

REVIEWING HONOURS AND DISTINCTION IN 21ST CENTURY AUSTRALIAN LAW SCHOOLS: IS THE DIVERSITY OF APPROACHES CORRODING ITS MARKET RELEVANCE?

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ABSTRACT

In 2013 and 2020 the Legal Education Associate Deans Network (‘LEAD’) executive undertook member-only surveys that captured a snapshot of the Honours programs offered at just over half of Australian law schools. In 2021, in order to further augment the responses and in response to member interest, the LEAD executive reviewed the publicly available data from Australian university websites advertising their Bachelor of Laws and/or Juris Doctor degrees, and the respective Honours and/or Distinction options. The 2021 review shows the most common law program offered by an Australian law school to be a Bachelor of Laws with Honours (including combined programs). However, the eligibility requirements for Honours vary considerably by institution. This article discusses and contextualises the initial findings of the 2021 LEAD executive review, with the intention to: highlight the varied and often inconsistent approaches of Australian law schools to the award of Honours; provide some insight as to how this situation arose; and, finally, identify some concerns with the current scattered approach, and why more consistency may be desirable. It seeks to initiate an ongoing conversation on how to best support the demonstration of excellence by students. This exploratory article is preliminary to a proposed larger project examining the place of Honours and Distinction in the contemporary Australian law school.

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I INTRODUCTION

The primary focus of this paper is on drawing attention to the broad diversity and inconsistency of criteria by which Honours is awarded amongst Australian law schools, and highlighting some issues that this *may* (and the authors stress ‘may’ — more research is needed) raise for graduates. The need to critically evaluate whether the current approach to awarding Honours at Australian law schools is providing benefit to graduates as a whole is given credence by recent suggestions that there is indeed confusion amongst students and domestic employers about the myriad approaches to Honours, and that this lack of clarity may have implications for the perceptions of quality in graduates from certain institutions.¹ This is discussed further in Part V. In the context of the global market for legal education, consideration should be given to the idea that dissatisfaction by consumers or employers with the offering of one institution could lead, unfairly, to dissatisfaction with the larger national sector by association. While there is no qualitative or quantitative evidence to suggest this last point is occurring in respect of Australian law schools, the global market provides a dynamic and fickle environment in which practices adopted by an individual business or organisation can generally impact the reputational integrity of others in its immediate or relational network. It is a risk that law schools need to be cognisant of and manage.

Part II presents some background and context underpinning the themes of this article, and Part III briefly outlines the revisions to the Australian Qualifications Framework (‘AQF’) in more depth, and the changes in requirements for Honours in the Bachelor of Laws (‘LLB’) that led to the proliferation of Honours models. The AQF forced Australian universities to examine their respective approaches, adapting them or adopting different ways of recognising academic excellence in law programs. Part IV reports on specific findings of the LEAD executive review of eligibility for the awarding of Honours or Distinction for the LLB and Juris Doctor (‘JD’), the review demonstrating the diversity of approaches. Part V provides opportunity for discussion and further contextualisation of issues identified through the literature and research that are germane to the contemporary Australian legal education and employment landscape, and the future direction of this project.

Consistent with previous research, the current study found a lack of robust contemporaneous research around Honours programs generally in the Australian context.² There is a dearth of specific literature on Honours and Distinction in law in Australia. Barron and Zeegers argue this lack of conversation is generally a reflection of the assumed place of Honours as simply being a pathway to higher study and academic positions,³ though it has been recognised that

¹ Nick James, ‘RIP LLB (Hons)’, *The Centre for Professional Legal Education* (Blog Post, 8 May 2020) <<https://thepeople.wordpress.com/2020/05/08/rip-llb-hons/>>.

² Elisa Backer and Pierre Benckendorff, ‘Australian Honours Degrees: The Last Bastion of Quality?’ (2018) 36 *Journal of Hospitality and Tourism Management* 49.

³ Deirdre Barron and Margaret Zeegers, ‘Honours in Australia: Globally Recognised Preparation for a Career in Research (or Elsewhere)’ (2012) 13(2) *Journal of the National Collegiate Honors Council* 35, 36. And see also John McGagh et al, *Review of Australia’s Research Training System* (Final Report, Australian Council of Learned Academies, 2016).

this traditional view is at odds with the actual demands of the modern employment market beyond universities.⁴ This current work seeks to move the discussion on this forward, with an empirical foundation. We encourage law academics to increase their awareness of how other law schools award Honours and Distinction to ensure that their students have the best possible graduate experience.

II BACKGROUND

Traditionally, Honours in an Australian LLB was awarded on the basis of marks achieved during the course of study, via a weighted average mark ('WAM') or grade point average ('GPA'). This was a common national approach and generally understood by students and by the profession seeking to employ graduates. However, the introduction of the AQF⁵ gave rise to significant challenges for law schools because of the new requirements for the award of the 'Level 8 Bachelor Honours Degree'. The AQF required that students awarded a Level 8 qualification (as opposed to a standard undergraduate 'pass' degree being classified at Level 7) would be required to demonstrate more advanced knowledge and skill requirements, as well as the application of that knowledge and skill set, and that the qualification would require a volume of learning of an additional 12 months following a three-year full-time Bachelor degree. As such, the traditional approach to the award of Honours on the basis of previous marks and, in some cases, a threshold requirement of a longer research essay in a later-year subject, no longer met AQF requirements. This resulted in the re-examination of Honours programs in law across Australia.

The AQF and Honours has been a topic of discussion amongst the Council of Australian Law Deans ('CALD').⁶ However, rather than adopting consistent national criteria to the awarding of Honours, Australian law schools took an individual interpretative approach as to how they would meet the new requirements. In some cases, the response was dictated by a larger institution-wide response to the AQF, as they sought to ensure compliance with a new regime of heavier regulation than previously experienced. Largely, and importantly, changes to Honours in law post-AQF were often based upon immediate pragmatic concerns, including a perceived need by some institutions to differentiate themselves in the developing national and global marketplace in a way that would be acceptable to consumers. They were not informed by empirical research per se, and there is little to suggest that law schools considered how an individualised and fragmented approach to Honours across the nation could negatively impact later students. The focus was on providing a benefit to their immediate cohorts at that juncture and satisfying regulatory pressures. However, individual institutions did take inspiration from overseas models, such as the degree classification system in England, or the model dominant

⁴ Louise Horstmanshof and Bill Boyd, 'W(h)ither the Honours Degree in Australian Universities?' (2019) 61(2) *Australian Universities' Review* 14.

