

# W A L T R

THE WESTERN AUSTRALIAN LAW TEACHERS' REVIEW



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**Volume Two**

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# CONTENTS

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## PRELIMINARY

Editors' Welcome and Foreword  
**WALTR Editorial Team**

page ii

## ARTICLES

After Law School: A Critical Evaluation of Practical Legal Training in The Australian Context  
**Jim McMillan and Rob Lilley**

page 1

Teaching Sensitive Content Safely: How to Approach Sexual Violence in Legal Education  
**Aidan Ricciardo**

page 11

Using Simulated Workplace Learning and Roleplaying in Teaching Business Law in Practice  
**Jani McCutcheon and Camilla Andersen**

page 23

What Makes a Great HDR Supervisor in Law? Perceptions from HDR Students & Their Supervisors  
**Jade Lindley, Natalie Brown and Liam Quinn**

page 37

Teaching Law in a Time of Crises: Learning Opportunities Arising from Crises  
**Chinelle Duvenhage and Joan Squelch**

page 57

## TEACHING NOTES

Incorporating Visual Learning Aids in Teaching Law  
**Natalie Brown**

page 67

Teaching About Consent: Reflections from an Undergraduate Law Unit  
**Amy Thomasson**

page 73





# Welcome to WALTR

Volume  
Two





# Editors' Foreword

We are thrilled to introduce you to this second volume of WALTR — the *Western Australian Law Teachers' Review*. Since the successful publication of the first volume in February 2023, we have made some exciting changes to WALTR.

In particular, we have introduced a more formalised process for double-anonymous peer review of articles. We extend our thanks to all who made this volume possible by voluntarily reviewing submissions.

In addition to longer-form scholarly articles, WALTR now has a new contribution category — 'teaching notes'. Teaching notes provide authors with opportunities to publish writing which is not suitable as a scholarly article, but is nonetheless of interest to other law teachers. A wide variety of writing may fall into this category, including short reflections on teaching and assessment experiences, contextualised lesson plans for other law teachers (including those teaching political and legal studies in secondary schools), and opinion pieces relating to teaching and learning in law.

We have also assembled an Editorial Advisory Committee comprising local, national and international law academics, as well as current and former Western Australian judges and tribunal members. The Committee will commence in their advisory roles in August 2024.

WALTR continues to publish valuable, engaging articles on topics relating to legal education. Ultimately seven pieces from eleven authors are published in this second volume. We thank everybody who has contributed to this volume for its successful publication.

Aidan Ricciardo  
**Editor in Chief**

Christina Do  
Adjunct A/Prof Kate Offer  
A/Prof Anna Bunn  
Julie Falck  
**Editors**





# ARTICLES

Articles are subject to a formal double-anonymous peer review process. If a member of the editorial board submits an article manuscript to WALTR, the entire review process is managed by another editor, with the author having no involvement in the process.

# AFTER LAW SCHOOL

## A CRITICAL EVALUATION OF PRACTICAL LEGAL TRAINING IN THE AUSTRALIAN CONTEXT

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JIM McMILLAN AND ROB LILLEY \*

### I INTRODUCTION

In every jurisdiction in Australia, Practical Legal Training ('PLT') represents the final hurdle for most, if not all, aspiring legal practitioners.<sup>1</sup> PLT emerged, in its modern form in Australia, in the late 20th Century as a means to:

...overcome the inadequacies of articles training by providing training in the essential skills and major areas of practice so as to ensure that a person entering the legal profession can function at a standard of competency which can reasonably be expected of a first-year practitioner.<sup>2</sup>

Based on the authors' experience of PLT at different institutions, both as former students and as current teachers, and considering recent research, it is doubtful that the current form of PLT in Australia achieves this goal.<sup>3</sup>

This article examines the current Australian approach to PLT in the broader context of experience in other jurisdictions, especially in England and Wales, and in New Zealand ('NZ'). It considers whether the current PLT approach is 'fit for purpose' in equipping new law graduates with the necessary skills to achieve success as entry-level legal practitioners. It concludes with some suggestions about changes that could be made to the PLT course structure, to better meet the needs of students and of the legal profession more generally. It builds on previous research about alternative PLT models that could be adopted.<sup>4</sup>

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<sup>1</sup> Rob Lilley and Christina Do, 'What Should an Entry-Level Lawyer Look Like In A Post-COVID World?' (2022) 1 *Western Australian Law Teachers' Review* 19.

<sup>2</sup> Frank Langle, 'Preparing for the Practice of the Law: Post-Graduate Pre-Admission Training in Australia' (1985) 3(2) *Journal of Professional Legal Education* 81, 82.

<sup>3</sup> Lilley and Do (n 1) 24; Francina Cantatore, Tanya Atwill and Rachael Field, *The Job Readiness of Law Graduates and Entry Level Solicitors in Private Practice* (Final Report, 1 December 2022) 73–8.

<sup>4</sup> Lilley and Do (n 1).



## II PRACTICAL LEGAL TRAINING IN AUSTRALIA: THE VIEW FROM THE WEST

Western Australia ('WA') was late in adopting PLT as a pathway to admission for new legal practitioners. Until the end of 2010, aspiring practitioners completed an 'Articles Training Program' conducted by the Legal Practice Board of Western Australia ('LPBWA'), in conjunction with a period of supervised work as an articled clerk.<sup>5</sup> In contrast, other states such as New South Wales ('NSW') and South Australia ('SA') commenced PLT courses in the 1970s which progressively became the sole pathway to practice.<sup>6</sup> Numerous PLT courses are now available in Australia, delivered by both university and non-university providers.

All PLT providers in Australia comply with the core curriculum requirements set by the Law Admissions Consultative Committee ('LACC') in its *Practical Legal Training Competency Standards for Entry-Level Lawyers* ('LACC Standards').<sup>7</sup> While the LPBWA voluntarily adopted the LACC Standards some time ago, they now have legislative effect through the adoption of the *Legal Profession Uniform Law* and its subsidiary legislation by WA in 2022. The LACC Standards are incorporated into Schedule 2 of the *Legal Profession Uniform Admission Rules 2015* ('Admission Rules').<sup>8</sup>

Under the LACC Standards, PLT students must complete training in 4 skills areas (Lawyers Skills, Problem Solving, Work Management and Business Skills, and Trust and Office Accounting) as well in three compulsory practice areas (Civil Litigation Practice, Commercial and Corporate Practice, and Property Law Practice).<sup>9</sup> Students must also complete two other units from a number of other optional practice areas (such as Family Law Practice, Criminal Law Practice and Administrative Law Practice) and a period of legal workplace experience ('LWE') through a placement, most often, in a legal practice.<sup>10</sup>

The LACC Standards are quite specific in their requirements, extending to one or two pages of criteria for most units. An illustrative example is the mandatory Commercial and Corporate Practice unit, which specifies that an entry-level lawyer should be able to conduct commercial transactions such as the sale and purchase of a small business (and identify any risks associated with such a transaction), advise on and set up business structures, advise on commercial finance arrangements, and 'assess the type of advice needed to assess the revenue implications of standard commercial transactions.' For each of those learning outcomes, there are several so called 'performance criteria' that comprise the assessable components of the course.<sup>11</sup>

<sup>5</sup> Kelli MacMillan, 'The End of an Era – Western Australia Farewells ATP' (2010) 37(8) *Brief* 35.

<sup>6</sup> Lilley and Do (n 1) 21.

<sup>7</sup> Law Admissions Consultative Committee ('LACC'), *Practical Legal Training Competency Standards for Entry-Level Lawyers* (Standards, October 2017) ('LACC Standards').

<sup>8</sup> 'Practical Legal Training Requirements', *Legal Practice Board of Western Australia* (Web Page) <<https://www.lpbwa.org.au/Becoming-A-Lawyer/Practical-Legal-Training-Requirements>>.

<sup>9</sup> *Legal Profession Uniform Admission Rules 2015* (WA) sch 2 ('Admission Rules').

<sup>10</sup> *Ibid*, sch 2, part 2, cl 3.

<sup>11</sup> *Admission Rules* (n 9) sch 2, part 4, cl 14.

The 'admitting authority'<sup>12</sup> of each State and Territory retains its own responsibility for accrediting PLT courses, subject to the *Admission Rules*.<sup>13</sup> In WA, courses approved for new practitioners seeking admission include those offered by the College of Law (Sydney-based) and the Leo Cussen Institute (Melbourne-based), which dominate the national market for PLT and, consequently, tend to be preferred as the PLT providers for the larger national and international law firms. In the case of the College of Law, it also provides PLT courses in New Zealand (since about 2004). The Piddington Society Inc and Curtin University also provide PLT courses which are only accredited for admission in WA.<sup>14</sup>

Nationally, there are numerous other PLT courses which tend to be locally focused, and which are mostly provided by universities. In some cases, courses are run in conjunction with a local law society such as in South Australia, where the University of Adelaide and the Law Society of South Australia collaborate in delivering a PLT course.<sup>15</sup> The University of Newcastle offers a unique PLT model, which is integrated with the last 2 years of a student's undergraduate law studies, and in which the legal workplace experience requirement is managed through the University of Newcastle Legal Centre (a community legal centre operated by the law school).<sup>16</sup>

Despite the attempt to create a nationally consistent approach to PLT, there remain some parochial differences in between jurisdictions as to how graduates may qualify for admission.<sup>17</sup> There are also differences in the way in which PLT courses are accredited. In WA, for instance, PLT course accreditation is governed by the LPBWA, which has its own internal criteria.<sup>18</sup> Thus, accreditation requirements do vary between different jurisdictions (and even within jurisdictions), most notably with respect to completion of a 'legal workplace experience' ('LWE') component. Under the *LACC Standards*, the minimum LWE requirement is 15 days, which has been adopted as the requirement in SA.<sup>19</sup> In WA and NSW,<sup>20</sup> a more onerous LWE requirement of 75 days is imposed in most cases. There are, however, variations to the LWE component, even within a single jurisdiction. For instance, in WA, if the student undertakes their LWE in the John Curtin Law Clinic (part of Curtin Law School), the requirement is reduced from 75 to 40 days. Furthermore, in the Australian Capital Territory, Victoria and WA, the College of Law offers additional courses of study (for an

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<sup>12</sup> Defined in the *LACC Standards* (n 7) as 'the body responsible in a jurisdiction for approving the content of...PLT courses...' [2.1]. In WA, the admitting authority is the Legal Practice Board of WA ('LPBWA') pursuant to the *Legal Profession Uniform Law Application Act 2022* (WA) s 20.

<sup>13</sup> *Legal Profession Uniform Law* (WA) s 29.

<sup>14</sup> 'Practical Legal Training Requirements', *Legal Practice Board of Western Australia* (Web Page) <<https://www.lpbwa.org.au/Becoming-A-Lawyer/Practical-Legal-Training-Requirements>>.

<sup>15</sup> 'Graduate Diploma in Legal Practice (GDLP)', *Law Society of South Australia* (Web Page) <<https://www.lawsocietysa.asn.au/gdlp>>.

<sup>16</sup> 'Law in Practice', *University of Newcastle* (Web Page) <<https://www.newcastle.edu.au/school/law-and-justice/experience/law-in-practice>>.

<sup>17</sup> *LACC Standards* (n 7) 1.

<sup>18</sup> See, eg, LPBWA, *Criteria for Approval of Practical Legal Training Course (PLT)* (1 July 2009).

<sup>19</sup> 'Placement and CPD', *Law Society of South Australia* (Web Page) <<https://www.lawsocietysa.asn.au/gdlp>>.

<sup>20</sup> 'Practical Legal Training', *Law Society of New South Wales* (Web Page) <<https://www.lawsociety.com.au/practical-legal-training>>.

additional fee) whereby students can reduce or completely bypass the requirement to undertake a period of LWE.<sup>21</sup>

### III THE EXPERIENCE IN ENGLAND AND WALES

It is noteworthy that over the past decade, the legal profession in England and Wales has undertaken a major review (the Legal Education and Training Review — 'LETR') of its system of legal education and training, resulting in the abandonment of the PLT approach adopted in the 1980s and 1990s (the Legal Practice Course — 'LPC'), and the introduction of a new centralised examination in its place (for solicitors, this is the Solicitors Qualifying Examination — 'SQE').<sup>22</sup> Some of the criticisms noted in the LETR were that the generalist curriculum of the LPC lacked utility in an increasingly specialised profession, the inconsistency of standards between different LPC providers, the lack of flexibility in course delivery, and the high costs of the LPC.<sup>23</sup> These criticisms resonate in the context of the Australian approach to PLT.

In England and Wales, the Solicitors Regulatory Authority ('SRA') describes the new pathway to legal practice for a new solicitor as follows:

- have a degree in any subject (or equivalent qualification or work experience);
- pass both SQE assessments - SQE1 focuses on functioning legal knowledge and SQE2 on practical legal skills and knowledge;
- have two years' Qualifying Work Experience; and
- meet the SRA's character and suitability requirements.<sup>24</sup>

As can be seen, this involves a substantial departure from the Australian pathway to legal practice for a new practitioner, with the SRA primarily focused on the examination requirement and the completion of two years of legal workplace experience, rather than whether the practitioner has completed a degree in law and a formal practical legal training course (as is the case in Australia).

The website of the Solicitors Regulation Authority indicates that the legal skills assessment (Solicitors Qualification Exam Part 2 — 'SQE2') involves rigorous testing of various skills over a number of days, covering multiple practice areas.<sup>25</sup> Some assessments are oral, whilst others involve the completion of written tasks. The oral assessments are conducted over two half days and cover a mix of advocacy (civil and criminal) as well as interviewing and note

<sup>21</sup> 'Work Experience', *College of Law* (Web Page) <<https://www.collaw.edu.au/learn-with-us/our-programs/practical-legal-training-programs/work-experience>>.

<sup>22</sup> Jack Burke and Hugh Zillmann, 'Creating a Gold Standard for Practical Legal Training in Common Law Countries' (2018) 5(1) *Journal of International and Comparative Law* 9.

<sup>23</sup> *Ibid* 12.

<sup>24</sup> 'What is the SQE?', *Solicitors Regulation Authority* (Web Page) <<https://sqa.sra.org.uk/about-sqa/what-is-the-sqa>>.

<sup>25</sup> 'SQE2 assessment specification', *Solicitors Regulation Authority* (Web Page) <<https://sqa.sra.org.uk/exam-arrangements/assessment-information/sqe2-assessment-specification>>.



taking tasks. Written assessments (conducted over an additional three half days) cover case and matter analysis, legal research, legal writing and legal drafting. Testing covers multiple areas of law: criminal, contract, tort, land law, wills and estates, and business organisations. Questions may also require some knowledge of taxation, and some questions will also raise ethical and professional conduct issues, which students are expected to identify and address.

## **IV NEW ZEALAND: THE PROFESSIONAL LEGAL STUDIES COURSE**

In NZ, law graduates who intend to practice law must first complete the Professional Legal Studies course (colloquially known as 'Profs', which is how it will be referred to in this article). Profs is a 13-week full-time (or equivalent) course governed by the NZ Council of Legal Education ('NZCLE'), which is a statutory body established in 1930 and continued under the *Lawyers and Conveyancers Act 2006* (NZ).<sup>26</sup>

The Profs course is currently offered by the Institute of Professional Legal Studies (which was created under legislation as a wholly owned subsidiary of the NZCLE) and the NZ branch of the College of Law. As with many Australian PLT providers, flexible options are available for students who require a part-time study load or need to attend workshops online or outside of normal business hours.<sup>27</sup>

The Profs course focuses on practical skills that are relevant to legal practice but are not typically taught within an undergraduate law degree. The course content is prescribed by regulations,<sup>28</sup> and includes professional conduct and the following skills:

1. Interviewing;
2. Advising;
3. Fact investigation and analysis;
4. Writing;
5. Drafting;
6. Negotiation;
7. Mediation;
8. Advocacy;
9. Problem-solving;

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<sup>26</sup> *Lawyers and Conveyancers Act 2006* (NZ) Part 8. See also 'Background', *New Zealand Council of Legal Education* (Web Page) <<https://nzcle.org.nz/background.html>>.

<sup>27</sup> See, eg, 'Profs – Workshop Schedule', *College of Law* (Web Page) <<https://www.collaw.ac.nz/learnwithus/our-programmes/professional-legal-studies-course/workshop-schedule>>.

<sup>28</sup> *Professional Legal Studies Course and Assessment Standards Regulations 2002* (NZ).

10. Practical legal research and analysis; and

11. Office and personal management.<sup>29</sup>

The core skills must be taught contextually against the background of a simulated legal matter or transaction that might be routinely encountered by entry-level lawyers.<sup>30</sup> This is quite different to the Australian approach, which is organised primarily by area of law as outlined in Part II of this article. The benefit of the NZ approach is that each of the required skills is only required to be taught and assessed once, whereas under the Australian model, students tend to be assessed several times on the same skills (especially writing and drafting) within different practice areas. For instance, 'advising' (in some form or another) appears as an assessable performance criterion eight times across the three compulsory practice areas alone, and 19 times total across the *LACC Standards*. In our experience, this results in pointless overassessment of certain skills across several practice areas at the expense of others.

That said, however, the NZ branch of the College of Law does organise its course along practice area lines, offering six compulsory subjects (being Property Practice, Commercial Practice, Civil Litigation Practice, Interviewing and Advising, Negotiation and Mediation, and Advocacy) and one elective (from Family Law, Criminal Law, In-house Practice, and Corporate Practice).<sup>31</sup> The reason for this may have simply come down to ease of conversion from the College of Law's Australian PLT course, which is structured predominantly around practice areas rather than skills.

Another major difference between the NZ and Australian approaches is that, in NZ, there is no requirement for graduates to undertake a period of LWE prior to admission. This will be further discussed in Parts VI and VII of this article.

## V THE MOVEMENT FOR CHANGE

It is understood that the Council of Australian Law Deans has initiated a reconsideration of the adequacy of legal education in Australia (including both the Priestley 11 requirements and the *LACC Standards*) in preparing law graduates for professional practice. There is also a recently published study of legal practitioners' attitudes which indicates widespread dissatisfaction with the level of 'work-readiness' of newly admitted legal practitioners in Queensland.<sup>32</sup> This raises important questions about the pathway of law students to legal practice and especially expectations about the skills and knowledge that entry-level lawyers should possess.

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<sup>29</sup> Ibid r 2.1.

<sup>30</sup> Ibid r 2.2.

<sup>31</sup> College of Law NZ, *Profs: Course Guide* (Brochure, 7 August 2023) 5, available for download from <<https://www.collaw.ac.nz/learnwithus/our-programmes/professional-legal-studies-course/plsc-handbook>>.

<sup>32</sup> Cantatore, Atwill and Field (n 3).

