backgrounds of the audience. This includes a knowledge and ability to work in plain English, as well as the use of legal, specialist terms where appropriate, in both traditional forms of communication (such as letters, briefs, questioning, and oral presentations) and contemporary forms of communication (such as email, video-link, and interactive online communications). Effective written communication requires an appreciation of different genres such as letter writing, drafting, and scholarly written argument.⁵⁴ Effective oral communication requires an appreciation of a range of communication styles; for example, assertive, attentive, integrative, conciliatory, or problem-solving styles. An ability to use appropriate oral communication skills is critical for effective and persuasive communication; for example, through advocacy and negotiation, in both formal and informal dispute resolution contexts.

'Effective, appropriate and persuasive' communication goes beyond the mere transmission of information to a passive recipient but requires a graduate to be able to listen to, engage with, and understand the needs of their audiences. Further, to communicate persuasively, a graduate will need to be able to choose the right form of communication for the particular legal context of that communication; for example, approaches to communication that are appropriate for advocacy may not suit a context in which interviewing, negotiation or mediation communication methods are appropriate.

For legal and non-legal audiences: 'legal audiences' include, for example, legal colleagues and fellow practitioners, judges, government, law reform agencies, the community legal sector, and legal publishers. 'Non-legal audiences' include clients and laypersons. This phrase is used to emphasise the need to determine the audience with whom one is communicating and tailor the communication to the needs of that audience. Graduates should be aware, and able to recognise, that clients or other stakeholders may have widely varying comprehension levels. The everyday requirement of

⁵¹ Refer AQF Descriptors for Level 9 Extended Degree, 'skills', bullet point 4.

⁵² Commentary in respect of LLB TLO 5 appears on pages 20-22 of the LLB Standards Statement.

⁵³ The LLB Standards Statement contains further discussion in respect of this phrase.

⁵⁴ Weisbrot, n41, as cited in LLB Standards Statement page 21.

legal practice (in the broad sense) is to ensure that the audience (who may be at any level of education, literacy, and English comprehension) understands what the lawyer is communicating. As stated above, the AQF at the Masters Degree (Extended) level explicitly refers to that ability to communicate to ‘specialist and non-specialist audiences’.

Collaborate effectively: this term encompasses teamwork, working in groups, and working cooperatively with others. Through the LTAS consultation process, many members of the profession emphasised these skills as critical to the modern legal workplace. Constructive approaches to collaboration include an ability to negotiate and work effectively through team disputes and problems with team dynamics.

JD TLO 6 – Self-management

TLO 6: Self-management

Graduates of the Juris Doctor will be able to:

- (a) Learn and work with a high level of autonomy, accountability and professionalism; and
- (b) Reflect on and assess their own capabilities and performance, and make use of feedback as appropriate, to support personal and professional development.

JD TLO 6 reflects the AQF requirement that graduates of a Masters Degree (Extended) have sophisticated self-management skills, and are expected to apply skills and knowledge ‘with high level personal autonomy and accountability’.⁵⁵ In addition, JD TLO 6 is intended to reflect the emphasis in the AQF for the Masters Degree (Extended) on the preparation of students for professional practice.

Terminology⁵⁶

Learn and work with a high level of autonomy: graduates working with a high level of autonomy are able to formulate aspects of their own learning (such as undertaking independent research to clarify points of law) through reflection on past learning, and effectively manage their study and time. Students need different levels of guidance during their degree to support the development of their capacity for autonomous learning. The extent of guidance offered depends on a student’s stage of development; for example, a final year student should need less guidance than a first year student.⁵⁷

⁵⁵ Refer learning outcomes descriptors for the AQF Level 9 Masters Degree (Extended), ‘application of skills and knowledge’.

⁵⁶ Commentary in respect of LLB TLO 6 appears on pages 22-23 of the LLB Standards Statement.

⁵⁷ QAA, para 4.14 at 9, as cited page 23 of the LLB Standards Statement.

*Learn and work with ... accountability:*⁵⁸ students working with accountability will demonstrate an ability to explain and justify their work practices and output. Such ability might be demonstrated, for example, by way of presentation of research undertaken in a particular area, and engagement with a critical assessment of that presentation.

This element of JD TLO 6 may also encompass the affective dimensions of student learning with the intention of supporting students to become careful, efficient, concerned, and curious learners. This is important in terms of the interface with PLT and professional CLE because it involves a commitment to lifelong learning and continuing education as a key aspect of legal professional competence and performance.⁵⁹

Legal employers have identified a need for graduates to have emotional intelligence – the ability to perceive, use, understand, and manage emotions. The TLOs encourage the development of emotional intelligence by attending to both self awareness (JD TLO 6) and the need to communicate and work with others (JD TLO 5). In the LTAS project’s consultations with the profession, this element of the TLO was acknowledged as critical to professional practice because it incorporates a capacity for resilience through personal awareness and coping skills that might include openness to assistance in times of personal and professional need.⁶⁰

*Make use of feedback as appropriate:*⁶¹ Graduates are expected to be receptive to, and make use of, constructive feedback (both positive and critical) to improve their performance. In this way, the requirement for students to work with accountability is again emphasised. Students may be offered feedback by a range of people, including academics, professional staff, or practitioners. Students may also learn from feedback received from their peers.

Personal and professional development: This TLO addresses the need for graduates to take responsibility for further developing knowledge (JD TLO 1) and those ethical and professional (JD TLO 2), thinking (JD TLO 3), research (JD TLO 4), interpersonal (JD TLO 5), and self-management (JD TLO 6) skills identified across the TLOs.

⁵⁸ The phrase ‘learn and work with accountability’ does not appear in the LLB TLOs, and hence is not discussed in the LLB Standards Statement. The commentary set out here does, however, build on the commentary set out in the LLB Standards Statement in respect of reflecting on and assessing capabilities and performance.

⁵⁹ Weisbrot, n43, as cited in LLB Standards Statement, page 23.

⁶⁰ N Kelk, G Luscombe, S Medlow, and I Hickie, *Courting the Blues: Attitudes towards depression in Australian law students and lawyers*, Brain and Mind Research Institute: University of Sydney, (2009), as cited on page 23 of the LLB Standards Statement.

⁶¹ The LLB Standards Statement contains further discussion in respect of this phrase.