⁵ Australian Qualifications Framework Council, *Australian Qualifications Framework* (2nd ed, 2013) <<https://www.aqf.edu.au/sites/aqf/files/aqf-2nd-edition-january-2013.pdf>> ('AQF 2013').

⁶ For CALD generally, see 'Home', *Council of Australian Law Deans* (Web Page, 2021) <<https://cald.asn.au>>.

in the United States where Honours is largely awarded based on GPA, and adapted those to their circumstances, after review.

This is in no way to be seen as a judgement or criticism of policies and practices adopted by institutions at that time. Law schools are independent, there is nothing to suggest they cannot make decisions based on their understood ‘best interests’, and the general position remains that a law school is free to set its own curriculum and assessment structure, assuming the graduates meet a certain ‘standard,’ and other statutory regulatory requirements where relevant. What is helpful is critically revisiting the assumptions upon which decisions were made at that time in order to test their validity now.

Indeed, it is almost trite to observe that a hallmark of ‘best practice’ in service delivery is that assumptions and practices should be re-examined periodically to ensure consistency with vision, goals and, importantly, consumer expectations. However, reconciling an individual response with the desirability of a national collective strategy, as argued by some, is recognised as a challenge. Identifying and implementing strategies to resolve objections is not assisted by the numerous restructures and amalgamations endured by law schools since the introduction of the AQF. It is no longer clear today how many law schools are able to set their own excellence regimes independent of the wider university protocols, despite a law school delivering a program that is largely professionally focused and therefore subject to compliance with an external, statutory-based, legal profession-admitting authority.

Arguably, in the face of an increasingly competitive domestic and global marketplace, not assisted by reductions in government funding and a global pandemic, there is an imperative for a unified voice on a number of policy matters, or at least a renewed recognition of the benefit of a ‘common purpose’ when scoping and adopting practice and policy positions.⁷ Of relevance to the current case, decisions that may have had a reasonable economic rationale at the time could potentially lead to future financial repercussions if, for example, the quality of an offering is not consistent with identified quality measurements or if markets otherwise shift so that they no longer reflect the reality of the previous paradigm. Focus should be directed at: identifying those policies that affect and inform how law schools measure and differentiate student excellence in a way that is meaningful; understanding how those measures are understood in the marketplace; and, finally, determining how such policies in practice may affect a graduate’s success in the job market, both domestically and globally.

A not insurmountable problem is that the diversity in approaches to Honours highlighted and discussed below has made it difficult to identify what is ‘best practice’ in the Australian context. The diversity in approaches should give the legal academy pause to consider a key question that has been conspicuously absent from the research landscape: what is the purpose

⁷ That law schools can all adopt the Priestley 11, even in a jurisdiction not covered by *Legal Profession Uniform Admission Rules*, provides some indication that common ground does exist, even if it is heavily contested at times, as is the case with the role and content of the Priestley 11. The point is that adhering to a general national curriculum of subjects is seen to provide benefits — eg, a consistency in knowledge — that the profession can rely upon.

of Honours in law in the 21st century? In Australia, and it appears uniquely in the world, Honours has been traditionally seen as the main pathway into higher degree-by-research programs, and to provide for a university workforce.⁸ Clearly, for law, Honours is something more than this, especially given that a law program is traditionally seen as professionally orientated.⁹ What that ‘more’ is needs to be defined in light of the contemporary student and employment market.

If it is more broadly about recognising excellence, then what is meant by ‘excellence’? Which view of what demonstrates excellence in a law school graduate should prevail? Do some methods of awarding Honours better reflect excellence than others? If this last view is in fact held by some key stakeholders, this could be problematic, even if such a view can be classed as subjective. Not only is it problematic for the reputation of an impugned law school and its graduates, but it introduces confusion into the wider legal education sector and employment market. Unchecked parochialism may unintentionally hinder law graduates from achieving the best possible outcome commensurate with their ability.

III IMPACT OF THE AQF

The AQF was originally introduced in 1995 to provide an agreed national (via intergovernmental agreement)¹⁰ level-based framework for categorisation of higher education, vocational education and training, and school qualifications.¹¹ A definition of the AQF is included in the dictionary to the *Higher Education Support Act 2003* (Cth):

Australian Qualifications Framework means the framework for recognition and endorsement of qualifications:

- (a) that is established by the Council consisting of the Ministers for the Commonwealth and each State and Territory responsible for higher education; and
- (b) that is to give effect to agreed standards in relation to the provision of education in Australia;

⁸ Margaret Kiley, Thea Moyes and Peter Clayton, “‘To Develop Research Skills’: Honours Programmes for the Changing Research Agenda in Australian Universities” (2009) 46(1) *Innovations in Education and Teaching International* 15; Margaret Kiley et al, ‘Honouring the Incomparable: Honours in Australian Universities’ (2011) 62(5) *Higher Education* 619, 620; Barron and Zeegers (n 3).

⁹ It is important to note, however, that (a) many law graduates do not go on to practice, and (b) in recent years there has been a shift to seeing a law degree as a ‘generalist’ qualification, though this is not without challenge. See, eg, Pip Nicholson, ‘Why Law Degrees Matter’, *Pursuit* (9 February 2018) <<https://pursuit.unimelb.edu.au/articles/why-law-degrees-matter>>. For a slightly different perspective, see, eg, Cathy Sherry, ‘A Law Degree? Only If You’re Committed’, *The Sydney Morning Herald* (online, 17 September 2015) <<https://www.smh.com.au/opinion/a-law-degree-only-if-youre-committed-20150917-gjozjx.html>>. While this has prompted discussion about the relevance of course content generally, does this also have implications for the way Honours is conceived or undertaken?