It should be noted that the *LACC Standards* were based on principles developed in the 1990s, they were first released in 2002, and they were later revised in 2015 and 2017.<sup>33</sup> Given the vast changes to the legal profession in the past 30 years, it is questionable whether competency standards first developed so long ago continue to meet the needs of the profession. Taking the compulsory Property Law Practice unit as an example, every newly admitted legal practitioner in Australia must learn how to complete a real property conveyance. Given the diversity of career paths now available to legal practitioners, does such a requirement remain reasonable or relevant in 2024? It may have been the case that in the 1990s, when the *LACC Standards* were under development, conveyancing formed an important component of legal practice in many parts of Australia, so it was important that new practitioners learned conveyancing skills. It is unlikely that this remains the case today, given the rise of licenced conveyancers as a distinct industry (whilst acknowledging, of course, that some legal practitioners do continue to provide conveyancing services). This leads into a broader consideration of how a PLT course should be designed to meet the needs of the profession in the 2020s and beyond.

## VI CRITICISMS OF PRACTICAL LEGAL TRAINING

A key criticism of the *LACC Standards* is that they focus on specific practice areas, rather than on developing broader skills and knowledge which are relevant to new practitioners in multiple practice areas. Again, to refer to the conveyancing example, consider the relevance of this skill to a new practitioner embarking on a career as a prosecutor with the Director of Public Prosecutions. Would it be better if, instead, the new practitioner's practical legal training incorporated training on matters of more general relevance such as the use of artificial intelligence, or the role of experts in legal practice (such as forensic scientists, psychologists, and accountants), or even the significance of morality in legal practice? There is no requirement in the *LACC Standards* for any of these matters to be dealt with in a PLT course, although PLT providers have some flexibility to provide additional content to students should they choose to do so. It is noteworthy also that Criminal Law Practice is not one of the compulsory practice areas. It is not clear why it should be compulsory for an Australian PLT student in 2024 to learn how to complete a real property conveyance, but not to learn how to make a simple plea in mitigation in a minor criminal matter before a magistrate.

More generally, what is the value to a new practitioner through being forced to develop competencies in practice areas where they will never work in the future? It is at least arguable that these requirements degrade the relevance of PLT training both to the new practitioner and to the profession generally. Also, bear in mind that the new practitioner (or in some cases, their employer) bears the cost of an expensive PLT course (PLT course fees in

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<sup>33</sup> LACC, *Competency Standards* (n 7) 1.



Australia typically range between \$9,000–\$13,000 for domestic fee-paying students)<sup>34</sup> which in many cases delivers them training about practice areas for which they will have no future need. Would it be preferable for PLT training to instead focus on teaching a new practitioner skills and knowledge in areas that have greater general relevance? Could this lead to a shorter and lower cost course that allows a new practitioner to be better equipped with skills and knowledge to meet the demands of modern legal practice? These are legitimate issues that need to be considered.

Another criticism may be levelled at the requirement for legal workplace experience. Not all law firms are alike. So much is obvious. This inevitably means that the experience of law graduates undertaking their LWE differs, perhaps vastly, from placement to placement. This lack of a consistent training experience was, in fact, one of the criticisms of the articles training program that led to the implementation and adoption of PLT half a century ago.<sup>35</sup>

The LWE requirement also potentially reinforces inequity and nepotism within the profession: students whose parents or close relatives are involved in the profession are likely to find it much easier to find a LWE placement than a person without those connections. Our teaching experience suggests that some students find it very difficult to find LWE placements, especially mature age students looking to transition into a legal career but are working full time in a non-legal role, or international or immigrant students who don't have an established local network or work history. It is also not a stretch to imagine a situation where a disabled graduate is 'overlooked' for a LWE placement due to some perceived inconvenience involved with making any necessary workplace adjustments to facilitate a fifteen week work placement.<sup>36</sup>

In New Zealand, as explored above, lawyers are admitted to practice without having to ever set foot in a law firm. A change to introduce mandatory LWE as a precondition to admission in New Zealand was considered and roundly rejected in 2013.<sup>37</sup> Of course, there is nothing to stop law students and graduates from obtaining a job as a paralegal or clerk in a law firm prior to admission, but it is clearly not a necessity — especially when one considers the requirement of a period of supervised legal practice (usually two years full-time) before a solicitor is entitled to practice on their own account.<sup>38</sup>

## VII OBSERVATIONS AND CONCLUSION

Although the implementation of change with respect to PLT in Australia is likely to take a number of years, the commencement of a review is welcome. There are clear indications that both legal academics involved in the delivery of PLT courses and the profession more

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<sup>34</sup> By contrast, the cost of the Profs course in New Zealand for a domestic student is about half that price: see, eg, 'Profs – Professional Legal Studies', *College of Law* (Web Page) <<https://www.collaw.ac.nz/>>.

<sup>35</sup> Langley (n 2) 81–2.

<sup>36</sup> See generally Abbey Dalton, Ella Alexander and Natalie Wade, 'No More Hiding in Plain Sight: The Need for a More Inclusive Legal Profession' (2022) 171 *Precedent* 4.

<sup>37</sup> Sir Andrew Tipping, *Review of the Professional Legal Studies Course* (Report, August 2013) 1–2, 9

<sup>38</sup> *Legal Profession Uniform Law* (WA) s 49.

generally are dissatisfied with the current PLT approach, especially with respect to the core competencies. Some practitioners have a bleak view, evidenced by a comment made by a senior practitioner to one of the authors recently to the effect that 'PLT is a waste of time — we all know it takes at least two years before a new lawyer is any good.' While this may be to overstate the issue somewhat, legal educators and LACC need to pay heed to these sentiments. If the current PLT model is not meeting the needs of the profession, then change becomes inevitable.

From the brief analysis in this article, it should be obvious that the *LACC Standards* are in urgent need of reform to cater to modern legal practice. With the changing nature of legal work, increased specialisation, and changes in the way in which legal practice is organised, there is no longer any such thing as a 'typical' entry-level lawyer (if there ever was). In such an environment, subject-oriented practical legal training seems pointless, illustrated by the example highlighted in this article that all new lawyers in Australia must still learn how to complete a real property conveyance.

If it is accepted that the purpose of PLT is to provide a bridge between a student's academic legal study of the law in an LLB or JD degree and the commencement of their work as a new legal practitioner, then PLT must inevitably shift towards skills-based training, along the lines adopted in New Zealand, especially if this could result in courses of shorter duration and lower cost to students. Achieving consistency in the approach to the LWE requirement for different Australian jurisdictions should also be considered. Perhaps even adopting the NZ model, which involves no such requirement, may prove to be a better and more equitable approach?

PLT should be focused on filling the 'skills gap' between what is studied in a law degree and the requirements of legal practice. Inevitably, this should be oriented towards skills such as legal drafting, advocacy, negotiation, interviews, and mediation. Some focus on ethics and professional responsibility must also be part of PLT. To this mix, perhaps, could be added introductory training in some specialist areas of non-legal knowledge that a legal practitioner may encounter in the future. The use of technology and the rise of artificial intelligence are obvious areas for focus, but consideration could be extended to other fields of knowledge, such as psychology, forensic science, valuations, and accounting.

The departure from the PLT model in England and Wales and the adoption of a model of work experience plus an independent exam is an interesting development and one which deserves more consideration. However, the change to an exam-based approach appears to have been motivated by concerns about barriers to entry to practice, and inconsistencies in the quality of legal education provided to students. It may be the case that through a combination of the number of law schools in Australia, the HECS/FEE-HELP system, and the independent and rigorous accreditation process for legal training providers in Australia (with each of Australia's eight State and Territory jurisdictions having a role in regulating legal education), the same issues do not arise here as in England and Wales.

These are not easy issues and there is no simple solution. However, it is hoped that with the commencement of a process to review the core PLT competencies, legal educators will increasingly focus on their role in educating future legal professionals and achieve a balance in delivering a sound education in core legal concepts and providing new practitioners with the skills they require to succeed as entry-level lawyers.



# TEACHING SENSITIVE CONTENT SAFELY

## HOW TO APPROACH SEXUAL VIOLENCE IN LEGAL EDUCATION

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AIDAN RICCIARDO \*

### I INTRODUCTION

As teachers of law, no matter what subject we teach, at least some of the content relevant to our subject area is bound to be 'sensitive', complex, and potentially distressing. In some subject areas — eg, Criminal Law — this is obviously the case, but as law inherently involves justice *and* injustice, the reality is that we are all required to teach complex and sensitive content. This can be difficult for teachers and students alike — as put by Heath et al:

Learning about the law can involve bruising encounters with injustice that the law does not always adequately redress. Many students find this distressing... Undoubtedly some teachers find it distressing to have the role of inflicting these new realisations on students, even if they also see understanding these questions as essential.<sup>1</sup>

Although teaching sensitive content is unavoidable for law teachers, many of us (unsurprisingly) feel ill-equipped to do so.<sup>2</sup> It is clear that there is a need for us to collectively reconsider — and develop our skills relating to — how we teach this content.

We must not shy away from teaching sensitive content where it is relevant to our subject area. But the way that we approach this content matters. This article makes these arguments, taking the topic of sexual violence as an example of sensitive content that might be encountered in the law classroom. The following definition of sexual violence is adopted in this article:

Sexual violence is a broad term to describe hurtful acts of physical or emotional harm through the use of power, control, and/or intimidation. Sexual violence includes sexual harassment, sexual assault, sexual exploitation, dating and intimate partner violence, domestic violence, or stalking.<sup>3</sup>

Part II argues that where it is relevant to an area of law, we have an obligation to teach content which relates to sexual violence. Part III then proposes a number of principles, informed by the literature, which can assist law teachers to cover this content safely.

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<sup>1</sup> Mary Heath et al, 'Learning to Feel Like a Lawyer: Law Teachers, Sessional Teaching and Emotional Labour in Legal Education' (2017) 26(3) *Griffith Law Review* 430, 433.

<sup>2</sup> *Ibid.*

<sup>3</sup> Macalester College, *Supporting Student Survivors in the Classroom* (Guidance Document, 2021) <<https://titleix.sdsu.edu/resources-for-faculty-and-staff/faculty-guide-for-supporting-survivors.pdf>>.

## II WHY WE NEED TO TEACH OUR STUDENTS ABOUT SEXUAL VIOLENCE

It is accepted that in a range of professional degrees, including law, teaching sensitive and confronting content is necessary — not only because it is relevant to the subject area, but also because our students will encounter these situations in their professional lives. As put in an article by a multidisciplinary academic team (including teachers of law, psychology, social work, midwifery and veterinary science):

[Teaching sensitive and confronting] material is necessary for both the specific aims of the courses we teach (that is, in relation to intellectual engagement with the subject material and expected learning outcomes), and to prepare students for situations many will face as professionals.<sup>4</sup>

Sexual violence is relevant to many core areas of legal education and legal practice, including those areas which law schools are required to teach as part of a qualifying law degree. Most obviously, sexual violence is relevant in the teaching and practice of criminal law. Similarly, many of the core cases in evidence law relate to sexual violence, and a body of law has developed in relation to the way that cases relating to sexual violence are tried. Tort law, which demands discussion of consent and bodily autonomy, is also unquestionably linked to sexual violence. Sexual violence is also an inherent part of the teaching and practice of many subject areas which may not be 'required' in a qualifying law degree, but are commonly offered by law schools as optional units. For example, sexual violence arises in employment law (eg, in the context of workplace sexual harassment), family law (eg, in the context of family and intimate partner violence), and in human rights law (eg, where sexual violence is used as a weapon of war).<sup>5</sup> Engaging with content which relates and responds to sexual violence is a core learning requirement in these areas of study. Having a competent understanding of how laws — and lawyers — do (and should) respond to sexual violence is also essential in the practice of these areas:

It is vital that students are prepared for dealing with such challenging situations in their future professional practice through the inclusion of such subject matters within [course] curricula... [P]rofessional competency requires capacity to address sensitive issues.<sup>6</sup>

Indeed, lawyers (and law graduates who choose not to practice) play a key role in addressing and mitigating social issues, including sexual violence.<sup>7</sup> Educating our students about these issues — including where the law falls short and leads to injustice — equips them to contribute positively to society and advocate for justice and reform.

Providing our students with an adequate education on matters of sexual violence is especially important given that harmful misconceptions about sexual violence, and about victim-survivors

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<sup>4</sup> Mary Heath et al, 'Teaching Sensitive Material: A Multi-Disciplinary Perspective' (2017) 4 *Ergo* 5, 11.

<sup>5</sup> Paul Kirby, 'How is Rape a Weapon of War? Feminist International Relations, Modes of Critical Explanation and the Study of Wartime Sexual Violence' (2012) 19(4) *European Journal of International Relations* 797.

<sup>6</sup> Heath et al (n 4) 6.

<sup>7</sup> See generally Andrea A Curcio, Teresa M Ward and Nisha Dogra, 'Educating Culturally Sensible Lawyers: A Study Of Student Attitudes About The Role Culture Plays In The Lawyering Process' (2012) 16 *University of Western Sydney Law Review* 100.

of sexual violence, are rife in Australia generally and in the legal system specifically.<sup>8</sup> In their future careers, many of our students will be tasked with counteracting those misconceptions. The following quote by Scriver and Kennedy is written in the context of medical and social sciences education in Ireland, but it could just as readily be said of legal education in Australia:

The sensitive nature of sexual violence, combined with a poor level of knowledge about the topic among the general population in Ireland may lead lecturers to avoid its inclusion in curricula. However, [our] students ... are future doctors, nurses, midwives, social workers, teachers and policy-makers. They are the people who will be tasked with addressing sexual violence and its impact. It is therefore essential that education about sexual violence is given due consideration within [course] curricula.<sup>9</sup>

Just like doctors, nurses and social workers, the professional lives of many law graduates will involve addressing sexual violence and its impact. It follows that in the context of legal education, we would be doing our students — and our society — a disservice if we were to avoid teaching about how the law responds to sexual violence. How, then, can we best go about teaching this content?

### III TEN PRINCIPLES FOR TEACHING SEXUAL VIOLENCE SAFELY

There is a small body of research relating to the teaching of sensitive material generally in law.<sup>10</sup> However, there is relatively little research which directly addresses how to teach about sexual violence in law.<sup>11</sup> Helpfully though, there are a fair number of articles which focus on teaching sexual violence in higher education generally, and in specific higher education disciplines other than law.<sup>12</sup> This Part draws together research from each of these fields and distils it into ten core principles for teaching about sexual violence safely, and effectively, in law.

#### **Principle 1: Be mindful of classroom power dynamics to avoid re-traumatisation**

As a starting point, and from before the semester begins, law teachers who cover content relating to sexual violence need to be aware of the power dynamics inherent in the classroom, including in the teacher-student relationship. The classroom, by its very nature, involves a disparity of power that can lead to re-traumatisation for survivors of sexual violence. As noted by Crumpton:

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<sup>8</sup> See, eg, Jacqueline Horan and Jane Goodman-Delahunty, 'Expert Evidence to Counteract Jury Misconceptions About Consent in Sexual Assault Cases: Failures and Lessons Learned' (2020) 43(2) *UNSW Law Journal* 707; Julia Quilter, 'Getting Consent "Right": Sexual Assault Law Reform in New South Wales' (2020) 46(2) *Australian Feminist Law Journal* 225.

<sup>9</sup> Stacey Scriver and Kieran M Kennedy, 'Delivering Education About Sexual Violence: Reflections on the Experience of Teaching a Sensitive Topic in the Social and Health Sciences' (2016) 35(2) *Irish Educational Studies* 195, 196.

<sup>10</sup> See, eg, Heath et al (n 1); Heath et al (n 4).

<sup>11</sup> See, eg, Wendy Ball and Jacquelin Mackinnon, 'Teaching the Unthinkable: Approaches to Effective/Protected Learning in the Area of Sexual Offences' (1997) 8(1) *Legal Education Review* 99; Mary Heath, 'Encounters With the Volcano: Strategies for Emotional Management in Teaching the Law of Rape' (2005) 39(2) *The Law Teacher* 129.

<sup>12</sup> See, eg, Corrine C Bertram and M Sue Crowley, 'Teaching about Sexual Violence in Higher Education: Moving from Concern to Conscious Resistance' (2012) 33(1) *Frontiers: A Journal of Women Studies* 63.

For students who have experienced the abusive exercise of power that characterizes sexual assault, heightened anxiety in a context that is already organized around power disparity can be a trigger. It often invokes recall of an incident(s) when power was used to abuse. It can trigger a chain reaction of sorts, in which the fears from former abuse are projected onto the disparate power structure that exists in the classroom.<sup>13</sup>

An awareness of the potential for harm, including by way of re-traumatisation, needs to underscore the entire approach to teaching about sexual violence. This is especially important given that we know from sector-wide surveys that there are almost certainly survivors of sexual abuse in every classroom.<sup>14</sup> For these students, the resurgence of traumatic memories in an educational setting can blur the lines between past abuse and the present power-charged classroom environment. As Crumpton continues:

When triggered, they may feel that “it” (the powerlessness, loss of control, and violence) is happening again. There is indeed a difference between the power disparity in the classroom and the abuse of power in sexual assault, but the resurgence of traumatic memories often makes that distinction less clear. The result is a highly charged environment wherein some are unable to distinguish the difference between the expected discomfort and the individual sense of threat that emerges...<sup>15</sup>

The traumatic response elicited by classroom dynamics can be profound, causing some students to experience significant distress. This highlights the necessity for educators to develop a teaching approach and create a classroom atmosphere that acknowledges and mitigates these triggers.

### **Principle 2: Prepare students from the start of the course**

When the teaching period begins, the work to prepare students for the upcoming sensitive content begins on day-one. Letting students know from the outset of the course that content relating to sexual violence will be covered provides students with an opportunity to prepare themselves for that content. It also provides us as teachers with an opportunity to learn from students about how we can best support them when we ultimately encounter that content. As explained by Bedera:

Professors can... begin centering survivors and preparing students for discussions of sexual violence on the first day of classes... I begin all courses that include material on sexual violence the same way. I tell students explicitly that we will cover controversial and sensitive topics, including the kinds of violence that many students may have experienced first-hand. At that point, I... position myself as a learner. I ask students what they need to feel comfortable when having tough conversations in class...<sup>16</sup>

Bedera's approach helps to establish a safe, supportive learning environment from the very outset of the course — this approach not only sets clear expectations but also opens a dialogue

<sup>13</sup> Stephanie M Crumpton, 'Trigger Warnings, Covenants of Presence, and More: Cultivating Safe Space for Theological Discussions About Sexual Trauma' (2017) 20(1) *Teaching Theology and Religion* 137, 138.

<sup>14</sup> Wendy Heywood et al, *National Student Safety Survey: Report on the Prevalence of Sexual Harassment and Sexual Assault Among University Students in 2021* (National Report, Social Research Centre, 2022) 1–6.

<sup>15</sup> Crumpton (n 17) 138.

<sup>16</sup> Nicole Bedera, 'Beyond Trigger Warnings: A Survivor-Centered Approach to Teaching on Sexual Violence and Avoiding Institutional Betrayal' (2021) 49(3) *Teaching Sociology* 267, 270.

about how to handle these discussions with care and sensitivity. Further, by addressing the potential emotional impact of the material from the start, educators can help normalise the range of responses students may have. Bedera tells her classes that 'even students who have no personal ties to trauma sometimes tear up', noting that this can help 'survivors feel like having an emotional response won't be akin to disclosing their survivor identity.'<sup>17</sup> This pre-emptive acknowledgment can reduce the pressure on survivors of sexual violence, enabling them to participate without the fear of being singled out or inadvertently revealing their personal experiences.

Starting this preparation on the first day not only reassures students that their emotional responses are valid but also establishes a classroom culture of empathy and respect. By positioning themselves as learners alongside their students, educators demonstrate a commitment to creating a safe and inclusive space for learning. This proactive approach fosters trust and encourages open communication, which are vital components for effectively navigating the complexities of teaching about sexual violence.<sup>18</sup>

### **Principle 3: Be careful and consistent with the language you use**

Being careful and consistent with the language we use to describe acts of sexual violence is crucial to creating a safe and effective learning environment. The words we choose can either reinforce harmful stereotypes and stigmas or help dismantle them. Using precise and accurate terms such as 'rape' instead of 'sex' (in the case of a non-consensual act of penetration) and 'abuse' or 'sexual assault' instead of 'sexual encounter' (in the case of other non-consensual touching of a sexual nature) ensures that the gravity of these acts is appropriately conveyed and that victim-survivors are not further stigmatised or blamed for their abuser's wrongdoing.<sup>19</sup>

Language shapes perception, and the way sexual violence is discussed in the classroom can have a profound impact on students' understanding of these issues.<sup>20</sup> When educators use terms that downplay the severity of sexual violence, it can inadvertently perpetuate the misconception that the victim is partially responsible or that the violence is less serious. Conversely, using clear and specific terminology underscores the non-consensual and violent nature of these acts, leaving little doubt that we as teachers condemn, and recognise the severity of, sexual violence. This approach not only helps to validate the experiences of survivors but also sets a standard for professional and respectful discourse that students can carry into their future careers in law. By modelling precise and respectful language, we as law teachers contribute to a broader cultural shift in this space.

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<sup>17</sup> Ibid 272.

<sup>18</sup> Heath (n 11) 139–40.

<sup>19</sup> Constance Grady, 'The Complicated, Inadequate Language of Sexual Violence', Vox (online, 30 Nov 2017) <<https://www.vox.com/culture/2017/11/30/16644394/language-sexual-violence>>.

<sup>20</sup> See generally Elizabeth R Brown, Jennifer K Wesely and Curtis E Phills, 'De-stigmatizing Survivors: Chapter De-stigmatizing Survivors Intervening by Changing the Composition of Campus Alerts about Sexual Assault' in Alicia H Nordstrom and Wind Goodfriend (eds), *Innovative Stigma and Discrimination Reduction Programs Across the World* (Routledge, 2010) ch 6; Emma Gretgrix and Clare Farmer, 'Heteronormative Assumptions and Expectations of Sexual Violence: Language and Inclusivity Within Sexual Violence Policy in Australian Universities' (2023) 20 *Sexuality Research and Social Policy* 735.



#### **Principle 4: Where content isn't optional, forewarn to allow students to prepare**

Forewarning, in the context of education, refers to the practice of informing students in advance that specific sensitive or potentially distressing content will be covered in class. The purpose of forewarning is to allow students to mentally and emotionally prepare for the material, helping them to manage their reactions and engage with the content more effectively.<sup>21</sup>

Forewarnings might sometimes — rather unhelpfully — be called 'trigger warnings',<sup>22</sup> and it is a common misconception that the purpose of such warnings is simply to allow students who might be triggered to choose not to engage with the content.<sup>23</sup> But, as established in Part II, often in a law course content relating to sexual violence *is* essential and the reality is that students do not have a choice about whether or not they engage with this content: we need to teach students this content and they need to be able to demonstrate an understanding of it.

In fact, forewarning is especially important in the context of content which is not optional. Providing this advance notice allows students to prepare themselves psychologically and emotionally for the material, giving them an opportunity to organise any support they might need and put themselves in the right frame of mind to learn. Scriver and Kennedy emphasise the importance of this approach:

While forewarning for the purpose of optional non-attendance is... not clearly supported by research..., efforts should be made to provide students with as much information as possible in advance of the teaching sessions so that they know what to expect. Forewarning, rather than acting as advice to 'stay away' for vulnerable students, can act as a means to empower students to deal with their emotional reactions by allowing them to situate their response within a deeper conceptual understanding of that issue. Ensuring students understand the purpose of learning about sexual violence is thus an essential part of forewarning.<sup>24</sup>

This approach helps students contextualise their responses and understand the importance of learning about sexual violence within the broader framework of their legal education. As educators, it is important to communicate not only the content but also the significance of engaging with these challenging topics. As Scriver and Kennedy suggest, explaining the relevance of the material can be done with statements like: 'I appreciate that this may be something that you find difficult to think about, but it is important for you to be aware of this issue because ...'.<sup>25</sup>

Forewarning students about sensitive content and providing them with the rationale for its inclusion in the curriculum enables students to engage more fully with the material and develop a deeper understanding of the legal and social complexities surrounding sexual violence.

This approach not only prepares students for the content but also underscores the importance of their learning journey, reinforcing the necessity of confronting and understanding sexual violence as future legal professionals.

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<sup>21</sup> Katie Cebula, 'Student Experiences of Learning About Potentially Emotionally Sensitive Topics: Trigger Warnings Are Not the Whole Story' (2022) 46(8) *Journal of Further and Higher Education* 1120, 1121–2.

<sup>22</sup> This implies that the only purpose of the warning is to assist students who might be triggered by the content. The term 'forewarning' is more appropriate because these warnings serve other purposes and can be helpful for all students, as discussed at length in this section.

<sup>23</sup> Cebula et al (n 21) 1121–2.

<sup>24</sup> Scriver and Kennedy (n 9) 200.

<sup>25</sup> *Ibid.*

### **Principle 5: Where content is optional, forewarn and ensure students can leave**

Despite the discussion in the previous section, sometimes content will be optional. Perhaps more often, whilst students are required to engage with particular content, they might have the option of engaging with it in a manner other than in face-to-face classes. Forewarning still plays a critical role in these instances, ensuring that students are fully informed about their options and can make choices that best suit their needs. When learning about particular content is optional, or where doing so face-to-face is optional, law teachers need to make sure that their forewarning is accompanied by an adequate opportunity to leave the classroom.

For example, if students are given the option to 'opt out' of a class or discussion, it is essential that attendance and participation policies reflect and support this option. For example, students need to be reassured that they can opt out without fear of penalty.<sup>26</sup> In practice, small adjustments can help make these options more accessible. For example, taking short breaks before difficult activities or discussions can give students the chance to step out without drawing attention to themselves. As suggested in a resource for educators:

Take a 2–3 minute break before difficult activities or discussions, and urge students to stretch, get a drink, or use the restroom before regrouping as a class. This practice allows survivors to step out without drawing attention to themselves or feeling forced to publicly identify themselves as a potential survivor.<sup>27</sup>

This approach provides a discreet way for students to make the choices that suit their needs without feeling exposed or singled out.

Indeed, educators should seriously consider whether students really need to be present in a face-to-face class when learning about sexual violence content. This may well be necessary — eg, where discussion is required. But in many instances, it will be appropriate to offer alternative ways to engage with the content. For instance, providing an online recording of the live lecture as an alternative to in-person attendance allows students to engage with the material at their own pace and in a setting where they feel most comfortable. This flexibility can make a significant difference for students who may find encountering the content in-person very distressing.<sup>28</sup>

### **Principle 6: Compile course materials carefully, centring survivor voices**

When compiling course materials for law classes that include content on sexual violence, it is important to carefully select readings and sources that centre survivor voices and take the impact of sexual violence seriously. The choices educators make in curating these materials send a strong message to students about the importance and gravity of the topic. As emphasised by Beder, 'When selecting course materials (eg, readings, films) on sexual violence, it is essential that they take seriously the impact of sexual trauma on survivors.'<sup>29</sup> Including sources that trivialise or misrepresent sexual violence can lead students to mistakenly believe that such perspectives are acceptable or are tacitly endorsed by the law teacher.

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<sup>26</sup> Macalester College (n 3).

<sup>27</sup> Ibid.

<sup>28</sup> Heath et al (n 4) 8, 10.

<sup>29</sup> Beder (n 16) 270.

Setting sources which are created or influenced by survivors of sexual violence ensures that the experiences and insights of survivors are treated as valuable and important. Bedera notes that 'a survivor-centered approach views survivors as what they truly are — experts on sexual violence whose experiences, views, and ideas are instructive in creating transformative courses.'<sup>30</sup> By foregrounding survivor narratives, educators not only validate the lived experiences of survivors but also provide students with a more nuanced understanding of sexual violence. Indeed, as an example, it is widely acknowledged that sexual offence complainants themselves are amongst those who are best placed to advise on how criminal trial processes might be made less traumatic for sexual offence complainants like them.<sup>31</sup>

However, there may be instances where including problematic sources is unavoidable due to their relevance or importance in the field. In such cases, it is crucial to provide context and guidance to students. When including a potentially problematic source, educators should explain in advance (either in class or on the reading list) why the source is problematic and encourage students to critically assess its treatment of sexual violence. Additionally, clearly stating the precise reason for including the source can help students appreciate its educational value while remaining critical of its shortcomings.

Course materials should also inform students of the support services and resources available to them if they feel distressed.<sup>32</sup> Providing this information ensures that students know where to turn for help, reinforces the message that their wellbeing is a priority, and also makes it clear that the teacher is not their counsellor: they should obtain professional assistance if necessary.<sup>33</sup>

### **Principle 7: Consider in advance how to respond to problematic comments**

Whenever sexual violence is being discussed in the classroom, there is a very real risk that students (or, indeed, teachers) will make comments which are potentially harmful. Law teachers should make it clear from the outset that while discussion is welcome, comments that perpetuate harm or support violence will not be tolerated.<sup>34</sup> If potentially harmful comments are made, it is very important for teachers to know when and how to jump in and respond to these rogue contributions. Ignoring or mishandling these comments can reinforce harmful attitudes and contribute to an environment that is unsafe for survivors. Although many potentially harmful comments will be borne of ignorance, in some cases these comments might be actively antagonistic. Indeed, as Bedera points out:

Although professors rarely like to think about it, it is extremely likely that you have perpetrators of gender-based violence taking your classes as well. After all, studies indicate that as many as 11 percent of college men commit a rape before graduation. There are also a multitude of other reasons that students may hold rape-supportive attitudes, such as having a close friend who was

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<sup>30</sup> Ibid 275.

<sup>31</sup> See, eg, Australian Senate Legal and Constitutional Affairs References Committee, *Current and Proposed Sexual Consent Laws in Australia* (Final Report, September 2023) 37–62, 104.

<sup>32</sup> Scriver and Kennedy (n 9) 200.

<sup>33</sup> Heath et al (n 4) 10–11.

<sup>34</sup> Cebula et al (n 21) 1128.

accused of sexual assault or simply growing up in a culture that normalizes, excuses, and condones men's acts of violence.<sup>35</sup>

This reality underscores the necessity for teachers to be vigilant and proactive in addressing problematic comments. Teachers should anticipate potential challenges and think ahead about how to effectively intervene. Preparing in advance allows educators to confidently and swiftly address harmful comments when they arise, maintaining a respectful and supportive classroom environment.<sup>36</sup>

When responding to potentially harmful comments, it is important to address the issue directly and clearly. Instructors should focus on correcting misinformation, reinforcing respectful discourse, and reiterating the principles of empathy and support for survivors. For example, if a student makes a comment that implicitly blames a victim, the instructor might start by saying, 'I know that you might not have meant to imply what you just did, but I just want to address that comment because it's important to understand that victim-blaming is harmful and incorrect....'

A failure to directly address harmful comments 'can make an instructor appear to endorse those views.'<sup>37</sup> By planning their responses, teachers can avoid being caught off guard and can handle these situations with authority and sensitivity.

### **Principle 8: Be mindful of your own boundaries in dealing with student trauma**

Teaching about sexual violence can lead to instances where students disclose their own traumatic experiences or seek emotional support from their teachers.<sup>38</sup> In this regard, we must be mindful of our own roles and boundaries when dealing with student trauma. While it is important to create a supportive and empathetic classroom environment, educators need to recognise the limits of their professional responsibilities. The role of a teacher is distinct from the role of a counsellor,<sup>39</sup> and attempting to take on such a role can lead to burnout and ethical challenges. As Bedera states, 'To prevent burnout and ensure that students are treated ethically, it is also key that instructors set their own boundaries about how they would like to engage with [trauma].'<sup>40</sup> Establishing clear boundaries helps protect both the teacher's wellbeing and the integrity of the support offered to students.

The complexity of managing disclosures of trauma can be overwhelming for educators, who may not feel equipped to handle such situations. Bedera acknowledges this concern: 'professors report that they do not feel skilled enough to manage the intricacies of sexual assault disclosure. That is perfectly okay — professors are academics, not counselors.'<sup>41</sup> Similarly, Scriver and Kennedy note that 'we do not feel comfortable, nor would we advocate for other teachers, to take on the role of counsellor to students.'<sup>42</sup> Recognising this distinction is crucial. Law teachers should focus on

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<sup>35</sup> Bedera (n 16) 272.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Heath (n 11) 144–5. This burden is likely to fall disproportionately on female academics — see generally Rebecca Hayes, Tara N Richards and Kathryn A Branch, 'But I'm Not a Counselor: The Nature of Role Strain Experienced by Female Professors When a Student Discloses Sexual Assault and Intimate Partner Violence' (2010) 2(3) *Enhancing Learning in the Social Sciences* 1756.

<sup>39</sup> Heath et al (n 4) 10–11.

<sup>40</sup> Bedera (n 16) 274.

<sup>41</sup> Ibid.

<sup>42</sup> Scriver and Kennedy (n 9) 205.

their primary role as facilitators of learning and guides through the academic content, rather than attempting to provide therapeutic support.

To navigate these challenges effectively, teachers should plan in advance how to respond when students disclose traumatic experiences and appear to require further support. Heath et al advise that in these instances, teachers should refer students to university counselling services and other appropriate supports.<sup>43</sup> Similarly, Bedera advises that

a professor who does not feel equipped to do crisis intervention may tell a student, 'I do not feel fully qualified or prepared to give you everything you deserve, but I would love to support you in the ways I can, like listening to you and helping connect you to the resources you need.'<sup>44</sup>

Heath advises that simply listening is powerful:

Many sexual assault services suggest that people who have experienced rape will find it useful to be listened to in a non-judgemental, supportive and validating way... If in doubt, I listen. I acknowledge the student's courage in speaking with me. I clearly communicate that I believe the student and will keep their confidence. And, of course, I refer them to appropriate services.<sup>45</sup>

Maintaining professional boundaries also helps prevent emotional exhaustion and burnout for educators.<sup>46</sup> Teaching about sexual violence and other traumatic subjects can be emotionally taxing, and without clear boundaries, instructors may find themselves overwhelmed by the weight of their students' disclosures. By setting and adhering to boundaries, teachers can sustain their capacity to provide high-quality education and support to their students over the long term.

### **Principle 9: Demand institutional support when you teach about sexual violence**

As noted in the previous section, teaching about sexual violence presents risks to the teacher's own wellbeing. Scriver and Kennedy note that

Lecturers who repeatedly teach sensitive topics may also suffer vicarious trauma... Lecturers may experience vicarious trauma through their engagement with materials in researching and preparing sessions ... [or] following a disclosure from a student which can result in feelings of guilt, sadness, or anger.<sup>47</sup>

Educators who teach about sexual violence must demand appropriate institutional support to manage the unique challenges and emotional burdens associated with this work. Universities have a responsibility to provide this support, in recognition of the increased demands placed on faculty who cover such sensitive topics. Keene and Jordan highlight the need for administrative recognition of these challenges:

Faculty staff involved in administering academic workloads should recognize and take into account the increased workloads arising from pastoral care work done by academic staff teaching courses which include sexual violence.<sup>48</sup>

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<sup>43</sup> Heath et al (n 4) 10.

<sup>44</sup> Bedera (n 16) 274.

<sup>45</sup> Heath (n 11) 144.

<sup>46</sup> Bedera (n 16) 274; Scriver and Kennedy (n 9) 206; Heath et al (n 4) 6.

<sup>47</sup> Scriver and Kennedy (n 9) 206.

<sup>48</sup> Samantha Keene and Jan Jordan, 'Teaching About Sexual Violence in Digital Learning Environments' (2021) 35(1) *Women's Studies Journal* 66, 69–70.

Acknowledging the additional pastoral care responsibilities in formal workload allocations is essential for preventing burnout and ensuring that educators can continue to provide high-quality teaching and support to their students. Universities must also prioritise the wellbeing of their staff by implementing measures that address these challenges. Educators must be provided with access to counselling services, peer support groups, as well as relevant professional development. In particular, creating a supportive community among faculty where they can share experiences and strategies can help mitigate the isolating effects of vicarious trauma.<sup>49</sup>

### **Principle 10: Reflect, reflect, reflect!**

Finally, educators who teach about sexual violence and other sensitive material must engage in a constant process of reflective practice. No teacher can be expected to get everything right the first time (or, perhaps, any time), and what worked one year might not work as well the next. Through reflection, educators can identify what worked well and what didn't, allowing them to make informed adjustments and improve their approach over time. The literature on learning and teaching in law consistently notes the importance of reflective practice for effective education.<sup>50</sup>

By regularly considering the impact of their teaching methods and content choices, educators can better understand how their students are engaging with the material and what additional support may be needed.<sup>51</sup> This process involves not only self-assessment but also seeking feedback from students and colleagues to gain diverse perspectives on the effectiveness of the academic's approach to teaching about sexual violence.<sup>52</sup>

Incorporating reflective practice into teaching routines can lead to significant improvements in how sensitive topics are addressed in the classroom. For instance, after a challenging discussion on sexual violence, a teacher might reflect on the students' reactions, the classroom dynamics, and their own feelings during the session. This reflection can reveal areas for improvement, such as adjusting the way certain topics are introduced, modifying discussion guidelines, or finding new ways to support students who may be struggling with the material.

Importantly, reflective practice fosters a growth mindset, encouraging educators to view challenges as opportunities for development rather than as setbacks.<sup>53</sup> This mindset is particularly important when teaching sensitive subjects, where (as discussed in the previous sections) there is great potential for emotional and intellectual strain. By embracing continuous improvement, law teachers can become more resilient and adaptable, better equipping themselves to handle the complexities of teaching about sexual violence.

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<sup>49</sup> Heath et al (n 4) 10, 12.

<sup>50</sup> See, eg, Timothy Casey, 'Reflective Practice in Legal Education: The Stages of Reflection' (2014) 20 *Clinical Law Review* 317.

<sup>51</sup> Sue Clegg, 'Knowing Through Reflective Practice in Higher Education' (2000) 8 *Educational Action Research* 451, 466.

<sup>52</sup> See, eg, Maureen Bell, 'Supported Reflective Practice: A Programme of Peer Observation and Feedback for Academic Teaching Development' (2001) 6(1) *International Journal for Academic Development* 29, 32–5; Joseph Lamb, 'How do Teachers Reflect on Their Practice? A Study into How Feedback Influences Teachers' Reflective Practice' (2017) 4(4) *The Student Teacher Perspectives Journal* 94, 101.

<sup>53</sup> See generally Diane LaFrance and Lori Rakes, 'Teacher Identity, Growth Mindset, and Agency: Changing the Trajectory of Teacher Retention' in Maria Peterson-Ahmad and Vicki L Luther (eds), *Collaborative Approaches to Recruiting, Preparing, and Retaining Teachers for the Field* (IGI Global, 2022) 119; Laura F Poe et al, 'Promoting Positive Student Outcomes: The Use of Reflection and Planning Activities with a GrowthMindset Focus and SMART Goals' (2021) 19(4) *Information Systems Education Journal* 13.



## **IV CONCLUSION**

As law teachers, we are required to teach our students about sensitive material. For some of us, that sensitive material will include content relating to sexual violence. It is important that we do not shy away from our responsibility to teach this content where it is relevant — covering this material helps to prepare law graduates to address these issues with the right knowledge and sensitivity in their professional lives. But teaching this content can be challenging, and the way we go about it matters. The ten core principles proposed in this article provide a basic grounding for law teachers who teach about sexual violence. These principles can assist educators to foster safe learning environments where students can learn to navigate the complex legal and social dimensions of sexual violence. Although teaching about sexual violence and other sensitive content will never be easy, adopting a careful, consistent and reflective approach can make 'getting it right' a little easier.

# USING SIMULATED WORKPLACE LEARNING AND ROLEPLAYING IN TEACHING BUSINESS LAW IN PRACTICE

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## I INTRODUCTION

Role-playing, group work and work-integrated learning ('WIL') have become major features of tertiary education. Each learning approach has a number of claimed benefits. This article explores the confluence of these learning tools in a unit which incorporates aspects of each, but with a twist. We examine these phenomena in the context of a recently re-designed law unit, Business Law in Practice ('BLIP'), in an undergraduate business law program at a Western Australian university. BLIP is the capstone unit of the University of Western Australia's undergraduate Business Law Major, which is available in the Bachelor of Commerce. The unit was updated in 2020 to allow for more interactive teaching, and to enable scaffolded learning in groups role-playing the establishment and operation of a business start-up. As such, the unit combines *group work*, the largely simulated aspects of *role-playing*, and the *workplace*-focused aspects of WIL. However, it stretches boundaries even further by stepping into a relatively new area of educational practice, which we will refer to as 'simulated workplace learning' ('SWL'). This article does not revisit the already rich literature on group work, role-playing, and WIL, but focuses instead on the SWL aspects of BLIP.

This article first outlines the design, educational objectives and background to BLIP (Part II). It then outlines the major features of group work, role-playing and WIL, before focusing on the unique contours of SWL, comparing those models to the bespoke compilation of BLIP.

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(Part III). We then reflect on the benefits of applying these tools in the specific context of BLIP (Part IV). We conclude with our perspective on opportunities for improvements and lessons learned (Part V).

## II THE DESIGN AND BACKGROUND TO BLIP

BLIP attracts around 160–170 students annually, and is currently offered once per year. As a core capstone unit, BLIP builds on the knowledge embedded in the previous Business Law Major units, and draws them together to develop collaborative, cognitive, technical, research and communication skills relevant to business law.

BLIP was designed with the deliberate rationale of being interactive, practical, skills based, fun, informative and interesting. In 2019, we considered that Business Law Major students had consistently learned their units through traditional methods of mostly passive knowledge absorption, application of that knowledge in exams and assignments, before moving on to the next unit. We saw that students consequently lacked knowledge and experience about how the law applies to business *in practice*. To cure this, we designed BLIP. We posited that exposing students to the experience of devising, working in and running a business start-up in an environment mimicking the real world would be an excellent scaffold for students to apply the knowledge and skills they had learned throughout the Business Law Major. Due to the large number of students and the practical vagaries of diverse businesses, placing students as interns in real-world business environments was not practicable, and so their businesses needed to be simulated, and we would require students to role-play working in those businesses.

BLIP uses a blended learning design, combining online lectures and independent reading with a weekly two-hour mandatory face-to-face workshop. In the first week of semester, students are placed in a group of around 10 students based on student last name, and work together in that group throughout the 12-week semester in the workshops and other scheduled meetings to design and role-play running the simulated business entity conceived and designed by the group.

The students are given five portfolio challenges from various areas of business law and practice, which typically include: teamwork and leadership theory and skills; managing intellectual property; contract management and design; legal risk management; conflict and dispute resolution; and business engagement skills and strategies. For each portfolio challenge, two to three group leaders are allocated, and two to three record keepers, with all students taking their turn to act as group leader and record-keeper once per semester. Otherwise, the roles played by the students are determined by the groups themselves, and must adapt to the particular business the groups design, and the individual portfolio challenge.

Detailed instructions are provided for each portfolio challenge, which generally run for two weeks. Students must also conduct independent research specific to both their unique entity and each challenge. This is designed to facilitate the development of leadership, collaboration, communication, organisational and accountability skills, and a better understanding of law in practice.

At the end of each portfolio, the groups prepare a written report, with a shared mark, outlining how and why they navigated and resolved the challenge as they did for each of their businesses. To test their knowledge of the reading materials and lectures, students take 5 quizzes aligned to each challenge. Students also prepare two personal reflections on their learning and teamwork experiences during semester. These assessment items are individually marked. There is no exam. To promote accountability and a positive teamwork experience for each portfolio challenge, students must anonymously peer review their colleagues' performance, and prepare a report of the work they personally undertook in navigating the challenge. The group record-keepers must keep detailed records of meetings and workshops, and of task allocation and completion.

There is constant pressure in the unit to be working, drafting reflections and reports, researching, preparing for and attending workshops and meetings, and completing the quizzes by the deadlines. It is in this simulated high-pressure working environment, designed and run by the students, that the legal challenges are addressed through the semester.

### **III ROLE-PLAY, GROUP WORK, WORK-INTEGRATED LEARNING AND SIMULATION-BASED LEARNING IN LEGAL EDUCATION: OFF THE BEATEN TRACK**

As mentioned in the introduction, BLIP is a melange of teaching and learning tools which combine the simulation features of role-playing, the collaborative nature of group work, and the workplace environment of WIL. In searching for a pedagogical 'home' for this unique combination, we encountered the relatively nascent topic of SWL. It is useful to first briefly revisit some of the chief characteristics of role-playing, group work, and WIL to identify whether and, if so, how BLIP aligns with those concepts, before turning to SWL and locating BLIP in that innovative educational territory.

#### **Role-playing**

Role-playing is difficult to define conclusively,<sup>1</sup> and it is not this article's purpose to do so. We employ the nomenclature of 'role-playing' in BLIP, while acknowledging its many guises

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<sup>1</sup> See, eg, Shawna Shapiro and Lisa Leopold, 'A Critical Role for Role-Playing Pedagogy' (2012) 29(2) *TESL Canada Journal* 120, 121.

and changing shape over the decades, and BLIP's perhaps weak relationship to conventional role-playing models. Traditionally, the focus of role-playing in law has been the development of soft skills in the delivery or practice of the law and its related fields,<sup>2</sup> particularly in relation to mooting, dispute resolution and client negotiation and interviewing — however, role-playing extends across all aspects of education. As Soo et al note: '[r]ole-playing in education has been gaining popularity with recognition of its benefits and it has been applied in training a variety of professions. Apart from being used to teach courses on "soft" skills it is also used in a much wider and general context in education'.<sup>3</sup> It is claimed to be a valuable learning tool:

In relation to the learning of soft skills, role-playing has several other advantages. It puts students into real-life problem settings and helps create more initiatives for active learning; when done in groups, it encourages team building and brainstorming among students, both observing and participating in the role-playing sessions; and it provides students with the necessary confidence for dealing with similar situations in their real-life work. More important, role-playing itself can also be fun for educators and students.<sup>4</sup>

Role-playing in legal education traditionally tends to go through the stages of briefing students, the actual role-play, and then debriefing.<sup>5</sup> Usually, teachers sketch out some broad parameters, such as a fact scenario, allocated roles, and provide written instructions.<sup>6</sup> Teachers usually attend, and even direct, the role-playing sessions. The role-playing tends to be a discrete episode in the teaching programme, perhaps for one or several sessions. The role-playing in BLIP differs in some significant respects. Teachers exert less pressure on the parameters in BLIP role-playing than in conventional settings. We allocate leaders and record-keepers, but leave it to students to determine how those roles are performed. We do not scrupulously script or structure scenarios, with the exception of the dispute resolution portfolio, which is co-written by two students and approved by teachers. Otherwise, we provide detailed instructions setting brief parameters for each portfolio challenge, but students must then interpret those instructions, determine what work needs to be done, and allocate roles to achieve that. Further, we do not physically attend the entire role-playing sessions. Rather, student groups work in break-out rooms, with teachers circulating through those rooms for each workshop, asking and answering questions and providing feedback. Finally, the role-playing in BLIP is not in isolated episodes. Rather, it is an integral feature of the unit, embedded in the unit's very DNA, and runs for the entire 12 weeks of the semester.

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<sup>2</sup> Gary Soo et al, 'Role-Playing for Group Learning of Law in Engineering and Construction Programs' (2009) 1(4) *Journal of Legal Affairs and Dispute Resolution in Engineering and Construction* 169, 170.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

## Group Work

There is very rich literature on group work in tertiary education,<sup>7</sup> which we will not revisit. We mention group work only to acknowledge that BLIP is essentially designed around it. As mentioned, students work together *as a group* in their simulated business start-ups, with shared marks for major aspects of the unit's assessment, and students peer review their colleagues' performances, including their teamwork and leadership. Group work, in its broadest sense, is usually also an essential component in the other two features of BLIP's design – role-playing and WIL, simply because students tend not to work alone in either of those contexts. Each of those contexts also have the same learning objectives as group work in developing collaboration, communication, self-reflection and teamwork skills.

## Work-integrated Learning

WIL 'is an umbrella term referring to a range of practical experiences designed to give students valuable exposure to work-related activities relevant to their course of study'.<sup>8</sup> It generally requires universities to partner with real-world employers to place students in internships and projects.<sup>9</sup> WIL is said to be necessary to assist university graduates in being career-ready, and to prepare students 'to be flexible, adaptive and able to apply their technical skills to real-world situations'.<sup>10</sup> WIL is the core of many professional training schemes, increasingly featured in university programs, and remains a cornerstone in establishing work readiness. This is reflected in the literature, including the re-naming of the previously titled 'Journal of Co-Operative Education' to the 'Journal of Work Integrated Learning' in 2018.<sup>11</sup> We recognise the value of important aspects of WIL, and the beneficial student attributes it can help develop. We acknowledge the perhaps compelling argument that *actual* workplace learning, through placements, projects and internships, is superior to any simulated cousin. The *real* pressures of a *real* placement might induce better incentives and learning outcomes than those achieved through a simulated alternative.

However, BLIP does not implement a conventional WIL design. While the primary reason is the practical challenge of arranging 160 placements, the simulated nature of BLIP's SWL also helps avoid the numerous challenges of WIL, including identifying suitable projects and tasks for students to complete, ensuring students have some decision-making capacity which they could learn consequences from, host capacity to supervise,<sup>12</sup> navigating relationships

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<sup>7</sup> See, eg, Martin Davies, 'Groupwork as a Form of Assessment: Common Problems and Recommended Solutions' (2009) 58 *Higher Education* 563.

<sup>8</sup> Universities Australia, *Work-Integrated Learning in Universities: Final Report* (Final Report, 2018) 4.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> 'About the Journal', *IJWIL* (Web Page) <<https://www.ijwil.org/about-the-journal>>.

<sup>12</sup> Denise Jackson et al, 'Employer Understanding of Work-Integrated Learning and The Challenges of Engaging In Work Placement Opportunities' (2017) 39(1) *Studies in Continuing Education* 35.

between host organisations and universities,<sup>13</sup> and fairly assessing student performance.<sup>14</sup> It is not always practical, feasible, or even ethical, to place and fairly assess students in real environments. Even outside the serious challenges imposed by a pandemic, good WIL programs require meticulous planning and cooperation across diverse organisations. It is also sometimes highly doubtful whether students' placements actually result in real challenges and learning, or in the modern-day equivalent of coffee-making and photocopying. Moreover, even without these problems, internships as exploitative unpaid labour raise difficult ethical issues.<sup>15</sup> Further, 'real' WIL would also compromise the collaborative aspect of BLIP that we value. While, as mentioned, working *as part of a group* is (usually) integral to a placement in a real-world workplace, students rarely work alongside, and in collaboration with, other students in WIL placements. Instead, we rely on students' responsibilities to other team members to simulate a pressure to do well, alongside the need to attract good marks in the assessment items.

In view of the challenges of WIL mentioned above, simulation of a workplace environment becomes an attractive alternative. In particular, the more controlled environment of SWL can be easier to moderate than the real-world vagaries of students' diverse experiences across potentially very different work environments, which in itself raises potential equity issues. It also ensures that any risks resulting from student activities remain theoretical rather than the potentially real risks that could be experienced by businesses as a result of hosting students. But what is SWL, and how does BLIP comport with that model?

### **Simulated Workplace Learning**

As with role playing, and even WIL, there is no recognised definition of 'simulated workplace learning'. A version of the term seems to have originated in Margaret Jollands' 2016 article on chemical engineering students.<sup>16</sup> Jollands observes that while work experience is generally considered the best way to develop employability, there are often too few work placements to meet graduate demand.<sup>17</sup> To combat this challenge, Jollands developed what she labelled 'non-placement authentic work integrated learning'. Her module used a real chemical engineering project from a local STEM company, with rich complex resources. Students were co-supervised by Jollands and an engineer from the project company, who met with students every fortnight for consultation. The students also participated in a variety of

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<sup>13</sup> See, eg, Sarojni Choy and Brian Delahaye, 'Partnerships Between Universities And Workplaces: Some Challenges For Work-Integrated Learning' (2011) 33(2) *Studies in Continuing Education* 157.

<sup>14</sup> See, eg, Judith McNamara, 'The Challenge of Assessing Professional Competence in Work Integrated Learning' (2013) 38(2) *Assessment & Evaluation in Higher Education* 183; Denise Jackson, 'Challenges and Strategies For Assessing Student Workplace Performance During Work-Integrated Learning' (2018) 43(4) *Assessment and Evaluation in Higher Education* 555.

<sup>15</sup> See, eg, Jackson (n 14).

<sup>16</sup> Margaret Jollands, 'A Non-Placement Authentic Simulated Work Integrated Learning Project For Final Year Students' (Conference Paper, Proceedings of the Australian Conference on Science and Mathematics Education, 21 August 2017).

<sup>17</sup> Ibid 170, citing Calvin Smith et al, 'The Impact of Work Integrated Learning On Student Work-Readiness' (Final Report, Australian Government Office for Learning and Teaching, 2014).

bespoke workshops targeted at developing critical employment skills. Jollands noted the dearth of research showing whether learning outcomes are equivalent to real work experience.<sup>18</sup> Jollands' research suggests that an authentic simulated WIL project is as effective as work experience in increasing students' confidence in their work readiness. We contend, at minimum, that it is certainly better than traditional learning alone, and refer again to some of the potential ethical and equity problems connected to WIL mentioned above.

Various nomenclature for SWL is used, and it takes different forms, both analogue and digital, in different settings. For example, 'workplace simulations' are particularly familiar in vocational education settings, where mechanics students might work in a 'garage', future cooks will prepare meals in a replica kitchen for real guests, and horticulture students will make bouquets in a room set up to look like a florist.<sup>19</sup> Alternatively, the workplace simulations may be digital, including using games to teach students, such as flight simulators for training pilots.<sup>20</sup> As with many educators, we are beholden to the COVID-19 pandemic for accelerating our development of the online and flipped classroom in this unit. As recent literature has shown, the pandemic also furthered the adoption and greater acceptance of SWL in response to interns being unable to enter physical working environments during lockdowns.<sup>21</sup> This prompted institutions to search for a range of innovative solutions and redesign their conventional placement-based activities or programs to enable students to meet graduate profile criteria through alternative means, such as virtual or simulated working experiences.<sup>22</sup>

A 2017 United States Department of Education report explored the value of SWL, and compared various simulated work-based learning models, as captured in Table 1 below.

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<sup>18</sup> Ibid.

<sup>19</sup> See, eg, Helen Jossberger et al, 'Learning in Workplace Simulations in Vocational Education: a Student Perspective' (2018) 11 *Vocations and Learning* 179.

<sup>20</sup> See, eg, Judene Pretti, Jenny Fleming and Karsten Zegwaard, 'Refereed Proceedings of the 4<sup>th</sup> WACE International Research Symposium on Cooperative and Work-Integrated Education, 2022, Kanazawa Institute of Technology, Japan' (Conference Paper, WACE International Research Symposium on Cooperative and Work-Integrated Education, 2022).

<sup>21</sup> See, eg, Selma Lipinge et al, 'Using Simulations to Improve Skills Needed for Work-Integrated Learning Before and During COVID-19 in Namibia' (2020) 21(5) *International Journal of Work-Integrated Learning* 531; Natarsha Tezcan et al, 'Scaffolded, Simulated Work-Integrated Learning in Design Education : Beyond the Live Project' (2020) 21(5) *International Journal of Work-Integrated Learning* 521; Yvonne Wood, Karsten Zegwaard and Wendy Fox-Turnbull, 'Conventional, Remote, Virtual and Simulated Work-Integrated Learning : A Meta-Analysis of Existing Practice' (2020) 21(4) *International Journal of Work-Integrated Learning* 331 ('Wood et al').

<sup>22</sup> Ibid.



**Table 1.** Models of Simulated Work Based Learning

	<b>Simulation Tools</b>	<b>Simulated Workplaces</b>	<b>School-based Enterprises</b>
<b>Motivation</b>	Create safe opportunities to teach specific skills or tasks associated with a given job	Replicate a range of workplace environments designed to develop employability skills and increase student engagement	Offer students a holistic experience of running an actual business to foster entrepreneurial skills and deepen student engagement
<b>Intended skills</b>	<ul style="list-style-type: none"> <li>- Critical thinking/ decision-making</li> <li>- Preparation/exposure to specific work scenarios</li> <li>- Confidence</li> <li>- Technical skills</li> </ul>	<ul style="list-style-type: none"> <li>- Employability (on time, drug free, interviewing, safety, professionalism, dress)</li> <li>- Teamwork</li> <li>- Responsibility</li> <li>- Leadership</li> <li>- Career awareness</li> </ul>	<ul style="list-style-type: none"> <li>- Entrepreneurism</li> <li>- Critical thinking</li> <li>- Problem solving</li> <li>- Communication</li> <li>- Collaboration</li> </ul>
<b>Typical program elements</b>	<ul style="list-style-type: none"> <li>- Use of common and emergency scenarios</li> <li>- Some clinical credits for simulation time (health care)</li> <li>- Debrief/reflection processes that allow for learning from mistakes</li> </ul>	<ul style="list-style-type: none"> <li>- Classes organised as student-led companies</li> <li>- Time clocks, uniforms, drug testing</li> <li>- Facilities resemble industry settings</li> <li>- Teacher serves as facilitator</li> </ul>	<ul style="list-style-type: none"> <li>- Student-run businesses provide products or services for sale to other people</li> <li>- Businesses plan development</li> <li>- Teacher serves as facilitator</li> </ul>
<b>Required resources</b>	<ul style="list-style-type: none"> <li>- Simulation tools</li> <li>- Operations and maintenance costs</li> <li>- Additional training for instructors or coordinators</li> </ul>	<ul style="list-style-type: none"> <li>- Professional development</li> <li>- Employer partnership and input/guidance</li> </ul>	<ul style="list-style-type: none"> <li>- Equipment for student businesses</li> <li>- Start-up capital</li> <li>- Additional training for instructors or coordinators</li> </ul>

**Note:** This table is replicated from the United States Department of Education 2017 Report.<sup>23</sup>

In adopting the taxonomy of this report, we could argue that BLIP fits most comfortably in the 'School-based Enterprises' model, while acknowledging that it shares features with the other two categories.

In their evaluation of the growth of SWL during COVID-19, Wood et al linked a number of observations and studies based on their review of literature analysing diverse models of work-based learning beyond conventional work placements.<sup>24</sup> They conducted a meta-analysis of these models to provide a compiled synthesis of existing practice from within the field.<sup>25</sup> The synthesis revealed that remote and simulated WIL traversed a wide array of

<sup>23</sup> United States Department of Education, 'Simulated Work-Based Learning: Instructional Approaches and Noteworthy Practices' (Report, August 2017) xii.

<sup>24</sup> See Wood et al (n 21) 335. The study specifically focused on publications in the International Journal of Work-Integrated Learning, Work-Integrated Learning in the 21<sup>st</sup> Century, the International Handbook for Cooperative and Work-Integrated Education, and the conference proceedings of the New Zealand Association for Collaborative Education (NZACE) (1999–2019), Australian Collaborative Education Network (ACEN) (2010–2018), and WACE — the international collaborative education association (2016–2019).

<sup>25</sup> Wood et al (n 21).

disciplines, and that there was greater acceptance of remote WIL placements, including the potential to work more closely with international virtual internship agencies, although it stressed the importance of the authentic inclusion of industry so that it is WIL, rather than a classroom activity. It also noted the potential of using both physical and virtual built workspaces and developing interdisciplinary collaborative simulated experiences. Finally, the report also identified that conventional and remote WIL sometimes overlapped through combinations of conventional, remote, and/or simulated WIL, resulting in hybrid or blended WIL spaces.<sup>26</sup>

Lipinge et al recently explored Namibian students' perceptions of WIL readiness skills developed from an offline and online two-day business simulation course, before and during the COVID-19 pandemic.<sup>27</sup> These simulation sessions reflect aspects of the BLIP experience, in that students working in a team are presented with realistic business scenarios. The team must analyse the given information and develop a strategic approach to solve the scenario within a specified time frame, allocating roles to each other such as leadership. Pre-COVID-19, these sessions were held physically on campus. During COVID-19, they were conducted online. The findings indicate that both versions of the business simulation sessions were able to inculcate WIL readiness skills in the students, and that students perceived the business simulation course to be an appropriate learning tool in developing the skills needed for WIL. Interestingly, the researchers concluded that key skills, including communication, professionalism, leadership, teamwork, analytical problem solving, critical thinking, assertiveness, time management, willingness to learn, attention to detail, diversity and accountability were more significantly developed in the offline business simulation than in the online version. They therefore recommend investigating further pedagogical and content-related strategies that can enhance online business simulations in order to improve actual workplace learning.

Chand et al have stressed a pressing need for engineering students to be work ready when they graduate,<sup>28</sup> with problem-solving and real-world skills that complement the necessary technical skills to function once in the workplace. Similar to Jollands' example, Chand et al examined SWL in a project-based engineering course. The lecturer functioned as a 'client', setting an engineering task. The students worked in teams to deliver engineered solutions to the 'client' brief. Chand et al posit that problems solved during the simulated learning process should be based on practical, real-world scenarios, and detail some assessment activities that provide a simulated work-integrated learning experience which ensures work readiness.

Many SWL models explored in the literature focus on the authenticity of the workplace environment (whether real or virtual), which is seen to be key to students learning

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<sup>26</sup> Ibid 349.

<sup>27</sup> See Lipinge et al (n 21).

<sup>28</sup> See Praneel Chand et al, 'Using Simulated Work-Integrated Learning in Mechatronics Courses' (Conference Paper, IEEE International Conference on Engineering, Technology & Education (TALE), 2021).

effectively.<sup>29</sup> Also, like Jollands' model for example, the veracity of the learning project being harvested from a real-world business is important. A notable feature of these SWL models is the *authenticity* of the workplace environment or workplace-generated project as a key requirement. BLIP makes no attempt to replicate real physical workplaces, or even real projects. Our students are not learning hard, technical skills, such as suturing a wound or baking a cake. Instead, we want them to understand how the law applies to businesses in practice. We think this can be done effectively and efficiently by setting realistic challenges to students which force them to do research, learn something about the law, and about how businesses interact with real-world pressures. We therefore value the focus on realism that these SWL models incorporate. To that end, we endeavour to set realistic challenges, and our group assessment emphasises the realism of how students navigate the portfolio challenges we set them.

Even if BLIP departs from some key aspects of contemporary SWL models, the unit nonetheless draws on SWL's other beneficial aspects. In particular, BLIP reflects two aspects which are important to SWL, namely linking theory and practice and tailoring learning to learners' needs.<sup>30</sup> We recognise other benefits of SWL identified by Fatima Lateef in her early 2010 study of simulation-based learning in a medical practice context, where she outlined the educational utility of simulating real scenarios.<sup>31</sup> There are many clear parallels between her position and ours. Lateef highlights how simulation-based learning can develop health professionals' knowledge, skills, and attitudes, whilst protecting patients from unnecessary risks. We follow a similar ethos in BLIP. We require student teams to concoct a start-up business without having to worry about real financial or legal risk or actual commercial competition. Lateef also highlights the benefits of using simulation-based education as a valuable tool in learning to mitigate ethical tensions and resolve practical dilemmas. We have seen both ethical issues and practical problems come up in the running of BLIP businesses over the years, and it is a relief these issues did not occur with real-life consequences. We have also noted how the group dynamic enhances the experience of simulation-based training. By applying techniques, tools, and strategies in designing structured learning experiences, as well as tailoring assessment items as measurement tools linked to targeted teamwork competencies and learning objectives, we have seen a wider set of skills in professional conduct grow in our students. And, as Lateef points out, teamwork training conducted in the simulated environment may offer an additive benefit to the traditional didactic instruction, enhance performance, and possibly help reduce errors.<sup>32</sup>

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<sup>29</sup> See, eg, Jossberger et al (n 19).

<sup>30</sup> Ibid.

<sup>31</sup> Fatima Lateef, 'Simulation-Based Learning: Just Like the Real Thing' (2010) 3(4) *Journal of Emergencies, Trauma, and Shock* 348.

<sup>32</sup> Ibid 352.

## **IV REFLECTIONS ON THE BLIP SWL MODEL**

While BLIP students are not placed in a real-world workplace, nor do they undertake projects generated by real firms, we consider that the students in BLIP mirror working in, and learning from, the real world of a business start-up in several important respects:

1. People who may not always know each other well may still come together to create or work in a start-up business;
2. They have considerable autonomy in designing the business structure, and determining the goods and or services that the business will provide;
3. They must work together in large groups to manage and achieve success in the business and record the business's operations and decision making;
4. They encounter situations that generate legal, ethical, practical, commercial and teamwork issues and must undertake research to understand, navigate and resolve those issues;
5. They must reflect on the success or otherwise of how those issues were resolved, and consider opportunities for change;
6. They must navigate and resolve real-world work situations such as: social loafing, a lack of acknowledgment of work, personality clashes, deciding how to allocate work fairly, accountability, and providing and receiving constructive feedback on work produced;
7. They are forced to work effectively with people they have not chosen as their colleagues;
8. They undertake different roles over time, reflecting sometimes shifting hierarchies of power in the workplace, and in the process develop various skills, including communication, teamwork, leadership, research and record-keeping skills;
9. They must learn how to manage time-sensitive deadlines as a group in an environment of constant pressure to complete tasks;
10. They learn actively by doing, which complements the more passive learning achieved through engaging with written or audio learning materials; and
11. They must be agile, adapting to unforeseen and unscripted problems, challenges and risks.

The BLIP experience also highlights several important life and workplace values, including the values of:

1. commitment to a group and teambuilding;
2. responsibility and accountability;
3. effective communication and constructive feedback;
4. reflective practice and identifying opportunities for improvement; and
5. supporting others in completing tasks.

Many of these positive and 'work-ready' aspects of BLIP are reflected in students' anecdotal summations of the unit, which stress the opportunity to extend group working skills, develop confidence in speaking up and voicing opinions, resolve disagreement and meet taxing deadlines.

### **Knowledge Retention**

Our experience with BLIP suggests that the interactivity and practical application of the law through SWL enhances student learning by allowing students to better retain the knowledge developed during semester. Again, this is consistently reflected in student feedback, which highlights the increased opportunities to incorporate and apply in real life the learning achieved through the readings and teaching and the preference for this more interactive, experiential and on-going method of learning over end-of-semester examinations based on concentrated memorised learning which is quickly forgotten. Student feedback suggests anecdotally that the ability to understand the context behind the law, such as the reasons why a company structure was better than other options, significantly aided knowledge retention and understanding.

### **Group Work Skills**

Perhaps one of the most important aspects of real-world WIL is the opportunity to develop knowledge and skills that will assist graduates to function as effective team members in groups with very different personalities and skills. While the group work in BLIP is one of the more challenging aspects of managing the unit, given the natural potential for conflict among humans, the strongest themes emerging from anecdotal student feedback are the benefits of working in groups, and the relevance of group work to work readiness. The communication, organisational and interpersonal skills acquired through BLIP, and required for a teamwork-ready student are consistently addressed by students, which illuminates how the unit is highly reflective of a real working environment in terms of relational learning and exposing opportunities to improve in conflict resolution, organisational, delegation and team-management skills, and develop as a professional and teammate by working for a long period with the same people.

### **Real-world Relevance**

The relevance of the knowledge and skills learned through the SWL model of BLIP as it applies to real-world employment is a consistent theme in anecdotal student feedback, which illustrates how the practical tasks of doing the work in teams of diverse people develops knowledge and skills which students feel they will use in their everyday lives upon entering the workforce and possibly running businesses.

### **Learning by Doing**

In our interactions with BLIP students, they have often identified the utility of the skills learned through the experiential learning aspect of BLIP, its emphasis on learning by doing, and the translation of those skills to the real world. This helps students to see the relevance of what they learn in context and not just as an academic assignment.

### **Agility**

The agility required to respond to unforeseen and complex challenges in the real world is also developed in BLIP, and again is reflected in anecdotal student feedback which highlights how BLIP, as in the real world, presents situations which are not black-and-white and require the need to dynamically adapt thinking.

## **V CONCLUSION**

WIL, group work and role-playing are important and beneficial features of contemporary legal education. Following the pandemic's restrictions on WIL placements, and with the increased use of electronic interfacing and learning tools, SWL has become a more normalised and accepted alternative to WIL. We look forward to continuing to utilise and develop BLIP's unique SWL model.

This symbiotic mesh of learning models through role-playing in groups, and in a fabricated workplace environment, intensifies and entrenches the development of soft skills, deepens students' understanding of the knowledge they gain and apply in the unit, and enhances their work readiness.

Of course, the defining features of BLIP's learning modes are the role-playing model it employs, and the *simulated* nature of SWL. Each year, we ask a graduating student to film a short video for their incoming peers the following year. Most urge prospective students to invest seriously in BLIP, and caution that they will get from BLIP what they put in. Nevertheless, role-playing requires cooperation and a genuine commitment from students to be fully effective and, of course, this is something that we cannot always control.

The very nature of *simulation* belies a suggestion that it is inferior to the real. There is a natural tendency to privilege the real over the fabricated, notwithstanding some of the problems associated with real-world WIL that we identified in this article. To test the competing merits of the real and the simulated, it would be ideal if we could run a controlled experiment, simultaneously running two versions of BLIP, one using its existing simulated model, and another placing students in the real world. However, some of the challenges posed by BLIP will not be easily resolved, due to the large number of students and the concomitant pressures on resources and teaching staff. Therefore, we are resolved to maintaining a simulated model of WIL. With their hunger for real-world immersion unsatisfied, this can result in some students not taking the exercise seriously, and in social loafing. There are consequences to how students run their simulated businesses, however they are ultimately consequences felt personally by the students in the marks they receive, and the feedback provided by their peers. Otherwise, students can shrug off anything that didn't quite work. There is no oversight by real-world business managers or mentors. There are no real-world consequences to businesses flowing from the decisions students make. To combat the risk of social loafing and poor engagement in SWL, we have bolstered the peer assessment mechanisms employed in BLIP to enhance accountability and encourage self-reflection. To encourage students to take the role playing seriously and emulate the features of a real business workplace, we include in our assessment rubric a realism criterion.

We encourage educators to expand and consolidate the scarce research on SWL, and share their successes and failures. We are always looking for opportunities to improve our SWL model. In particular, we see prospects to enhance the realism of students' experiences, while maintaining the essential features of the model. In 2025, we will introduce a new assessment item which requires students to prepare a real-world 'Business Law in Practice Report'. This will require them to compare their simulated business start-up with a real-world business. We envisage that this will help students test the realism of their start-up businesses, and learn important aspects from the real-world business that they choose to compare themselves against. In conducting the research for their report, we will encourage students to reach out to real-world businesses and speak directly with them as they answer the research questions we set them. Other possible methods for enhancing opportunities for students to interact with real businesses could be establishing business panels, at which students could ask questions, and be questioned by panel members.

We also see scope in developing some tools to assist students to embrace, enthusiastically and effectively, the SWL model of BLIP. We think students may benefit from further targeted guidance on how to role-play effectively, which we could introduce as a separate module for students to complete, or alternatively run as a discrete workshop.

In the meantime, we will continue to encourage our students to 'fake it 'til they make it'.

# WHAT MAKES A GREAT HDR SUPERVISOR IN LAW?

## PERCEPTIONS FROM HDR STUDENTS AND THEIR SUPERVISORS

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JADE LINDLEY, NATALIE BROWN AND LIAM QUINN \*

### I INTRODUCTION AND BACKGROUND

The relationship between a supervisor and a Higher Degree by Research (HDR) candidate for a Master's degree by Research, Doctor of Juridical Science (SJD), or Doctor of Philosophy (PhD) qualification can contribute to the candidate's timely submission of their thesis. The 2020 article by Lindley, Skead and Montalto,<sup>1</sup> identified this complex relationship as a contributing factor to HDR students' completion or attrition.<sup>2</sup> The present study builds on those research findings by exploring the characteristics of the supervisory relationship that HDR students and supervisors identify as key to successful thesis completion. The results presented in this article intend to assist HDR supervisions in law.

Students' socio-psychological wellbeing (also referred to simply as wellbeing) is a complex phenomenon that requires further research in the HDR context.<sup>3</sup> The students' wellbeing is key to completing the intellectually and emotionally challenging HDR journey and their success thereafter.<sup>4</sup> The personal aspects of the supervisory relationship can impact positively or negatively on the timely completion of the research project. A supportive supervision relationship is a vital component of the PhD journey.<sup>5</sup> Emotional support is equally as important as academic guidance to develop a constructive relationship and the students' self-confidence.<sup>6</sup>

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<sup>1</sup> Jade Lindley, Natalie Skead and Michael Montalto, 'Enhancing Institutional Support to Ensure Timely PhD Completions in Law' (2020) 30(1) *Legal Education Review* 1.

<sup>2</sup> Ibid 28.

<sup>3</sup> J Stubb, K Pyhalto and K Lonka, 'Balancing Between Inspiration And Exhaustion: PhD Students' Experiences Socio-Psychological Well-Being' (2011) 33(1) *Studies in Continuing Education* 33, 45–6.

<sup>4</sup> Ibid 46–8.

<sup>5</sup> Lorna Moxham, Trudy Dwyer and Kerry Reid-Searle, 'Articulating Expectations For PhD Candidature Upon Commencement: Ensuring Supervisor/Student "Best Fit"' (2013) 35(4) *Journal of Higher Education Policy and Management* 345, 345, 347; Kim Beasy, Sherridan Emery and Joseph Crawford, 'Drowning in the Shallows: An Australian Study of the PhD Experience of Wellbeing' (2021) 26(4) *Teaching in Higher Education* 602; KM Barry et al, 'Psychological Health of Doctoral Candidates, Study-Related Challenges and Perceived Performance' (2018) 37(3) *Higher Education Research and Development* 468; Susan Guthrie et al, 'Understanding Mental Health in the Research Environment: A Rapid Evidence Assessment' (2018) 7(3) *Rand Health Quarterly* 2.

<sup>6</sup> Moxham, Dwyer and Reid-Searle (n 5) 352.



A healthy mentor relationship is a critical factor contributing to completion rates,<sup>7</sup> because students are insulated within supervisory relationship, which will be a source of resilience or a risk to the students' well-being.<sup>8</sup> Stress, exhaustion, anxiety, and lack of interest (or socio-psychological ill-being) may lead to attrition.<sup>9</sup> Students who have a positive HDR experience may be 'empowered' whereas those who have a negative HDR experience may feel 'burdened' and experience exhaustion, insecurity and anxiety.<sup>10</sup> Students experiencing good wellbeing frequently cite feelings of satisfaction, support of learning, inspiration, and engagement.<sup>11</sup> High quality supervision is an important contributing factor to the development and fostering of students' wellbeing.<sup>12</sup> We submit that the quality of support provided by supervisors in this relationship is key to optimising supervision, as well as empowering and inspiring the student during the supervision process leading towards thesis completion.

Looking specifically at the PhD journey across any discipline, the supervisory relationship is long; three years full-time at a minimum, and often closer to four or five years. The supervisory relationship is even longer if the candidate is completing the research project part-time. As a side note, many of us have embarked on this relationship with little consideration of whether the personalities and skills of the supervisor and candidate are a good fit that will complement each other, or develop positively over the long term, and ultimately, contribute positively to PhD completion. Supervisors and candidates are paired often for academic reasons and may potentially know each other as colleagues or past students or other association,<sup>13</sup> the compatibility of personalities is an aspect often not discovered until well into the period of supervision. Therefore, the success of a supervisory relationship must depend on the characteristics of the supervisor and the candidate, what the parties consider important, whether each deliver on expectations, and when conflicts arise, whether the parties have the skills to resolve disputes, enabling the relationship to continue.

The parties' relationship in law HDR supervisions may have a greater impact on the candidate's success in comparison to other disciplines, such as sciences, due to the nature of the research. For example, laboratory based empirical research differs from legal research that is largely desk-based and oftentimes doctrinal.<sup>14</sup> Specifically, research suggests completion times are often quicker and more collaborative in science-based disciplines than language-based disciplines,<sup>15</sup> leading to correlatively, lower attrition rates than disciplines such as law.<sup>16</sup> Despite an upward trend in other methods as aside from purely doctrinal in law, doctrinal researchers are likely to

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<sup>7</sup> Stacey C Moak and Jeffery T Walker, 'How To Be A Successful Mentor' (2014) 30(4) *Journal of Contemporary Criminal Justice* 427, 438.

<sup>8</sup> Australian Council of Graduate Research, *Mental Health and Wellbeing in Graduate Research Education* (Version 2: August 2021) [8]–[9].

<sup>9</sup> Stubb, Pyhalto and Lonka (n 3) 34, 35, 44. See also, Ben Marder et al, 'Impression Formation Of Phd Supervisors During Student-Led Selection: An Examination Of UK Business Schools With A Focus On Staff Profiles', (2021) 19 *The International Journal of Management Education* 1, 3.

<sup>10</sup> Stubb, Pyhalto and Lonka (n 3) 39.

<sup>11</sup> Ibid 39–40.

<sup>12</sup> Ibid 47.

<sup>13</sup> Marder et al (n 9) 2, 6–10.

<sup>14</sup> Terry Hutchinson and Nigel Duncan, 'Describing and Defining What We Do: Doctrinal Legal Research' (2012) 17(1) *Deakin Law Review* 83, 99.

<sup>15</sup> Lindley, Skead and Montalto (n 1) 7. For comment on completion rates specific to law see Hutchinson and Duncan (n 14) 97. See also, completion times for humanities in comparison to sciences, Ronald Ehrenberg et al, 'Inside the Black Box of Doctoral Education: What Program Characteristics Influence Doctoral Students Attrition and Graduation Probabilities?' (2007) 29(2) *Educational Evaluation and Policy Analysis* 134, 134–5.

<sup>16</sup> Ehrenberg et al (n 15) 135, 147.

experience greater isolation than collaborative laboratory-based researchers,<sup>17</sup> and are more likely to engage the subjective opinions of the supervisor and student,<sup>18</sup> than HDR students in the sciences. These circumstances in law make the student/supervisor relationship all the more important to maintain the student's wellbeing.

Some aspects of the supervisory role that may be important in the early research phases, may be less important during the final push to refine the finished thesis. For example, timely feedback, encouragement, support, empathy, and assistance refining the research task may be more important to the candidate's achievement during the early stages of the project, while attention to detail is a relationship quality that is more useful for the finalisation of the research task. Indeed, a supervisor who has completed a PhD themselves may bring empathetic qualities to supervision because they understand the early research challenges and can support the candidate by normalising common issues and setbacks through shared experience.<sup>19</sup>

The initial choice of supervisors and acceptance of candidates is primarily based on academic acumen, appropriate knowledge and skills, and a shared interest in the research task.<sup>20</sup> Students rank competence and warmth as important qualities of a HDR supervisor, however, interpersonal skills are not attributes that can as easily be ascertained as competence during this important decision-making process.<sup>21</sup> Supervisors and HDR students may have had pre-existing association or students may reach out to a potential supervisor based on their research profile reputation or advice from other students.<sup>22</sup> However, the needs of individual students are not homogenous,<sup>23</sup> the supervisor's personality that worked well for one student may not work for another.<sup>24</sup> Largely many characteristics that will contribute to an optimal PhD supervision are unknown and unknowable until the relationship commences in earnest.

To understand and identify the important characteristics of the supervisory relationship and contribute to successful and timely completion of law HDR theses, we conducted empirical research by surveying current and retired HDR supervisors, and current students and those who had completed, a PhD or SJD at the University of Western Australia (UWA) Law School in the five years prior. This article addresses the knowledge gap identified by Lindley, Skead and Montalto by answering the question, what relationship characteristics contribute to optimal PhD supervision? This article answers that question in the following sections: the methodology that describes the empirical approach undertaken; followed by the results of the perceptions surveys; and lastly, the discussion drawing on results and literature findings; and the conclusion. The intention of the research is to confirm, through empirical findings, expectations to support HDR supervision at the institutional and personal levels to benefit both students and supervisors. Key findings indicate the need for enhanced continuing professional development (CPD) for supervisors, in particular, conflict resolution and interpersonal skills. We suggest that cross

<sup>17</sup> See Stubb, Pyhalto and Lonka (n 3) 38, Table 1, which indicates that 93% of humanities PhD students worked alone in comparison to 43% in medicine and 78% in behavioural sciences.

<sup>18</sup> For a comparison of well-defined disciplines such as mathematics and chemistry (hard sciences) where the level of agreement between academics is higher than ill-defined disciplines in which academics have several or sometimes opposing views on acceptable ways of approaching a research topic, see Stubb, Pyhalto and Lonka (n 3) 35.

<sup>19</sup> For example, students' perception that others do not struggle in the program, described as 'academic imposter syndrome' — see Moak and Walker (n 7) 430–1.

<sup>20</sup> Marder et al (n 9) 2, 6–10.

<sup>21</sup> Ibid 3–4.

<sup>22</sup> Ibid 2; Moak and Walker (n 7) 438.

<sup>23</sup> Moxham, Dwyer and Reid-Searle (n 5) 346; Moak and Walker (n 7) 428.

<sup>24</sup> Moak and Walker (n 7) 436, 438.

institutional access to supervision CPD could address this deficit. The aim of this article is to provide a foundation of understanding that will both support students and supervisors, and supporting institutions to identify factors that lead to attrition and develop tools and resources to achieve optimal PhD supervisions.

## II METHOD

Two voluntary and anonymous surveys were developed on the online survey platform, 'Qualtrics'. Ethics approval was granted for the research project on 15 November 2021, by the UWA Human Research Ethics Office (REF: 2021/ET000682). The surveys were active for completion from 26 November 2021 to 21 December 2021, during the period of the COVID-19 pandemic. As in previous research of this kind conducted by Lindley, Skead and Montalto in 2020,<sup>25</sup> non-random purpose sampling was employed, whereby a sample of respondents were selected from a population based on specific characteristics — specifically, their status as a past or present UWA PhD or SJD student or supervisor. Email invitations to complete the surveys were sent via internal mailing lists for enrolled UWA Law School PhD or SJD students (at the time of survey completion) and those who completed within the five years prior; and to UWA Law School supervisors and those who had retired within the five years prior. One survey was specific to the experiences and perceptions of UWA Law School PhD and/or SJD supervisors, and the other survey was specific to the experiences and perceptions of UWA Law School PhD and/or SJD students. The overall aim of both surveys was to identify optimal supervision practices according to students and supervisors. The student survey comprised eight questions, with four questions containing multiple parts; whereas the staff survey comprised 11 questions, with eight questions containing multiple parts. Questions included multiple choice, free text, and ranking formats.

Descriptive analyses of the quantitative data were conducted in *R*. Inductive thematic analyses of the free text survey data involved systematically scanning, coding, and thematically grouping responses. As with previous survey research of PhD program participants by Lindley, Skead and Montalto in 2020, there were several limitations of the present research.<sup>26</sup> Firstly, the student and supervisor sample sizes were small. This is predominantly a reflection of the small population of Law School PhD or SJD students and supervisors at the university. The study also relied on respondents self-selecting to complete the relevant survey. This may have skewed the results to reflect the experiences and perceptions of respondents who had shared factors underpinning their reasons to self-select participation in the survey, for example, the student may have experienced particularly positive or negative student-supervisor interactions. While this latter limitation cannot be entirely discounted, the nature of the initial background questions did allow some assessment of the diversity of respondents within each sample according to experience. Moreover, given the exploratory nature of the survey (and the recognised lack of inferential capabilities) we contend that the data still contributes valuable insights to the current knowledge on the topic, and provides a platform for future research.

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<sup>25</sup> Lindley, Skead and Montalto (n 1).

<sup>26</sup> *Ibid.*

### III RESULTS

A total of 26 respondents completed the surveys; 15 respondents completed the supervisor survey, and 11 respondents completed the student survey. To provide context, the median duration to complete the supervisor survey was 16 minutes, and the median duration to complete the student survey was 11 minutes.

#### Experience

It was first important to initially establish the diversity of the supervisor and student samples with respect to the background of supervisor-related and student-related academic experience. The background experience characteristics of supervisor respondents are presented in Table 1.

**Table 1.** Background personal experience characteristics of PhD or SJD supervisor respondents

	Number of respondents	Proportion of respondents (%)
<b>Qualification</b>		
PhD	10	67
SJD	1	7
Neither	4	27
<b>Academic work experience</b>		
Less than 1 year	0	0
Between 1 and 5 years	0	0
Between 5 and 10 years	1	7
Between 10 and 20 years	6	40
More than 20 years	8	53
<b>Supervisory experience (to completion)</b>		
PhD – principal supervisor	10	67
PhD – co-supervisor	12	80
SJD – principal	3	20
SJD – co-supervisor	0	0
<b>Ever discontinued PhD or SJD supervision</b>		
Yes	9	60
No	6	40

**Note:** qualification and academic work experience proportions are rounded and therefore may not sum to 100; supervisory experience proportions may not sum to 100 due to respondents having the option to choose multiple responses.

The 11 supervisor respondents who had completed PhD or SJD studies all indicated that they believe this qualification helped them as a supervisor, for reasons such as understanding the experience of students, understanding the requirements of the qualification, and learning supervisory techniques or tools from their own experience of interacting with their PhD or SJD supervisor. Conversely, all four of the respondents who did not have a PhD or SJD indicated that they do not believe this limited them as a supervisor, for reasons such as research output equivalence through other qualifications or work experiences, and prior successful experiences in a supervisory capacity.

As reflected in Table 1, the academic work experience of our sample of supervisor respondents was skewed towards respondents who have had a longer academic career, compared to a junior academics, and having been a principal or co-supervisor of PhD candidates rather than SJD candidates. However, there was a more pronounced variation amongst the supervisor respondents in terms of the number of candidates they had supervised. For example, four respondents had supervised only one candidate as a principal supervisor, one respondent had supervised two PhD candidates, one had supervised three PhD candidates, one had supervised four PhD candidates, while three had supervised five or more PhD candidates, in this capacity.

Of the nine respondents who indicated that they had discontinued a PhD or SJD supervision, five indicated in a free-text follow-up that they had discontinued supervisions at the student's request, and five indicated that they had discontinued supervisions themselves, this result included students that did not proceed beyond milestones such as confirmation of candidature. Student-related reasons for discontinuing supervisions according to the supervisor respondents included personal, family, and/or health-related issues of the student, a student changing their supervisory team to be more local to their living situation, and the student's work commitments impacting their ability to complete a PhD. Supervisor-related reasons for discontinuing supervisions included changing institutions, a breach of trust by a student, and students failing to fulfil the requirements of a PhD to proceed past the initial milestones.

The background experience characteristics of student respondents are presented in Table 2.

**Table 2.** Background personal experience characteristics of PhD or SJD student respondents

	Number of respondents	Proportion of respondents (%)
<b>Enrolment status - temporal</b>		
Current PhD or SJD student	5	45
Previous PhD or SJD student	6	55
<b>Enrolment status - workload</b>		
Enrolled full-time	8	73
Enrolled part-time	3	27
<b>Progression status</b>		
Completed in the past 5 years	5	45
Less than 1 year	1	9
Between 1 and 2 years	1	9
Between 2 and 3 years	1	9
Between 3 and 4 years	1	9
Between 4 and 5 years	1	9
5 or more years	1	9
<b>Whether on track to complete on time</b>		
Yes	10	91
No	1	9
<b>Capacity worked with supervisor previously</b>		
Research assistant	3	27
Colleague	3	27
Masters	2	18
Honours	1	9
None	2	18

**Note:** proportions for the first four characteristics are rounded and therefore may not sum to 100; capacity worked with supervisor previously proportions may not sum to 100 due to respondents having the option to choose multiple responses. Additionally, one respondent did not provide details in relation to the capacity worked with supervisor previously characteristic.

Some characteristics of the student respondents were relatively evenly distributed among respondents (such as, current or previous enrolment status, and having worked with the supervisor previously), while other characteristics were skewed more in one direction (for example, most of the student respondents were enrolled full-time, and most of the student respondents believed they were on track to complete their qualification on time).

### Supervisor Training

To understand the factors contributing to optimal supervision, it was also important to establish the perceptions and experiences of supervisors with respect to supervisor training. Table 3 presents a breakdown of supervisor respondents' supervisor training experiences.

**Table 3.** Perceptions and experiences of supervisor respondents with respect to supervisor training

	Number of respondents	Proportion of respondents (%)
<b>Time since completing minimum induction training for supervisors (within the past...)</b>		
12 months	6	40
3 years	5	33
5 years	2	13
Can't recall	2	13
<b>Whether feel adequate training and support is provided to supervisors</b>		
Yes	14	93
No	1	7
<b>Whether think further mandatory minimum training is necessary for all supervisors</b>		
Yes	10	67
No	5	33
<b>Whether think further mandatory minimum training is necessary for all level 1 supervisors</b>		
Yes	11	73
No	4	27
<b>Whether think further mandatory minimum training is necessary for all level 2 supervisors</b>		
Yes	9	60
No	6	40
<b>Whether think further mandatory minimum training is necessary for all level 3 supervisors</b>		
Yes	9	60
No	6	40

**Note:** proportions are rounded and therefore may not sum to 100.

One area of training and support supervisor respondents felt would be beneficial to PhD or SJD supervisors was training relating to issues that arise in the process of supervision including conflict resolution strategies, for example:

'[D]ealing with all the tangential and technical issues that arise in the course of a candidature such as student behaviour and misbehaviour, student depressions, student accidents, illness, life problems such as family illness.'

'Training in conflict resolution should be available to all supervisors.'

'It would also be helpful to reflect on how to manage different issues that arise in the process of PhD supervision. Perhaps this is more about sharing experiences than formal training.'

While this is generally available, another area of training and support supervisor respondents identified as potentially useful was a comprehensive training across all aspects of supervision for new supervisors, for example:

'Definitely for early career supervisors, there needs to be comprehensive, mandatory training across all aspects of supervision (e.g. choosing a student; dealing with student issues [both the students having issues and problem students]; how to define & develop the supervisor-student relationship; supervisor expectations; dealing with different types of students [e.g. those who are more independent vs those who need more guidance]).'

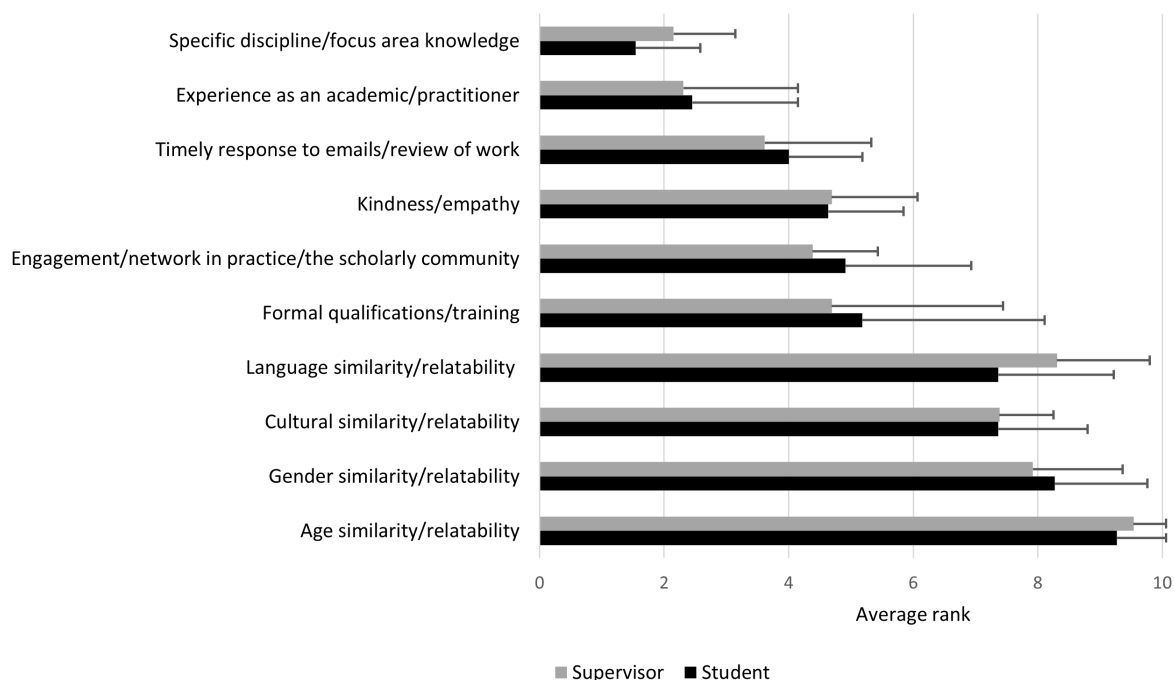
'All supervisors should receive training on how to supervise a project to completion including the different ways in which we can support students along the way - ie the stages of a PhD - commencing, drafting research proposals, establishing the structure and research design, drafting chapters, completion etc—and how supervision must change to accommodate these stages. This is not as easy as it seems and indeed may differ with various projects and students with some requiring quite nuanced supervision at the various stages and others less so.'

Other potentially useful areas of training and support that the supervisor respondents identified were ongoing training relating to the changing format of law theses, training on the specific institutional policies, training on how to support the professional development of students, training on the completion process for students nearing the end of their qualification, and training on how PhD supervision interacts with other structures at the university.

### **Optimal Supervision**

Given the areas of training and support identified as potentially useful by supervisor respondents, it is important to examine the factors that supervisors and students perceive as contributing to optimal supervision. Figure 1 shows supervisor respondent average rankings of supervisory characteristics by the importance they perceive HDR students attach to them compared to actual student respondent average rankings.

**Figure 1.** Supervisor respondent average rankings of supervisory characteristics by the importance they perceive PhD or SJD students attach to them compared to student respondent average rankings of supervisory characteristics by importance at the start of their program



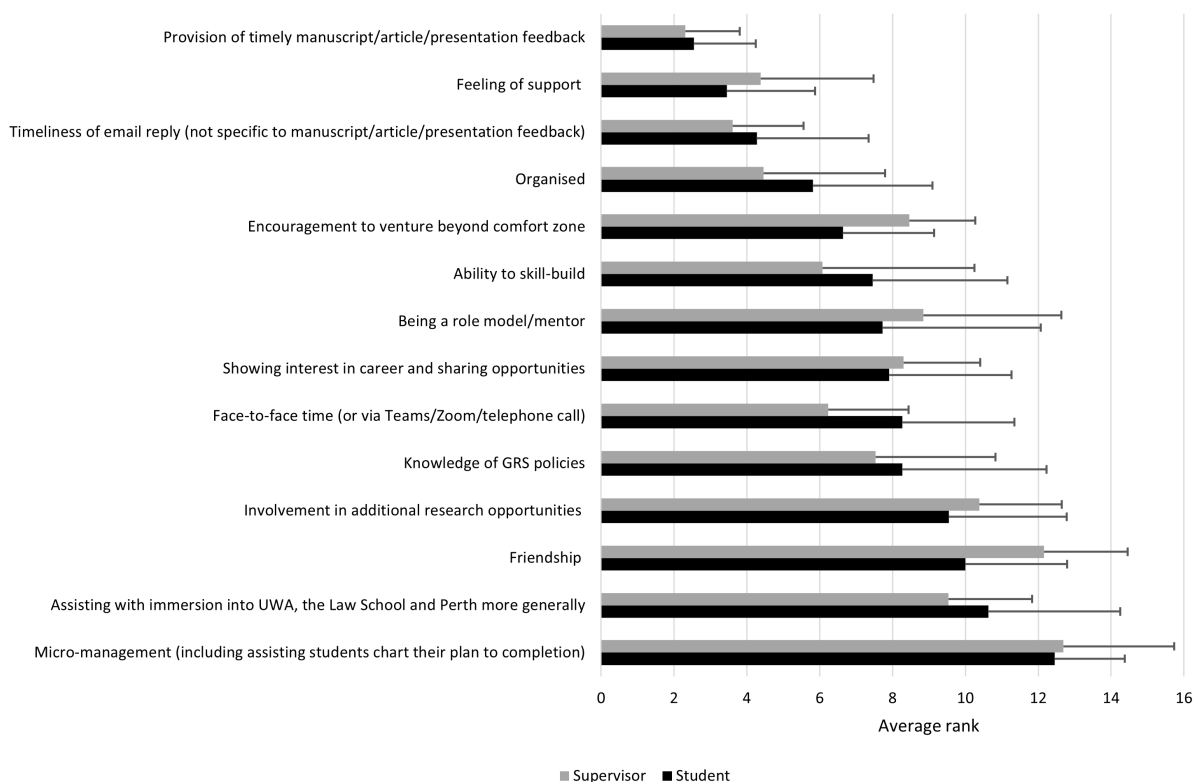
**Note:** A rank of 1 indicates most important and a rank of 10 indicates least important. As such, the smaller the average rank value, the more important respondents perceive the supervisory characteristic is to students/themselves. Error bars represent standard deviation. Two supervisor respondents were excluded from analysis due to subsequent comments that indicated they felt the rankings did not represent their views. The sample sizes differ for the student ( $n = 11$ ) and supervisor ( $n = 13$ ) respondent samples.

As depicted in Figure 1, supervisors estimated the relative importance of different supervisory characteristics to students with a reasonable degree of accuracy. Although, there were two minor exceptions to this. Firstly, students placed 'kindness/empathy' as slightly more important than 'engagement/network in practice/the scholarly community', whereas supervisors estimated the latter as slightly more important than the former, when considering average ranks. Secondly, students placed 'language similarity/relatability' as more important than 'cultural similarity/relatability' and 'gender similarity/relatability', while supervisors estimated the two latter characteristics as more important than the former, when considering average ranks. Interestingly, 'formal qualifications/training' had the largest standard deviation in ranking for both the student and supervisor samples, indicating that the biggest difference in rankings was for this supervisory characteristic. There was a greater range of rankings provided for this characteristic: some students/supervisors perceived 'formal qualifications/training' as considerably more important to students than others, while the range of rankings for other supervisory characteristics was more uniform.

Despite general similarities among student and supervisor respondents in the average ranking of specific qualities perceived to contribute to optimal supervision, there was considerably more variety in average rank between the two samples across all qualities. Figure 2 shows a comparison of supervisor and student respondent average rankings of qualities perceived to contribute to optimal supervision by importance.



**Figure 2.** Comparison of supervisor and student respondent average rankings of qualities perceived to contribute to optimal supervision by importance



**Note:** A rank of 1 indicates most important and a rank of 14 indicates least important. As such, the smaller the average rank value, the more important respondents perceive the supervisory characteristic is. Error bars represent standard deviation. Two supervisor respondents were excluded from analysis due to subsequent comments that indicated they felt the rankings did not represent their views. The sample sizes differ for the student ( $n = 11$ ) and supervisor ( $n = 13$ ) respondent samples.

Particularly notable differences in the relative importance of qualities in contributing to optimal supervision among student and supervisor respondents were 'encouragement to venture beyond comfort zone', 'face-to-face time (or via Teams/Zoom/telephone call)', and 'friendship'. Specifically, on average, students ranked 'encouragement to venture beyond comfort zone' and 'friendship' as more important for optimal supervision than supervisors. Conversely, on average, supervisors ranked 'face-to-face time (or via Teams/Zoom/ telephone call)' as more important for optimal supervision than students. Nevertheless, there were some important similarities in the qualities students and supervisors felt were most important for optimal supervision. Specifically, on average, both students and supervisors ranked 'provision of timely manuscript/article/presentation feedback', 'feeling of support', 'timeliness of email reply (not specific to manuscript/article/presentation feedback)', and 'organised' as the four most important qualities for optimal supervision.

It should also be noted that two supervisor respondents were excluded from this analysis due to subsequent comments indicating that they felt the ranking format/options misrepresented their views on optimal supervision. It is important to represent those views here, though the Figures and Tables and survey quotes, as they may have a bearing on the design and focus of future research into optimal supervision. Both respondents made comments that they would rank many (or all) qualities as equally important, while one of these respondents also stated that they

perceived some of the options as logistical issues that could be solved rather than 'qualities' contributing to optimal supervision and that other options were subjective in meaning.

Given the exploratory nature of the research, it was also important to identify other qualities beyond those presented in the survey that students and supervisors felt were important for optimal supervision. Supervisor respondents identified encouraging passion in their students for research, having an interest in a student's research topic, encouraging critical thinking in research, normalising the PhD experience by explaining common challenges, establishing and reviewing expectations of the student and supervisor, and adapting supervisory needs to the individual at various stages of the HDR journey, as supervisory qualities important for optimal supervision. Students also identified qualities relating to inspiring a passion for the research, and having an interest in a student's research topic, for example:

'Genuine interest in PhD topic and taking the time to discuss it. I think many of us have missed a "sparring partner". I chose to venture beyond the interest of my principal supervisor, so I understand a lack of interest there, but, generally, I've felt like my supervisor never really had the time for an in-depth discussion due to competing demands.'

'Appreciation of the shared nature, the dialogue, of feedback.'

Other qualities identified by students as important for optimal supervision were providing direct, honest feedback, and suggesting alternative research pathways where appropriate.

Another way in which qualities or characteristics of optimal supervision were elicited from students and supervisors was by asking the best advice they had given students (supervisors), and the best advice they had received (students). Four student respondents mentioned technical advice including changing their thesis title, writing more concisely, writing the thesis introduction early on to frame and limit the topic, and suggesting a good document management system with drafts organised by date. Two student respondents made comments relating to advice on time management, including trying not to work during the holidays and to not over-prepare for tasks to allow time for other important tasks. Finally, four student respondents made comments about other more general advice received, including learning to live with imperfection, encouraging deep reflection on alternative points of view when assumptions were made in their own writing, encouraging participation in conferences, not give up, and to stay humble. Furthermore, in a follow-up question, one student respondent indicated that they may have removed a supervisor that did not contribute sufficiently to the supervisory team, and another student respondent indicated that they would include a supervisor in their supervisory team who had knowledge of the methodology applied in the PhD.

Some of the best advice given by supervisor respondents aligned with that received by student respondents, such as advising students to write early and consistently, for example:

'I get my students to write consistently and to submit that writing for ongoing feedback. ie Stick to a regular writing and submission timetable.'

'Start drafting parts of your research (even small parts) as early as you can, because this process reveals what you don't understand or don't really know.'

Other advice that aligned with student respondent comments was advising students to avoid trying to achieve perfection in their work, and the related concept of keeping focussed on the task requirements, for example:

'Don't let the right be the enemy of the good. It doesn't have to be perfect - it needs to make a meaningful contribution to the body of work in their thesis field.'

'There is research to be done after the PhD/SJD is completed. You don't have to solve everything in the PhD/SJD.'

Other 'best advice' given by supervisors was not mentioned by the student respondents, such as advising students to be clear about their motivation for doing the PhD, for example:

'All students need to be sure, as they start their PhD, that they are doing so for the right reasons and have chosen a topic that aligns with their personal and professional interests. They will need passion in their chosen topic/area to carry them through their research journey.'

As well as more specific law discipline-focussed advice for students to keep up to date with current news events to contextualise their research, offered by one supervisor respondent:

'Read the newspaper every day. You'll pick up all the legal literature in the course of your research activities but it is only of value if you place your work in the context of real world events and pressures.'

The number of student respondents who indicated that they would supervise future HDR students the way they had been supervised ( $n = 6$ ) was similar to the number who indicated they would not supervise future students in the same way ( $n = 5$ ).

## Disputes

In order to identify aspects of supervisor-student relationships that significantly depart from optimal supervision practices, it was important to gauge student and supervisor perceptions and experiences of formal and informal disputes.<sup>27</sup> Most of the student respondents indicated that they were aware they could make complaints about supervision (82%;  $n = 9$ ). Despite this, no student respondents had made a formal complaint. However, four of the 11 student respondents indicated that they had made an informal complaint. The informal complaints included the lack of availability of a supervisor, unfair assertions made by a supervisor, a lack of understanding about personal circumstances, exploitation of the supervisor/supervisee power imbalance, harsh treatment, belittling verbal communication, and 'borderline bullying'. Three of the students who made an informal complaint indicated that the outcome of the complaints process resolved the situation between them and their supervisor to enable a continued relationship. The remaining student who made an informal complaint, who cited exploitation of power imbalance, harsh treatment, and 'borderline bullying' as the grounds of their complaint, indicated that the outcome of the complaints process did not resolve the situation between them and their supervisor. Of the seven student respondents to indicate that they had not made any formal or informal complaints,

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<sup>27</sup> *Informal* complaints may be via the Dean/Head of School, as compared to *formal* complaints which are through the Graduate Research School.

two indicated that they had experienced difficulties with supervision. The nature of these difficulties included a lack of substantive feedback on drafts from their secondary supervisor and having a supervisor who they regarded as sexist and inexperienced.

Two of the 15 supervisor respondents indicated that they had been involved in a formal complaint. The persons making these two complaints were a student and a third party, respectively. The complaints related to the nature of communication to a student that their candidature was not confirmed, and unfairness of process leading to the decision to reject a PhD thesis. In the first case, it was identified that the outcome of the complaints process did not resolve the situation, which precluded ongoing supervision. Conversely, the outcome of the complaints process for the second complaint did resolve the situation. Six of the 15 staff respondents indicated that they had been involved in an informal complaint. The persons identified as making the complaints were students ( $n = 3$ ), and the supervisors themselves ( $n = 3$ ). Student complaints related to the timeliness and nature of communication/feedback as well as the conduct of a co-supervisor, and the nature of communication to a student who was not recommended for confirmation of candidature and advised to withdraw. The third complaint was identified as being obscure, with no specific details provided. Supervisor complaints related to bullying and aggression by a student; breach of trust by a student; and complaints by students include, poor advice to, and support of, a student in helping them to achieve their goal of becoming an academic. Three of the informal complaints were identified as having been resolved as an outcome of the complaints process, while the remaining three were not resolved—precluding ongoing supervision. Of the seven supervisor respondents to indicate that they had not been involved in either a formal or informal complaint, four identified that they had experienced difficulties with a supervision. These difficulties included crippling perfectionism and related mental health issues of students; students disengaging from the project or not making progress due to other commitments or doubt about whether they wanted to do a PhD; and students lacking sufficient research and writing skills at the time they commenced the project despite meeting the admission criteria.

When asked if they had any recommendations for improving the current Graduate Research School (GRS)/Law School dispute resolution system, five supervisor respondents indicated that they had not had any experience with the dispute resolution system; two indicated that they did not have a detailed understanding of the dispute resolution system but had past experiences where it worked satisfactorily; and one stated that outcomes appeared to be dependent on who the GRS representative was, citing their experience of bullying and aggression by a student which was dismissed by one GRS representative but dealt with very effectively by the next GRS representative.

## IV DISCUSSION

The PhD experience has been compared to Rapunzel isolated in the tower working diligently with the wicked witch supervisor providing necessary sustenance but not much else.<sup>28</sup> However, HDR students are more likely to complete and have a higher rate of satisfaction with the process when they have a strong positive relationship with their supervisor.<sup>29</sup> The HDR process has both intellectual and emotional challenges,<sup>30</sup> which means the supervisory role is multi-faceted requiring academic and interpersonal skills,<sup>31</sup> which may need CPD to ensure best practice teaching pedagogy for this specialised role.

### Experience and Supervisor Training

All supervising academics must complete an induction course offered by the GRS. While a majority of supervisor respondents considered that the professional development (training) and support provided by the institution were adequate, results indicated a perception that with greater academic experience attained that there is a lesser need for ongoing training. Twenty six percent of supervisor respondents had not engaged in training for over five years, and 60% for over three years. In relation to the need for ongoing training, 33% felt that supervisor training was not necessary for all supervisors. Responses indicated that the need for less training was predicated on the level of academic experience, 73% responding that further mandatory minimum training was necessary for *level one* supervisors compared to 60 percent responding it was necessary for *level two* (L2) and *three* supervisors (L3). Currently, UWA requires L2 and L3 supervisors to read the Supervisor Refresher Module or engage in some other form of professional development at least once every four years.<sup>32</sup> The refresher module mandates CPD for all supervisors aligned with the 2021 Australian Council of Graduate Research supervision guidelines.<sup>33</sup> These results raise two questions. First, are supervisors perceiving academic acumen and experience as correlating with best practice teaching skills, and secondly, is the institution providing professional development by updating the training and/or providing additional skills training in subjects necessary to maintain or attain best practice supervision as teaching methodology evolves? In a nutshell, is the response reflective of the perception that a highly skilled academic does not need teaching methodology CPD for their role as a supervisor, or that the CPD available does not provide suitable upskilling in teaching practice?

Tertiary teaching is unique in that tertiary teachers do not need and generally do not have formal teaching qualifications. Currently, a pre-tertiary teaching qualification requires a four year

<sup>28</sup> Melissa De Zwart and Bernadette Richards, 'Wi-Fi in the Ivory Tower: Reducing Isolation of the Law PhD Student Through Social Media Networks' (2014) 14 (1) *Queensland University of Technology Law Review Special Edition: Wellness for Law* 81, 81.

<sup>29</sup> Moak and Walker (n 7) 430.

<sup>30</sup> Stubb, Pyhalto and Lonka (n 3) 33.

<sup>31</sup> Moak and Walker (n 7) 430; Marder et al (n 9) 3.

<sup>32</sup> University of Western Australia Graduate Research School ('UWA GRS'), *Supervisor Workshops* <<https://www.postgraduate.uwa.edu.au/staff/supervisors/workshops#online>>.

<sup>33</sup> Ibid; Australian Council of Graduate Research, *Good Practice Guidelines* (Guidelines, version 2, August 2021) <<https://www.acgr.edu.au/good-practice/best-practice/>>.

undergraduate Bachelor of Education, specialising in primary, secondary or early childhood studies, or an equivalent two year Masters of Education.<sup>34</sup> In disciplines such as teaching, law, psychology, physical and medical professions, new methods of best practice are continually evolving, and a practitioner is required to undertake CPD to ensure they are employing the best practice methods for their discipline.<sup>35</sup> So, after qualifying, a Western Australian-based teacher is required to fulfil 20 hours of CPD per annum, and may specialise by completing post-graduate qualifications in areas such as special needs or learning difficulties.<sup>36</sup> Because tertiary teachers are not necessarily trained in higher education, there is potentially a greater need for mandatory teaching skills training and CPD, particularly if the academic intends to specialise in a teaching area such as HDR supervision.

On the other hand, the supervisors' response to the survey may indicate that the institution is not offering adequate CPD opportunities. For example, the supervisor training may be static, geared towards science-based disciplines, and not address developing personal aspects, or dealing with difficulties or disputes. Supervisors expressed a need for training in conflict resolution, dealing with student declining mental health and relationship development. The UWA GRS supervisor refresher course is largely a recap of the supervisor induction course, updating policy and services. In 2021, the GRS provide optional online and in-person workshops establishing a GRS Supervision Professional Development Program.<sup>37</sup> The eight online modules are designed to equip PhD supervisors specifically to support their students' development into independent researchers through comprehensive training in core principles and practices of Doctoral supervision.<sup>38</sup> Optional CPD offered by the GRS prior to 2022 included topics such as 'Finding the Right Student', 'Expectations, Relationships and Wellbeing', 'Research Students and Mental Health' as well more mainstream topics to develop research, writing and teamwork skills.<sup>39</sup> One means of providing a greater range of CPD opportunities may be by facilitating cross institution access to supervisor training modules. For example, Monash University offers CPD modules and tools, such as a diagnostic tool to target specific aspects of professional development, and topics such as 'Developing the Researcher and Enabling Progress', 'Effective Feedback', 'Supporting your Candidate', and 'Developing your Supervisory Practice', which are CPDs not currently available

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<sup>34</sup> Government of Western Australia Teachers Registration Board, *Accredited Initial Teacher Education Programs in Western Australia* <<https://www.trb.wa.gov.au/Initial-Teacher-Education-Programs/Accredited-initial-teacher-education-programs>>.

<sup>35</sup> *Teachers Registration Act 2012* (WA) s 22(2)(c); *Teacher Registration (General) Regulations 2012* (WA) r 13; Government of Western Australia Teachers Registration Board, *Professional Learning* <<https://www.trb.wa.gov.au/Teacher-Registration/Currently-registered-teachers/Renewal-of-registration/Professional-learning>>; Government of Western Australia Teachers Registration Board, *Professional Standards for Teachers in Western Australia* <<https://www.trb.wa.gov.au/DesktopModules/mvc/TrbDownload/PublishedDoc.aspx?number=D19/065548>>.

<sup>36</sup> 20 hours CPD is the common requirement for teachers in other Australian States. For example, see Victorian Institute of Teaching, *Professional Practice and Learning Requirements* <<https://www.vit.vic.edu.au/maintain/requirements>>; Edufolios, *Teacher Professional Development Requirements by State and Territory* <<https://edufolios.org/teacher-professional-learning-requirements-by-state-and-territory/>>; Edith Cowan University (ECU), *How can I become a Special Needs teacher?* <<https://askus2.ecu.edu.au/s/article/000001392>>.

<sup>37</sup> UWA GRS (n 32).

<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*



from the UWA GRS.<sup>40</sup> Supervisor CPD needs to be targeted, it necessarily needs to include administrative practice but also needs to be extended to provide exploration of the emotional demands of supervision and 'to reflexively and investigate and contemplate their supervision practices'.<sup>41</sup>

The University of Otago in New Zealand recognises that a good supervisory relationship is the key to a successful supervision, a successful supervision is both the desired end result (the award) and the process achieving that result.<sup>42</sup> In regard to the process, 'the key word is relationship'.<sup>43</sup> The relationship should be professional open and honest and based on mutual respect and trust.<sup>44</sup> In 2022, the University of Otago provided 54 CPD workshops specifically designed to support HDR supervisors and enhance supervision methodology and practice because research unequivocally indicates good supervisory practices are an essential factor that effects both the success and the quality of the research experience.<sup>45</sup> The Otago program offers a comprehensive range of in-person or online pedagogical workshops throughout the year to develop supervisor skills targeting key aspects and processes, such as 'Pastoral Care of Candidates; What doctoral supervisors need to know', 'Mental Health, Well-being and Productivity', 'Supporting your Supervisee', 'Pedagogical Approaches and Supervisory Styles', and 'Providing Feedback in Postgraduate Supervision'.<sup>46</sup>

The complex and demanding role of a supervisor means that CPD (via workshops and review of literature) is necessary to optimise and improve outcomes.<sup>47</sup> However, uptake of workshops for developing teaching or supervisory skills and methodology maybe low even when provided; survey results indicated 27% of supervisors had not participated in training in five years or more and 60% in three or more years. Introduction of a mandatory CPD point system in conjunction with access to programs similar to the University of Otago may ensure that supervisors of all levels are acquiring or maintaining best practice teaching skills.

### **Optimising Supervision: Personal and Practical Aspects Ranking**

Students ranked characteristics of a personal nature – such as support, empathy, and encouragement to venture beyond their comfort zone – as being of higher importance than characteristics of a practical nature — for example, career development and networking opportunities — which were more highly valorised by supervisors. 'Feeling of support' was ranked by students as the second most important aspect of the relationship after timely feedback.

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<sup>40</sup> Monash University Graduate Research School, *Training and Development* <[https://www.monash.edu/graduate-research/supervision/training#tabs\\_\\_2326750-02](https://www.monash.edu/graduate-research/supervision/training#tabs__2326750-02)>.

<sup>41</sup> Moxham, Dwyer and Reid-Searle (n 5) 352.

<sup>42</sup> The University of Otago, *Graduate Research School PhD Supervision* <<https://www.otago.ac.nz/graduate-research/current-students/otago703140.html>>.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

<sup>45</sup> The University of Otago, Higher Education Centre, *The Otago Doctoral Supervision Program* (2022) <<https://www.otago.ac.nz/hedc/otago831677.pdf>>.

<sup>46</sup> Ibid. The examples selected relate to this article's theme of the importance of relationship, however, the program also offers support on practical procedures, such as preparing for viva voce, and key administrative processes for supervisors.

<sup>47</sup> Stan Taylor, 'Good Supervisory Practice Framework', United Kingdom Council for Graduate Education, (June 2019) <<https://supervision.ukcge.ac.uk/good-supervisory-practice-framework/>> 2, 10.

Students ranked face to face time lower than supervisors, potentially indicating that the quality, rather than the quantity of the contact time is the most important form of support. Both students and supervisors ranked timely feedback as the most important relationship characteristic. However, we did not offer a sliding scale of how 'timely' is defined, nor did we delve into appropriate timeliness for various tasks. For example, expectations of timeliness would differ for email replies compared to critical feedback on one or more chapters. Oral or written feedback will typically be the main form of communication between the students and their supervisors, and thus feedback should inherently incorporate the personal aspects identified by students such as feeling supported, empathy, and encouragement. For example, PhD students, who have generally been successful in their prior academic pursuits, may be unprepared for the first revisions and criticisms — however well-intentioned — which may lead to students feeling 'isolated and alone in the uncertainty'.<sup>48</sup> Supervisors can improve communication and minimise feelings of isolation by going beyond feedback that critically analyses by providing supportive feedback that normalises this experience and offers encouragement.<sup>49</sup>

Supervisors play a vital role in providing support to students. Research demonstrates that students are motivated when their early efforts are encouraged and criticism is initially withheld at the beginning of their PhD journey.<sup>50</sup> Students are motivated by supportive, timely, meaningful, and encouraging feedback that shows their supervisor believes in them.<sup>51</sup> Indeed, feedback is an 'intrinsically emotional business'<sup>52</sup> that may seek to support the student's academic writing development. One student survey respondent noted that one supervisor's feedback on drafts focussing on grammar and sentence structure details left them feeling negative and that the supervisor was not seeing the 'bigger picture'.<sup>53</sup> In contrast, targeted critical feedback that was supportive and coupled with reassurance about the quality of the student's work provided the necessary motivational balance that allowed for thesis completion.<sup>54</sup> Other research indicates supervisors requiring 'polished' academic writing rather than encouraging thesis completion can lead to attrition, and that further 'polishing' did not contribute to better employment opportunities.<sup>55</sup> The converse may also apply — supervisors may require students to overcome their inherent perfectionism, as one supervisor survey respondent noted, 'It doesn't have to be perfect'.

There is a large body of literature considering effective feedback and how to develop best practice feedback, the impact of poor teacher feedback skills on student confidence and learning, and the role of emotion in learning.<sup>56</sup> Currently, there are limited resources available through the UWA

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<sup>48</sup> Moak and Walker (n 7) 430.

<sup>49</sup> Ibid 431.

<sup>50</sup> Sian Lindsay, 'What Works For Doctoral Students In Completing Their Thesis' (2015) 20(2) *Teaching in Higher Education* 183, 185.

<sup>51</sup> Ibid 191.

<sup>52</sup> Elizabeth Molloy, Francesc Borrell-Carrio, and Ron Epstein, 'The Impact Of Emotions In Feedback' in David Boud and Elizabeth Molloy (eds), *Feedback in Higher and Professional Education: Understanding it and Doing It Well* (Routledge, 2013) chapter 4, 63.

<sup>53</sup> Lindsay (n 5050) 191.

<sup>54</sup> Ibid.

<sup>55</sup> Ehrenberg et al (n 15) 147, 150.

<sup>56</sup> Molloy, Borrell-Carrio and Epstein (n 525252) 51–2; Clair Doloriert, Sally Sambrook and Jim Stewart, 'Power and Emotion in Doctoral Supervision: Implications for HRD' (2012) 36(7) *European Journal of Training and*

GRS on the provision of effective feedback.<sup>57</sup> Students can receive feedback on written work from an academic (other than their supervisors) through the 'Studiosity'<sup>58</sup> service, however while a useful resource, it does not address feedback skills development within the supervisory relationship.<sup>59</sup> Given the importance of feedback to the supervisory relationship, institutions may consider providing links to further resources on this topic,<sup>60</sup> for example, as part of mandatory supervisor refresher courses.

Personal tools for coping with critical feedback can also be developed for, and by students. One institution has introduced student support programs for first year PhD students.<sup>61</sup> The focus of the program is how to survive and complete a PhD program, choose a supervisor, and cultivate a constructive relationship.<sup>62</sup> A main topic is getting and giving feedback, and understanding what good feedback looks like.<sup>63</sup> Students have described program as a 'weekly therapy session' that often revolves around the stress of being critiqued.<sup>64</sup> For many, the initial shock of seeing a first draft review may send them into panic mode.<sup>65</sup> However, students comment that professional academics normalising the process, often with examples of their own earlier work, has assisted them to accept the necessity of the critical process, and rise to the challenge.<sup>66</sup> Students respond well, even to harsh criticism, when they know the supervisor is acting in their best interests and the process of critique is mixed with sympathy and understanding.<sup>67</sup> This observation further

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*Development* 732; David Carless and David Boud, 'The Development of Student Feedback Literacy: Enabling Uptake of Feedback' (2018) 43(8) *Assessment and Evaluation in Higher Education* 1315; Elke Stracke and Vijay Kumar, 'Encouraging Dialogue in Doctoral Supervision: The Development of the Feedback Expectation Tool' (2020) 15 *International Journal of Doctoral Studies* 265; Margot Pearson and Angela Brew, 'Research Training and Supervision Development' (2002) 27(2) *Studies in Higher Education* 135.

<sup>57</sup> UWA GRS (n 32). The GRS provides the following supervisor resource handbook: Commonwealth Government, Office of Learning and Teaching, 'Supervision of Higher Degree by Research Students: Supervisor Resource Book' (Supervisor Handbook). The Supervisor Handbook deals with feedback under heading [G] 'Managing relationships with the student' that notes frustrations can occur in the end stages of the project in relation to timely or critical feedback (110) and that a supervisor should give positive as well as negative feedback (128). The rest of the advice in this section is by way of 'case-studies' under various titles. For example, 'Case of a student apparently impervious to feedback' G1.4 (114) and 'Case of a student continually crying in supervision meetings' G1.5 (116), and 'Case of a student breaking down' G1.6 (116). The advice is not supported by references and does not offer support resources by way of links. In general, the case studies appear to focus on the student as having the issue and needing to be managed by the supervisor.

<sup>58</sup> See the University of Western Australia, *Studiosity* <<https://www.uwa.edu.au/education/educational-enhancement-unit/Strategic-Projects/Studiosity>>.

<sup>59</sup> UWA GRS, *Supervisor Workshops, Supervision Professional Development Program* (n 3257). See especially Unit 5, 'HDR Student Support' slide 17/26 <[https://www.postgraduate.uwa.edu.au/\\_data/assets/pdf\\_file/0006/3445611/SvisorInductionModule\\_Unit5.pdf](https://www.postgraduate.uwa.edu.au/_data/assets/pdf_file/0006/3445611/SvisorInductionModule_Unit5.pdf)>.

<sup>60</sup> For example, literary sources such as Molloy, Borrell-Carrio and Epstein (n 5252525252). See also the collaborative research project between Monash University, Deakin University and the University of Melbourne led by David Boud and Michael Henderson, *Feedback for Learning Closing the Assessment Loop* <<https://feedbackforlearning.org/>>, which offers a comprehensive staff resource for feedback strategies as well as links to texts or articles and online resources including 'Institute Learning Designer' to organise group workshops for teaching peers on upskill feedback and use of learning technologies. See also Federation University, *Feedback and Learning* <<https://federation.edu.au/staff/learning-and-teaching/teaching-practice/feedback/feedback-learning>>, specifically the 'Technologies to enhance feedback' and the 'Resources, strategies or assistance' sections.

<sup>61</sup> Moak and Walker (n 7) 434–5.

<sup>62</sup> Ibid 434.

<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

<sup>66</sup> Ibid 435.

<sup>67</sup> Ibid.

reflects the need to develop a robust supportive supervisory relationship in which the student can accept and constructively incorporate critical feedback.

### Dispute Resolution

The supervisory relationship is subject to a power imbalance,<sup>68</sup> so students are more likely to be reticent about resolving issues early on and may decide to put up with the problem rather than potentially jeopardise the supervision, consistent with our findings. Moak succinctly notes that 'students feel subordinate to faculty because they are'.<sup>69</sup> More dominant personality types may escalate and exacerbate the issue by not using a safe-setting or having poor communication skills. The student survey responses indicated that while 82% of respondents were aware of the available GRS complaints procedure, zero students had made a formal complaint and 36% of respondents had made an informal complaint. Of the students who made an informal complaint, 75% of those were resolved and enabled the relationship to continue. Of the total student participants, 18% indicated that although they had experienced difficulties with the supervision, they opted not to make a complaint of any kind.

The results of the supervisor survey are indicative of the reticence of candidates to engage in the complaints process to resolve supervisory issues. Collectively, the UWA Law School supervisors who participated in the survey have been practicing academics for over 250 years, however, during that time, the supervisors had received only two formal complaints and six informal complaints. The resolution process for the informal complaints were split 50/50, that is 50% continued with the supervision and 50% suspended the supervision. The lack of formal complaints and the variable results of the informal complaints procedure raise the question of whether suitable dispute resolution processes are available, and/or whether supervisors have sufficient training to resolve conflicts. The supervisor survey respondents indicated that conflict resolution is an area where additional resources or CPD would be welcomed.

Supervisors need to recognise the power imbalance in the relationship and develop counselling and mediation skills.<sup>70</sup> A novel approach to developing the relationship may include engaging in social activities outside of academia.<sup>71</sup> This approach may go a long way in breaking down the power imbalance and could enable the parties to constructively discuss issues on a levelled platform, however, this method requires well developed mentoring skills.<sup>72</sup> Research indicates that respecting and listening to the supervisee are key aspects of supervisors' role as a mentor.<sup>73</sup> This also brings into focus the usefulness of the role of an HDR mentor, as highlighted by Lindley, Skead and Montalto,<sup>74</sup> who may be a junior academic on faculty and fills the support gap

<sup>68</sup> Ibid 436; Moxham, Dwyer and Reid-Searle (n 5) 352.

<sup>69</sup> Moak and Walker (n 7) 436.

<sup>70</sup> Catherine Manathunga, 'Supervision as Mentoring: The Role of Power and Boundary Crossing' (2007) 29(2) *Studies in Continuing Education* 207; Maija Vähämäki, Essi Saru and Lauri-Matti Palmunen, 'Doctoral Supervision as an Academic Practice and Leader-Member Relationship: A Critical Approach to Relationship Dynamics' (2021) 19(3) *The International Journal of Management Education* 100510; Melinda Kirk and Kylie Lipscombe, 'When a Postgraduate Student Becomes a Novice Researcher and a Supervisor Becomes a Mentor: A Journey of Research Identity Development' (2019) 15(2) *Studying Teacher Education* 179.

<sup>71</sup> Moak and Walker (n 7) 437–9.

<sup>72</sup> Ibid 440.

<sup>73</sup> Ibid 430–2.

<sup>74</sup> Lindley, Skead and Montalto (n 1).

somewhere between supervisor and peer. Supervisors will need to develop conflict resolution and mentoring skills through CPD or other training to achieve optimal supervision relationships.

## **V CONCLUSION**

Drawing on perceptions yielded from two online surveys targeting UWA Law School current and recently completed HDR students, and current and recently retired HDR supervisors, this article provides insight into ways in which HDR supervision can be optimised. Survey results found both students and supervisors shared four qualities they considered most important for optimal supervision, namely timely feedback, support, timely replies, and organisation. As these qualities are subjective, establishing expectations early in the relationship is integral to develop an optimal supervisory relationship, which will contribute to the timely completion of the PhD thesis. Supportive and organised supervisors require skill-building and resources specifically designed to assist the relationship to develop positively over the duration of the project, which can be provided through CPD. While universities provide a range of skill-building for supervisors, there may be limitations as to the breadth of offerings, particularly those relevant to law. As such, we conclude that cross-institutional supervisor CPD programs — particularly relating to conflict resolution and interpersonal skills — will support law schools to share knowledge and skill-build their HDR supervisors to support the next generation of law academics.

# TEACHING LAW IN A TIME OF CRISES

## LEARNING OPPORTUNITIES ARISING FROM CRISES

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CHINELLE DUVENHAGE AND JOAN SQUELCH \*

### I INTRODUCTION

In 2022, a photograph of a Ukrainian professor delivering teaching online from the Ukrainian-Russian warzone in full military gear captured media attention and epitomised teaching in a crisis situation.<sup>1</sup> This is an extreme example of teaching in times of crises. Crises come in many forms and the word can be used in different ways depending on the situation and discipline. Moreover, as noted by Mitroff and Anagnos 'crises have become an inevitable, natural feature of our everyday lives'.<sup>2</sup> Teaching in a 'time of crisis' in Australia, and more specifically Western Australia, hardly conjures up teaching in a warzone. However, 'everywhere [we] are impacted by crises large and small'.<sup>3</sup> Teaching in a crisis can therefore be framed within the meaning of an 'unstable period', a 'turning point' or in a 'time of great danger'. In organisations, including educational institutions, a crisis may refer to unpredictable events (eg, COVID-19), major disruptions, and threatening situations that pose a risk to institutional reputation and success, such as the lack of resources, erosion of values, ineffectual leadership, dysfunctional management, financial pressures and even lawsuits.<sup>4</sup> Following a brief overview of the meaning and context of a 'crisis' in Part II, Part III of this article identifies essential behaviours, qualities and skills for teaching in a time of crisis based on crisis management and leadership theory. Part IV then considers pedagogical opportunities for teaching law in times of crisis.

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<sup>1</sup> Evan Simko-Bednarski, 'This Ukrainian Professor is Teaching His Class Remotely — From the Front Lines of War', *New York Post* (online, 6 May 2022) <<https://nypost.com/2022/05/06/ukrainian-professor-still-lectures-from-the-front-lines-of-war/>>.

<sup>2</sup> Ian Mitroff and Gus Anagnos, *Managing Crises Before They Happen: What Every Executive and Manager Needs to Know About Crisis Management* (AMACOM, 2000) 3. See also, Otto Lerbinger, *The Crisis Manager: Facing Disasters, Conflicts and Failures* (Taylor & Francis, 2011) 6–8.

<sup>3</sup> Mitroff and Anagnos (n 2) 5.

<sup>4</sup> See, eg, Edward S Devlin, *Crisis Management Planning and Execution* (Auerbach Publishers, 2006) 10. Other examples include product failure and product tampering.

## II WHAT IS A CRISIS?

Definitions of and synonyms for the term 'crisis' abound, and as Johnson notes 'dissecting and defining the word "crisis" is far from straightforward' and the 'semantic range of "crisis" is nothing short of Herculean'.<sup>5</sup> It is a term that is also overused and misused. In particular, the use of the 'word in the media is loose and imprecise'.<sup>6</sup> Moreover, Coombs notes that while there are similarities between definitions, 'there is no one, universally accepted definition of crisis'.<sup>7</sup> Nonetheless, for the sake of brevity, 'crisis' is variously and commonly defined as 'an extremely difficult or dangerous situation';<sup>8</sup> 'a time of great disagreement, confusion and suffering' (think the COVID-19 pandemic);<sup>9</sup> 'the decisive moment'; 'a crucial turning point' and an 'unstable period'.<sup>10</sup> Barton sums up the term crisis as 'an incident that is unexpected, negative, and overwhelming'.<sup>11</sup>

In terms of organisational crises, Milburn et al posit that 'one of the most significant influences on an organisation and its members is an organizational crisis' given the vast impact of crises on organisations and the 'implications for its very life'.<sup>12</sup> This applies equally to educational institutions and more specially, for the purpose of this article, the life of teaching and learning at those tertiary institutions. Ulmer, Sellnow and Seeger describe a crisis in an organisation as a 'specific, unexpected, and non-routine event or series of events that create high levels of uncertainty and threaten or are perceived to threaten an organisation's high-priority goals'.<sup>13</sup>

Similarly, Coombs defines an organisational crisis as 'the perception of an unpredictable event that threatens important expectancies of stakeholders and can seriously impact an organisation's performance and generate negative outcomes'.<sup>14</sup> Jacques likewise distinguishes a crisis as 'an event or development that can focus unwanted visibility on the organisation and is likely to endanger health or the environment, or seriously impact reputation or [the] ability to do business'.<sup>15</sup> Notwithstanding the many definitions and descriptions of a 'crisis', the definitions point to the unpredictability, destructive, overwhelming and serious nature of the event, and hence the need for decisive action. Farazmand for instance notes that a 'central feature of all crises is a sense of urgency'.<sup>16</sup> A crisis is 'an urgent situation that requires immediate and decisive action'.<sup>17</sup>

<sup>5</sup> Tim Johnson, *Crisis Leadership: How to Lead in Times of Crisis, Threat and Uncertainty* (Bloomsbury Publishing, 2017) 5. See also, