



## Position Paper: Juris Doctor at the University of Sydney

Prepared by Rashmi Kumar, SUPRA Co-President, 23<sup>rd</sup> February, 2010

The Juris Doctor (JD) is a degree program which the Faculty of Law (**faculty**) has proposed to replace its current graduate-entry LLB program. The JD is essentially an identical degree program to the graduate LLB program, with some cosmetic changes. SUPRA and the SRC have a number of concerns about this change, including the inequitable nature of the proposed program, and the compromise of academic standards that would be required to offer it. We also do not believe that all the faculty's claims accurately reflect the realities of the JD's position within the legal education system.

### Equity and public interest

The most significant change is that the JD program is classified as postgraduate, whereas the graduate-entry LLB was classified as undergraduate. In 2008, the Federal Government abolished domestic undergraduate full-fee (DUFF) places. **The re-badging of the faculty's graduate-entry law degree as a JD is a transparent attempt to evade this ban by including 25 domestic fee-paying places in what is essentially an undergraduate degree**, and the faculty admits as much in its amended course proposal dated 2 February:

*"[T]he JD provides a financial replacement for the loss of income from the LLB following the change in government higher education policy."*<sup>1</sup>

This statement should be considered in the context of earlier statements made to *The Australian* newspaper by the faculty Dean, Professor Gillian Triggs, in November 2008 about Australian universities offering JDs. Professor Triggs was quoted as saying:

*"What one could do is to take our graduate LLB and rebadge it as a JD, and bingo you've got a capacity to charge fees.*

*"We're trying to look at a new way of doing a JD, if we do go down that track."*<sup>2</sup>

Unfortunately, despite this stated intention, the faculty's proposed JD does not appear to be much more than a revenue-raising strategy.

<sup>1</sup> Page 5, New and Amended Course Proposal Template, Juris Doctor, updated 2 February 2010

<sup>2</sup> Lane, Bernard (2008) 'New juris doctor to dodge domestic full-fee ban' in *The Australian* newspaper, 12 November 2008. Available at [www.theaustralian.com.au/higher-education/new-juris-doctor-to-dodge-fee-ban/story-e6frgqjx-1111118007310](http://www.theaustralian.com.au/higher-education/new-juris-doctor-to-dodge-fee-ban/story-e6frgqjx-1111118007310) Last accessed 18 February 2010

Federal Education Minister Julia Gillard stated in November 2008 that the trend towards postgraduate Juris Doctorates was an attempt to evade the Government's ban on DUFF places. Other faculty deans around the country have intimated that this is an impending trend in professional qualifications. This is the main issue which the University must grapple with – does it want to follow in the footsteps of other universities in moving its professional degree programs to less-accessible postgraduate-level fee brackets in order to cover budget shortfalls?

**The ban on DUFF places is not merely an arbitrary restriction on the autonomy of universities. It is a *legitimate public-interest parameter* that distinguishes between levels of education considered to be in the public interest (undergraduate), and that determined to be in the interest of private individuals. As such, undergraduate education has a series of equity measures associated with it, to make it more accessible to socially disadvantaged groups, while these measures are not available to postgraduates.**

For instance, the Government's new scholarships, proposed to replace the now-disbanded Commonwealth Scholarships Scheme, will be available only to undergraduate students. The faculty has stated that it will pursue availability of University scholarships that were available to graduate LLB students. However, given that JD students will be undertaking a postgraduate degree, there is no chance of undergraduate scholarships offered by the government being available to JD students. The handful of scholarships listed by the faculty in its submission to Graduate Studies Committee dated 9 February 2010 pale in comparison to what graduate LLB students currently have access to.

JD students would also lose access to the Cadigal and Broadway schemes for special entry for disadvantaged students into University of Sydney courses, as these schemes are only available for undergraduate courses.

This is the major reason that SUPRA and the SRC are opposed to the JD proposal. The degree program, by virtue of its classification, offers far less to students than the graduate-entry LLB.

Issues relating to other University policies and regulations boil down to this critical question: **does the University believe it is acceptable to make a degree program that has remained at undergraduate level for over a century into a less accessible postgraduate program with the barrier of high fees? Does the University believe it is acceptable to restrict the accessibility of law qualifications for students from low-SES backgrounds?**

Students have not been adequately consulted about the likely effects of these changes on their welfare, both academic and professional. As the introduction of the JD represents a significant shift in the delivery of professional education, setting a potential precedent for other entry-level professional qualifications, further consultation is needed before a change of this magnitude can be implemented.

## Trends in legal education

The Law School has claimed that postgraduate-level JDs are becoming an international standard. This is not strictly true. The USA is the only country in the world where LLBs are not recognised for the purpose of legal practice. Worldwide, LLBs receive the same level of recognition as JDs. Likewise, each jurisdiction requires that legal practitioners sit local accreditation exams, regardless of the country of origin of the practitioner or the degree. In Commonwealth countries, LLBs remain the standard legal qualification.

In Australia, the “trend” towards JDs has come about only since the 2008 ban on DUFF places. That is, it has **always** been a transparent endeavour to evade the abolition of DUFFs. The faculty’s claim that shifts to postgraduate-entry law programs reflects internationalisation in graduate legal education is not strictly true.