¹⁰ The intergovernmental agreement is given effect via the following state and territory legislation: *Higher Education Act 2001* (NSW) s 7.

¹¹ See Australian Qualifications Framework Advisory Board, *Australian Qualifications Framework Implementation Handbook* (1st ed, 1995) <https://www.aqf.edu.au/sites/aqf/files/aqf_implementation-hb-1st-edition.cv01.pdf>.

as in force from time to time.¹²

The system underwent significant amendment in 2011,¹³ and then revision in 2013.¹⁴ The Tertiary Education Quality and Standards Agency ('TEQSA') was created in 2011 to regulate higher education in Australia.¹⁵ The primary impact of the revisions in 2011 was on the requirements for Honours-level qualifications.

Historically, the LLB was commonly four years' duration when studied alone, and five to six years' duration when studied concurrently with another undergraduate degree as part of a double degree offering. Whether studied as part of the more common double degree in law or as a stand-alone degree, the requirements for Honours in law were based on WAM or GPA, sometimes with additional 'threshold' requirements, like a research essay of 5,000 words or more. However, the 2011 revised AQF treated combined degrees as effectively two undergraduate degrees at Level 7, with Honours requirements at a higher level in terms of skill and duration, adding a 'typical' amount of 12 months' study. This additional 12 months of study may be embedded in a Bachelor degree, but it is still required to be a discrete additional year.¹⁶ As noted by then University of New South Wales Dean of Law David Dixon in 2012, '[t]his ignores the reality that the combined degree is more than a sum of its parts'.¹⁷

Dixon expressed the frustration that many law schools critical of the AQF approach were experiencing at that time. Arguments Dixon raised against the AQF approach included that: the requirement of an additional year of study does not take into account the unique professional nature of the LLB; the LLB is commonly taken as a double degree, thus containing significant content over a significant duration; and it would make Australian law schools uncompetitive in the global market if law students are required to undertake an additional year of study.¹⁸ Dixon notes that many competing international jurisdictions, such as England or the

¹² *Higher Education Support Act 2003* (Cth) sch 1.

¹³ Australian Qualifications Framework Council, *Australian Qualifications Framework* (1st ed, 2011) <<https://www.aqf.edu.au/sites/aqf/files/aqf-1st-edition-july-2011.pdf>> ('AQF 2011').

¹⁴ *AQF 2013* (n 5).

¹⁵ *Tertiary Education Quality and Standards Agency Act 2011* (Cth).

¹⁶ *AQF 2011* (n 13) 49. The same wording is used in *AQF 2013* (n 5) 51.

¹⁷ David Dixon, 'TEQSA, the AQF and the Regulatory Threat to Australian Legal Education' (University of New South Wales, 2012) <<https://cald.asn.au/wp-content/uploads/2012/06/TEQSA-and-the-Regulatory-Threat-to-Australian-Legal-Education-final.pdf>>.

¹⁸ *Ibid.* Note also that at law schools offering a straight undergraduate LLB (not combined) the duration is still usually four years, which is one year higher than most other undergraduate Bachelor (pass) programs. See, eg, 'Bachelor of Laws', *The University of Adelaide* (Web Page, 14 September 2021) <https://www.adelaide.edu.au/degree-finder/2022/blaws_llb.html>.

United States, do not require an additional year of research for their respective LLB or JD law programs to be awarded with Honours.¹⁹

As a result, some law schools continued with an LLB (AQF Level 7), adding on additional requirements to be awarded Honours (in which we see a considerable variety of approaches), and other law schools reclassified their entire LLB programs as being at AQF Level 8, with all students graduating with some level of Honours. Some law schools offered Honours in the LLB for the first time. It is hard to discern at this stage to what extent certain approaches were influenced by policies and procedures set at a university level. At a similar time, some law schools progressively introduced a JD, which brought its own issues.²⁰ The JD degree is not able to be awarded with Honours under the AQF and TEQSA standards. Being classified a ‘graduate degree’, it does not qualify for AQF Level 8, which is reserved for Bachelor degrees. Indeed, the AQF and TEQSA do not have a category that recognises graduate degrees at all, so as a compromise the JD is categorised as an AQF Level 9 qualification. This is the same position as a Master’s degree (coursework), despite the JD sharing much of its curriculum with the LLB.²¹ Individual institutional interpretation of the AQF has been a significant driver behind the adoption of diverse approaches to Honours and Distinction in the LLB and, to a lesser extent, JD programs in Australia today.

IV THE LEAD EXECUTIVE REVIEW: DIVERSE APPROACHES TO HONOURS IN AUSTRALIAN LAW PROGRAMS

The Law Associate Deans’ Network (as it was then called) was established in 2010. In September 2013 it was renamed the Legal Education Associate Deans Network (‘LEAD’). It comprises the Associate Deans (Teaching and Learning) (or equivalent) of Australian law schools. The purpose of LEAD is to promote collaborative approaches to teaching and learning in Australian legal education. LEAD seeks to encourage, document and lead initiatives

¹⁹ In the United States, Honours is awarded overwhelmingly on the basis of GPA throughout a program without an extra year. For some approaches, see, eg, Harvard Law School, *Harvard Law School: Handbook of Academic Policies 2021–2022* (2021) 36 <https://hls.harvard.edu/content/uploads/2021/09/HLS_HAP.pdf>; ‘Academic Honors & Cutoffs for 2019–2020’, *Georgetown Law* (Web Page) <<https://www.law.georgetown.edu/academics/academic-resources/registrar/academic-honors/academic-honors-cutoffs-for-2019-2020>>; ‘Grading Policy’, *Northwestern Pritzker School of Law* (Web Page) <<https://www.law.northwestern.edu/registrar/gradingpolicy>>; ‘Honors Programs’, *University of Illinois Chicago* (Web Page) <<https://law.uic.edu/academics/jd/honors>>. It is worth noting for readers that, in Australia, the JD degree is not able to be awarded with Honours.

²⁰ For early discussion on the introduction of the JD in Australia, see, eg, Donna Cooper et al, ‘The Emergence of JD in the Australian Legal Education Marketplace and Its Impact on Academic Standards’ (2011) 21 *Legal Education Review* 23; Wendy Larcombe and Ian Malkin, ‘The JD First Year Experience: Design Issues and Strategies’ (2011) 21 *Legal Education Review* 1.

²¹ See *Tertiary Education Quality and Standards Agency Act 2011* (Cth) s 5 <<https://www.legislation.gov.au/Details/C2021C00287>>, stating that a *higher education award* is: ‘(a) a diploma, advanced diploma, associate degree, bachelor degree, undergraduate certificate, graduate certificate, graduate diploma, masters degree or doctoral degree; or (b) a qualification covered by level 5, 6, 7, 8, 9 or 10 of the Australian Qualifications Framework; or (c) an award of a similar kind, or represented as being of a similar kind, to any of the above awards’. A ‘graduate degree’ is not mentioned in the *AQF 2013* (n 5). See also *Higher Education Standards Framework (Threshold Standards) 2021* (Cth) Definitions <<https://www.legislation.gov.au/Details/F2021L00488>>.

promoting good practice in learning and teaching in the discipline of law, and to create processes and strategies to sustain the network for the benefit of members. It previously received funding from the Office for Learning and Teaching, and now receives financial assistance from CALD. The views of LEAD are independent of those of CALD and its agenda is set by members.

In July 2021, the LEAD executive explored the publicly available information about Honours and Distinction in law programs on the websites of 38 Australian universities (for a full list of Australian universities reviewed, see Appendix 1). The research was intended to supplement previous findings and encapsulate a broader view of the LLB and JD offerings of Australian law schools, particularly exploring whether or how Honours and Distinction is awarded to law students. While LEAD had actively conducted online surveys of its members in 2013 and 2020 regarding Honours practices, the response rate was just over half of Australian law schools. The current comprehensive review was warranted because of continued interest on the topic of Honours by LEAD members, and the desire to capture more specific data missed from earlier surveys.

The 2021 review shows that the LLB with Honours is the most commonly provided law program in Australia (see Appendix 1 for a full list of Australian universities offering an LLB with Honours). All Australian universities reviewed continue to offer an LLB (and often a JD as well), with the exception of the University of Melbourne and the University of Western Australia, which solely offer a JD.²²

Consistent with previous survey findings, the 2021 review shows that none of the universities advertise an LLB with Distinction, but anecdotal evidence suggests that students who have studied an LLB at AQF Level 7 have been awarded Distinction based on a GPA of 6.5 or above out of 7 or an equivalent WAM, and dependent on wider university policies on that award. Some university websites disclose that the way Honours is awarded in law at their institution has changed in recent years. For example, the Australian National University and the University of Adelaide websites provide information on the change in the way Honours is awarded to students who were enrolled after 2015 (essentially after the new AQF came into force).²³ The University of Adelaide introduced an LLB (Honours) at the AQF Level 8 in 2017, replacing the automatic awarding of Honours that was in place pre-2015. The website explains how these changes impact law students who were enrolled pre-2015 or post-2015.²⁴ It is feasible that over time the information provided on university websites will fail to capture how

²² ‘Juris Doctor’, *The University of Melbourne* (Web Page) <<https://study.unimelb.edu.au/find/courses/graduate/juris-doctor>>; ‘Juris Doctor (JD)’, *The University of Western Australia* (Web Page, 16 September 2021) <<https://www.uwa.edu.au/study/courses/juris-doctor>>.

²³ ‘Program Management: Bachelor of Laws (Honours)’, *ANU College of Law* (Web Page) <<https://law.anu.edu.au/program-management-bachelor-laws-honours>>.

²⁴ ‘Honours’, *The University of Adelaide* (Web Page, 26 May 2020) <<https://law.adelaide.edu.au/intranet/honours>>.

Honours was awarded at previous points in time, potentially leading to unfair comparisons between students awarded with Honours from the same institution.

The critical finding of the review is that there are considerably diverse approaches for determining student eligibility for Honours amongst Australian law schools. While there are some similarities (to a greater or lesser extent) between individual law schools, there is not a single, consistent state, territory or national approach to the eligibility and awarding of Honours in law in Australia. Moreover, there is little guidance on approaches to Honours by advisory and regulatory bodies or by employers.

The extreme diversity in approaches can be plotted along a spectrum, from institutions where it appears no law students are awarded Honours, such as at the Central Queensland University and the Royal Melbourne Institute of Technology University,²⁵ to those where all law students are awarded with a level of Honours, such as at the Australian National University, Monash University, the Queensland University of Technology, the University of Newcastle, the University of Queensland and the University of South Australia.²⁶ Other variations or options exist within this spectrum. The Central Queensland University's website expressly acknowledges that their law degree is taught at the AQF Level 7²⁷ — presumably, a law degree that does not offer Honours remains appealing to some law students because it can be completed within three years full time. The University of Queensland recently started awarding Honours to all law students in 2017, while the University of Adelaide stopped this practice in 2015.²⁸

Interestingly, Charles Sturt University enables a law student to study an LLB, followed by a Bachelor of Applied Research (Honours) if they are interested in gaining Honours in law.²⁹ Most Australian universities award Honours to law students predicated on WAM or GPA, and the split between these two measures is fairly even.³⁰ However, there is considerable variation amongst institutions in the minimum WAM or GPA that forms the basis for awarding an

²⁵ 'Bachelor of Laws: CG98', *CQ University Australia* (Web Page) <<https://www.cqu.edu.au/courses/bachelor-of-laws>>; 'Bachelor of Laws', *RMIT University* (Web Page) <<https://www.rmit.edu.au/study-with-us/levels-of-study/undergraduate-study/bachelor-degrees/bp335>>.

²⁶ 'Honours in Law', *ANU College of Law* (Web Page) <<https://law.anu.edu.au/honours-law>>; 'L3001: Bachelor of Laws (Honours)', *Monash University* (Web Page) <<https://handbook.monash.edu/2020/courses/L3001>>; 'Bachelor of Laws (Honours)', *QUT* (Web Page, 27 August 2021) <<https://www.qut.edu.au/courses/bachelor-of-laws-honours>>; 'Bachelor of Laws (Honours) Combined', *The University of Newcastle Australia* (Web Page) <<https://www.newcastle.edu.au/degrees/bachelor-of-laws-honours/handbook#program-structure>>; 'Honours Class Calculation', *The University of Queensland Australia School of Law* (Web Page, 26 August 2019) <<https://law.uq.edu.au/study/undergraduate-study/llb-information/honours-class-calculation>>; 'Bachelor of Laws (Honours)', *University of South Australia* (Web Page) <<https://study.unisa.edu.au/degrees/bachelor-of-laws-honours/dom>>.

²⁷ 'Bachelor of Laws: CG98' (n 25).

²⁸ 'Honours Class Calculation' (n 26); 'Honours' (n 24).

²⁹ 'Bachelor of Applied Research (Honours)', *Charles Sturt University* (Web Page) <<https://study.csu.edu.au/courses/police-security-emergency/bachelor-applied-research-honours>>.

³⁰ See, eg, 'Bachelor of Laws (Honours) (LLBH): LLB (Hons)', *University of Southern Queensland* (Web Page) <<https://www.usq.edu.au/handbook/current/law-justice/LLBH.html>>; 'Law Honours Programs', *University of Wollongong Australia* (Web Page) <<https://www.uow.edu.au/business-law/current-students/law-honours-programs>>.

Honours grade. As this information was commonly found in wider university policies, procedures and handbooks, this minimum standard is likely to be decided at the university level rather than by a law faculty or school, though this is not always the case.

In addition to a WAM or GPA restriction, Curtin University imposes a quota restriction, which underscores the competitive nature of Honours but at the same time creates uncertainty because eligibility may vary from cohort to cohort.³¹ The authors' experience of this review showed that university websites make it easier to explore Honours eligibility as compared to Honours grading, and it is suggested that, where possible, law schools should seek to make information on grading more transparent and available. Both eligibility and grading are usually based on the WAM or GPA for certain prescribed courses and/or on the quality of the Honours thesis.

Where some kind of thesis is a requirement for the award of Honours (not undertaken in an additional year but embedded in the existing program) the Honours thesis requirements similarly vary (like WAM and GPA minimums), often quite markedly, from institution to institution. For example, Macquarie University appears to have a unique approach where first-class Honours is awarded based on the Honours thesis, and second-class Honours based on the WAM.³² Regardless of how Honours is awarded, an Honours thesis may be completed over one or two teaching periods.³³ The authors' research suggests that the split between these two timeframes looks reasonably even. The Honours thesis length ranges from 8,000 to 16,000 words, commonly prescribed at 10,000–12,000 words.³⁴ On some occasions, the word count explicitly includes footnotes, for instance at the Australian Catholic University, while other universities are silent on this issue.³⁵ Several university websites clarify that the Honours thesis is marked by two markers, for example, at the Australian Catholic University, the University of New South Wales and the University of the Sunshine Coast.³⁶ At the University of Sydney, the primary marker is independent but the other marker is the supervisor.³⁷ Notably, many universities do not publicly disclose whether the Honours thesis is marked by markers internal or external to the university, and this is a further area where university websites could provide

³¹ 'Laws: Bachelor Honours Degree', *Curtin University* (Web Page, 2 August 2021) <<https://study.curtin.edu.au/offering/course-ug-bachelor-of-laws-honours--bh-lawsv1>>.

³² 'Bachelor of Law (Honours)', *Macquarie University* (Web Page) <<https://www.mq.edu.au/faculty-of-arts/departments-and-schools/macquarie-law-school/study-with-us/bachelor-of-law-honours>>.

³³ 'Law Honours Pathway', *USC* (Web Page) <<https://www.usc.edu.au/study/courses-and-programs/law-and-criminology/law-honours-pathway>>.

³⁴ Regarding 8,000–10,000 words, see *ibid*; for an example of 10,000 words, see 'Handbook: Law (Honours)', *UNSW Sydney* (Web Page, 2021) <<https://www.handbook.unsw.edu.au/undergraduate/programs/2021/4702?year=2021>>; for an example of 10,000–12,000 words, see University of Wollongong Australia, 'Application for Transfer into the Bachelor of Laws (Honours) Program (2021/2022)' (2021) <<https://documents.uow.edu.au/content/public/@web/@lha/@law/documents/doc/uow262656.pdf>>; regarding 16,000 words, see 'Program Management: Bachelor of Laws (Honours)' (n 23).

³⁵ 'Guidelines for Honours Programs', *Australian Catholic University* (Web Page, 25 September 2019) <https://archives.acu.edu.au/handbook/handbooks/handbook_2019/general_information/guidelines_for_honours_programs.html>.

³⁶ *Ibid*; 'Handbook: Law (Honours)' (n 34); 'Law Honours Pathway' (n 33).

³⁷ 'Sydney Law School Handbook 2021: Honours in the Bachelor of Laws', *The University of Sydney* (Web Page, 12 November 2020) <<https://www.sydney.edu.au/handbooks/law/undergraduate/honours.shtml>>.

more clarity for the benefit of prospective students. Conversely, some Australian universities do not require an Honours thesis in law, but it is available as an option. For example, the Australian National University and the University of South Australia enable students to choose whether or not they do an Honours thesis.³⁸

As noted at the outset of this section, the University of Melbourne and the University of Western Australia offer a JD only instead of an LLB or LLB (Graduate Entry).³⁹ Similarly, Murdoch University clarifies that its JD replaces the LLB (Graduate Entry) to reflect UK and Asian courses.⁴⁰ Research of Australian university websites indicates that about half of Australian universities offer a JD program, often alongside an LLB combined degree program and as a replacement to a previous LLB (Graduate Entry) (for a list of Australian universities we reviewed offering a JD, see Appendix 1). No Australian universities in 2021 promoted a JD with Honours option, and this has not been possible under the AQF guidelines since 2015. Bond University clarifies that students who enrolled in the JD before 2015 could be awarded with Honours, while students who enrolled in or after 2015 could be awarded with Distinction.⁴¹ The University of New South Wales and the University of Western Australia advertise a JD with Distinction option.⁴² While it appears generally that Distinction in a JD is awarded based upon GPA or WAM, as noted previously, the minimum for these is anticipated to show some variation amongst institutions, though not in such a stark manner as is the case with Honours eligibility. At the University of New South Wales, the JD with Distinction has been offered since 2015.⁴³ The 2021 Handbook drops references to ‘2015’ and describes their JD with Distinction policy thus:⁴⁴

Juris Doctor with Distinction Policy

Students who complete the Juris Doctor Program will be eligible for the Juris Doctor with Distinction.

To be awarded the Juris Doctor with Distinction, students:

- 1) must achieve a Distinction WAM of 75%. The Distinction WAM will be calculated using the WAM from core courses as 60% and the WAM from elective courses as 40%, of which courses completed at UNSW ONLY will count towards the Distinction WAM calculation.
- 2) NOT been found guilty of plagiarism nor serious misconduct.

³⁸ ‘Honours in Law’ (n 26); ‘Bachelor of Laws (Honours)’ (n 26). It is important to acknowledge again that it is possible to be awarded Honours in law without doing an Honours thesis, and the AQF requirements are silent on this.

³⁹ ‘Juris Doctor’ (n 22); ‘Juris Doctor (JD)’ (n 22).

⁴⁰ ‘Graduate Entry to Law/LLB/Juris Doctor’, *Murdoch University* (Web Page) <https://askmurdoch.custhelp.com/app/askmurdoch/answers/detail/a_id/1202/~-/graduate-entry-to-law-%2F-llb-%2Fjuris-doctor>.

⁴¹ ‘Law Honours/Distinction Information’, *Bond University* (Web Page) <<https://bond.edu.au/law-honours-distinction-information>>.

⁴² ‘Handbook 2018: Juris Doctor — 9150’, *UNSW Sydney* (Web Page) <<http://legacy.handbook.unsw.edu.au/postgraduate/programs/2018/9150.html>>; ‘Course Details: Juris Doctor’, *The University of Western Australia* (Web Page) <<https://handbooks.uwa.edu.au/coursedetails?id=c12#rules>>.

⁴³ ‘Handbook 2018: Juris Doctor — 9150’ (n 42).

⁴⁴ ‘Handbook: Juris Doctor — 9150’, *UNSW Sydney* (Web Page, 2021) <<https://www.handbook.unsw.edu.au/postgraduate/programs/2021/9150?year=2021>>.

- 3) NOT have more than one failure in the JD program.

Note also that it is often the case that eligibility for an award of Distinction is tied to a larger institutional policy.

V DISCUSSION

As outlined, there is significant variation and inconsistency in approaches to the award of Honours among Australian law schools. Australia is unique amongst comparable jurisdictions for the breadth of its hybrid approach.⁴⁵ This diversity in approaches can be attributed to multiple factors, including law school academics taking a considered position based on their contemporaneous needs; wider institutional responses to regulatory ambiguity, including the need to respond to the 1999 Bologna Declaration; an emphasis on competitiveness pursued by Commonwealth governments in the years since the formation of TEQSA; and market pressures and feedback generally.⁴⁶ Backer and Benckendorff suggest that, while Honours programs across university disciplines as a whole continue to receive support despite intensive rationalisation activities at some institutions, current debate is largely financially driven, especially amongst research-intensive universities.⁴⁷

Another perspective on the diversity in law is that law is not unique, and reflects the situation generally in Australia with the way that Honours is undertaken across most undergraduate programs.⁴⁸ Previous research identifies that Honours is misunderstood across multiple disciplines, and diverse approaches to Honours exist across all programs, including amongst different universities even when the program may be the same in most other respects (business degrees, nursing degrees, engineering degrees, etc).⁴⁹ Consistent with this review of law, the variation in Honours approaches even extends to the assessment, marking and grading of the Honours thesis itself.⁵⁰ This could lead to problems around how a program from one institution is recognised by another institution (including overseas), with the potential for confusion about the development of skills and competencies that are assumed to be (based on the AQF Level 8 criteria) part of the Australian Honours degree curriculum.

For example, Manathunga et al argue that despite the significant diversity in the models of Honours in Australia and globally, they share (assumptively) a common goal of transforming

⁴⁵ Note that New Zealand also has what may be termed a ‘hybrid’ approach to Honours amongst some institutions, including in law, though it is not as stark. There is also diversity amongst UK institutions/jurisdictions. A more in-depth comparative study between New Zealand, select UK jurisdictions and Australia is being considered by the LEAD executive.

⁴⁶ See, eg, Horstmanshof and Boyd (n 4).

⁴⁷ Backer and Benckendorff (n 2) 51. See also Horstmanshof and Boyd (n 4).

⁴⁸ However, it is worth noting that a standard LLB is a four-year program and involves a degree of complexity that warrants a Level 8 classification in a way that other three-year Bachelor degrees do not.

⁴⁹ Margaret Kiley et al, *The Role of Honours in Contemporary Australian Higher Education* (Report, Australian Learning and Teaching Council, Department of Education, Employment and Workplace Relations (AU), May 2009).

⁵⁰ Barron and Zeegers (n 3) 42.

a student from ‘knowledge acquirer to knowledge creator’.⁵¹ This is consistent with the conventional emphasis in Australia on Honours being a preparation for higher research. However, as Manathunga et al note, in more professionally orientated programs there appears to be considerably more emphasis placed on developing advanced disciplinary knowledge of immediate benefit to the workplace at the expense of developing research skills and undertaking independent research.⁵² This is reflected in the diverse approaches to Honours in law identified in this study. The implications of this for the future may be profound. Manathunga et al argue:

The priority appears to be that graduates should be more immediately work-ready in the sense of being able to practice effectively rather than generating new knowledge in a practice area, which, it is conventionally assumed, comes after developing a good knowledge of practice. *This could eventually be a problem, however, as more and more employers outside the university sector expect honours graduates to be adept at knowledge production as well as acquisition.*⁵³

Thus, there is a concern that if students who graduate with Honours are not being exposed to methods of ‘knowledge production’ in a systematic manner, this could in fact have repercussions for their employability, and the standing of the institution amongst employers. It could also have an impact on their ability to complete higher research programs successfully.⁵⁴

Zeegers and Barron argue that the tension created by these two apparent purposes of honours — preparation for the workplace and/or preparation for higher research study ‘raises issues of pedagogy as well as policy’.⁵⁵ The majority of students are not concerned with undertaking academic or research focused careers, but are concerned with developing domain knowledge, and the skills to apply that.⁵⁶ What does this mean for course content and the assessment and recognition of excellence? If the assumption remains that Honours should have a primary aim to prepare students for further research programs, is it even achieving that under the current approaches? The regulatory implications are not to be ignored. As Barron and Zeegers argue, a key aim of the establishment of TEQSA was to ensure a measure of consistency between degree programs within Australia, ensuring that a student was qualified to undertake postgraduate education at any other institution, and that scholarships could also be awarded in

⁵¹ Catherine Manathunga et al, ‘From Knowledge Acquisition to Knowledge Production: Issues with Australia Honours Curricula’ (2012) 17(2) *Teaching in Higher Education* 139, 141.

⁵² Ibid 145.

⁵³ Ibid (emphasis added).

⁵⁴ It is worth clarifying that while it may be a conventional ‘expectation’ that Honours graduates are able to generate new knowledge and use existing knowledge in new ways, in reality or practice it is more of an ‘assumption’. See, eg, Barron and Zeegers (n 3) 41. Having said that, whether expectation or assumption, it is nonetheless problematic if students are not acquiring the expected or assumed skills, including from the perspective of actual program design. A counter argument may be that the PhD or Master’s process provides a filter, and students who are lacking requisite skills can be identified early and provided remedial support. However, this does nothing to allay the fact that the original program does not meet expectations, or assumptions, and that a higher degree should be about expanding skills, not acquiring skills already assumed to have been developed.

⁵⁵ Margaret Zeegers and Deirdre Barron, ‘Honours: A Taken-for-Granted Pathway to Research?’ (2009) 57(5) *Higher Education* 567, 573.

⁵⁶ Horstmanshof and Boyd (n 4) 14.

an objective and consistent manner.⁵⁷ The current fractured approach to Honours explicitly calls into question a core assumption for its place.

Nick James, Dean of Law at Bond University describes the defences advanced in favour of the traditional approach to Honours in Australian law schools as ‘not always persuasive’, namely that the need for an additional year of Honours study is negated by the fact that the study of law is, by nature, ‘commensurately more advanced’ than other disciplines.⁵⁸ If a key rationale for Honours is taken to be preparation for further research, then, arguably, as Manathunga et al allude to,⁵⁹ students who do not complete a period of structured curricula designed to foster skills in knowledge acquisition are not fit to proceed directly to higher research upon the award of Honours.

Furthermore, James argues that the current approach is creating a ‘signalling problem’ for the law school market, leading to confusion amongst students about how best to evaluate the differing approaches to Honours and the impact of those approaches on their futures.⁶⁰ This confusion and anxiety felt by students around navigating the landscape of Honours in law can be identified in multiple online forums, such as in a recent post on the Reddit sub-Reddit ‘r/auslaw’, where a potential undergraduate student began a thread asking, ‘Is an Honours Degree in Law Really Necessary?’ The responses were, perhaps predictably, diverse, with a general level of confusion somewhat palpable.⁶¹ The point is that students are concerned about making a decision that will not be detrimental to their future careers. Previous surveys conducted by LEAD in conjunction with the current review underpin the authors’ suggestion that, in the case of whether or not to pursue Honours, material currently available on a faculty website, for example, is not always helpful in providing clear guidance as to the best decision to be made. To support students to achieve academically and professionally, the 21st century law school needs to provide options that are evidence-based, transparent, and reflect the needs of the current national and global marketplace.

Critically, James suggests the current diverse approach identified in this study may be resulting in some apprehension by employers, who may no longer see Honours as a key ‘reliable indicator’ of the quality of a graduate, given that Honours awarded post-2013 may simply indicate the student achieved consistently well in their general academic studies, depending on the institution.⁶² Or it may indicate they completed a thesis and/or an additional year’s study. An issue then is how does a time-pressed employer or Human Resources department make sense of this for hiring purposes? James cites comments by Ian Humphries, a partner with major law firm Ashurst in its Brisbane office, that are illuminating as to the potential for a disconnect:

⁵⁷ Barron and Zeegers (n 3) 40.

⁵⁸ James (n 1).

⁵⁹ Manathunga et al (n 51).

⁶⁰ James (n 1).

⁶¹ See BunyipChaser, ‘Is an Honours Degree in Law Really Necessary?’ (Reddit, 21 October 2020 GST) <https://www.reddit.com/r/auslaw/comments/jf4sd1/is_an_honours_degree_in_law_really_necessary>.

⁶² James (n 1).

The differing approaches to Honours is an annoyance to us as we conduct our graduate selection process. We are aware of the differing approaches and try, as best we can, to take them into account when making selection decisions. As the approaches of faculties diverge, it becomes more difficult. ... The award of Honours was, and from certain institutions still is, a point of real distinction and something which stands for quality and effort; something which a person could and should take particular pride in. I think there is a real risk with the way some institutions are approaching it for Honours to be devalued. This would be a real shame.⁶³

One implication of the above comment is that, because Honours can potentially no longer be seen as an indicator of quality, as it lacks a collectively accepted definition of how the standard should be met and consistently applied in practice, the fallback position is to prioritise ‘certain institutions’ over others in the recruitment process (at least by the ‘top tier’ firms), regardless of Honours. This process traditionally advantages the Group of Eight law schools, whose graduates are over-represented in top tier firms, even when their own approaches may be contributing to the market confusion. On the other hand, an institution that makes it relatively easier for students to gain Honours may actually be: contributing to a situation where the program is, in comparison with ‘certain institutions’, ultimately seen to be of little worth amongst sectors of the marketplace; contributing to the devaluing of other Honours programs broadly, and; actually disadvantaging their students in the marketplace by removing any perceived competitive advantage the award of Honours has once it is compared with a program that is considered ‘high value’, and standing for ‘quality and effort’. Clearly, a deeper understanding of what a ‘high value’ Honours program looks like from the perspective of an employer is needed. This is critical.

Relatedly, Backer and Benckendorff argue that the ‘rationalisation’ of Honours programs broadly is encouraging questioning of their ‘perceived value’, not just in the domestic job market, but overseas as well, particularly when compared with Master’s programs (coursework or research).⁶⁴ They argue that globalisation and demands for a mobile workforce have provided an ‘impetus for harmonising qualifications between countries’. Given the reliance on the international student market, and the mobility of graduates, ensuring some consistency between jurisdictions nationally and internationally should be an important consideration in planning.⁶⁵

Broadly, resolving tensions around which model of Honours should best be pursued in Australian undergraduate education (not just law) has been described as a great ‘unsolved dilemma’.⁶⁶ Honours in law has been a topic of some consternation amongst law academics since at least 2011. There are overwhelmingly genuine commitments from law schools to provide the best opportunities for their students, and this includes in the ways to recognise excellence. Nevertheless, this current review demonstrates that a shared concept of what constitutes ‘best practice’ or ‘excellence’ in awarding Honours in law remains elusive.

⁶³ Ibid.

⁶⁴ Backer and Benckendorff (n 2) 51.

⁶⁵ Ibid.

⁶⁶ Horstmanshof and Boyd (n 4) 19.

Critically understanding the implications of this across multiple spheres requires further nuanced and sensitive research.

VI CONCLUSION

The authors' review of Australian university websites in July 2021 shows that the LLB with Honours is the most commonly provided law program in Australia (usually combined with another program). The review identifies a significant diversity in approaches to how Honours is assessed and awarded in Australian law schools, and these findings are consistent with the previous surveys of Honours practice in law schools undertaken by LEAD on behalf of its members.

Critically, there seems to be no commonly agreed definition of the purpose of Honours in law in the 21st century Australian law school. Is it to provide a pathway into higher research? Is it meant to distinguish excellence? Is it a tool by which students may be engaged deeper in the general learning process?⁶⁷ Is it primarily a means of differentiating institutions? Is it simply a means of further categorising students so they can be streamed efficiently into the workplace?

Similarly, there is no agreed model on how to best achieve the above outcomes, particularly as to how institutions can recognise excellence in such a way that value and quality is immediately identifiable by stakeholders. The inability to discern a common agreed meaning, model and associated value of the Honours degree in law, based on a critical consideration of evidence, encourages the suggestion that the current approach by some institutions may, through no direct fault of their own, be disadvantaging some students. This should give the legal academy pause.

The purpose of this brief article (and the conference presentation on which it was based) is to rekindle that conversation in light of a national and international legal education and legal practice landscape that has changed dramatically in the past two decades.⁶⁸

Previous surveys conducted by LEAD on this topic, and this current review, were in response to direct requests from LEAD members to support them when considering policy and practice. This demonstrates the interest of the topic amongst legal academics and law school administrators. The question remains: where to from here? There is an urgent need for research to seek clarification on the views and concerns about the role of Honours — and excellence indicators more broadly — of, for example, employers, admitting authorities, advisory bodies, peak bodies, students (domestic and international) and academics.

The vision LEAD has is to identify and articulate an evidence-based framework that presents contemporary insights into what 'best practice' in recognising excellence in law may look like, which law academics can use to inform assessment and policy decisions undertaken in the future, while having confidence to differentiate and innovate. This would in turn encourage

⁶⁷ See, eg, Wendy Larcombe, 'Can Assessment Policies Play a Role in Promoting Student Engagement in Law?' (2009) 17 *Journal of the Australasian Law Teachers Association* 197.

⁶⁸ Zeegers and Barron (n 55) 573.

greater certainty for student and employment markets. It is hoped this framework and other future research in this field will be recognised as reflecting a collective endeavour (and the authors' research going forward will seek to engage widely, as always).

Appendix 1: Australian universities offering LLB with Honours and/or JD

Australian university	LLB with Honours	JD
Australian Catholic University	Yes	No
Australian National University	Yes	Yes
Bond University	Yes	Yes
Central Queensland University	No	No
Charles Darwin University	Yes	No
Charles Sturt University	No	No
Curtin University	Yes	No
Deakin University	Yes	Yes
Edith Cowan University	Yes	No
Flinders University	Yes	Yes
Griffith University	Yes	Yes
James Cook University	Yes	No
La Trobe University	Yes	Yes
Macquarie University	Yes	Yes
Monash University	Yes	Yes
Murdoch University	Yes	No
Queensland University of Technology	Yes	No
RMIT University	No	Yes
Southern Cross University	Yes	Yes
Swinburne University of Technology	Yes	No
University of Adelaide	Yes	No
University of Canberra	Yes	Yes
University of Melbourne	No	Yes
University of New England	Yes	No
University of Newcastle	Yes	Yes
University of New South Wales	Yes	Yes
University of Notre Dame	Yes	No
University of Queensland	Yes	No
University of South Australia	Yes	No
University of Southern Queensland	Yes	Yes
University of the Sunshine Coast	Yes	No
University of Sydney	Yes	Yes
University of Tasmania	Yes	No
University of Technology, Sydney	Yes	Yes
University of Western Australia	No	Yes
University of Wollongong	Yes	No
Victoria University, Australia	Yes	No
Western Sydney University	Yes	Yes