The faculty claims that demand for the graduate LLB has diminished since UNSW introduced a JD. However, University of Sydney courses have been losing demand to UNSW courses more generally, while in the general higher education sector, demand for graduate-entry law is increasing. The faculty’s market research reflects these broader trends – there is little to suggest that students who would otherwise have applied for graduate-entry law at Sydney have chosen instead to apply at UNSW. The faculty itself admits that demand for the graduate LLB remains strong, and they have little difficulty filling places.

Nevertheless, the qualitative evidence of demand for JDs may be considered a case of ‘supply creating its own demand’. Where other universities have appeared to update their offerings, it has created a perception amongst prospective students that JDs are substantially different from LLBs (despite the fact that this is not the case in reality).

One possible solution to this trend in legal education in Australia is for the Juris Doctor to be a graduate-entry, rather than postgraduate, program. That is, for it to be classified as undergraduate.

In response to this suggestion, the faculty has only ever raised the prohibition on charging full-fees to undergraduate students as the barrier to implementing the JD as a graduate-entry program. As such, **there is no academic merit to the proposal that the JD be classified as a postgraduate degree**. The classification is being proposed because the faculty has a much-publicised budget deficit of \$2 million, the amount which the proposed student load and fees are designed to raise in fee revenues.

We are disappointed that the faculty has chosen to adopt a strategy where students make up the shortfall in revenue, rather than act with other faculties and the University to lobby the Federal Government to increase funding for higher education. We consider that this latter strategy is more consistent with the role of the Academic Board to “*maintain the highest standards in teaching, scholarship and research*”<sup>3</sup>.

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<sup>3</sup> Part 2 – Functions and membership of the Academic Board, clause 4.1.1 – General functions, *University of Sydney (Academic Governance) Rule 2003 (as amended)*

## Academic standards

There are significant implications for academic standards should domestic full-fee (DFF) places be introduced alongside Commonwealth-Supported Places (CSPs). **Full-fee places alongside CSPs reduces the academic standards for entry into the program.** The faculty is proposing that there are 2 streams of intake for CSPs and full-fee places, meaning that academic results for entry into a full-fee place would be lower than that for a CSP. Since students self-select for admission into DFF places, only those who have prospects for repaying an \$85,000 loan would apply for those places. This would inevitably reduce admission standards into the JD, possibly making it less academically prestigious than envisioned.

Furthermore, the degree program itself compromises the integrity of the University's postgraduate degree programs by including material that is identical to undergraduate course content in an identical postgraduate degree program. The faculty proposes to teach up to two-thirds of the JD program alongside the undergraduate LLB program.

The faculty has not been able to answer the question 'what makes the JD a postgraduate degree?' with any response other than the spurious identification of the students in the program as already having a degree. However, this is no different from the graduate-entry LLB program, which is designated as an undergraduate degree. The faculty has admitted that the prospective students and outcomes for the JD would be no different than those in the graduate LLB program, and that most of these students enter directly from a Pass degree. The faculty has also made contradictory statements about the qualifications of undergraduate Combined Law students in 4<sup>th</sup> and 5<sup>th</sup> year, nominating them as undergraduates or postgraduate-equivalent as it suits the interests of the faculty. **It is clear from these contradictory statements that the faculty wishes to apply classifications as it suits their financial interests, rather than in the interests of maintaining high academic standards. This will have the unavoidable consequence of compromising academic standards at the University.**

Not only does this violate the University's Parallel Teaching Policy, but it also jeopardises the academic integrity and prestige of the University's other postgraduate offerings. Where undergraduate material is being taught to postgraduate students, this cannot help but cast doubt on the high academic standards of other postgraduate programs at the University.

The JD also appears to offer fewer opportunities to conduct research than the graduate-entry LLB. Although currently, Honours in Law are awarded based on academic achievement rather than an additional Honours year, the faculty has suggested that this may change in the near future and that all undergraduate Law students will have the opportunity to undertake an extra year of study and a research project. That this opportunity would have been available to graduate-entry LLB students and not JD students makes the JD a less academically valuable degree than the graduate LLB. Given that students are only eligible for APAs with a degree with First Class Honours or equivalent, the JD offers fewer opportunities for higher research than the graduate LLB.

**Thus, in terms of academic standards, equity, research pathways, and international scope, the JD does not offer distinctive academic possibilities, and has far less to offer than the current graduate-entry LLB.**

We will be voting against the faculty's JD proposal at the 24 February meeting of the Academic Board.

We strongly urge other Board members to vote against the proposal also unless, the faculty make the following changes to mitigate the problems with the proposal as it stands as a bare minimum:

- **Either** classify the JD as an undergraduate program; **OR**
- Retain the graduate-entry LLB, alongside a postgraduate JD, the system offered at UTS (while this would not address all issues relating to academic standards, it would address the equity concerns); and
- Ensure that:
  - adequate consultation with students, including Masters by coursework students and graduate LLB students, occurs; **AND**
  - adequate scholarship support is offered to students, equivalent to that offered to graduate-entry LLB students; **AND**
  - students have opportunities to undertake research which meet qualification requirements for APA applications; **AND**
  - no parallel teaching occurs of undergraduate Combined Law students with JD students.

Sincerely,



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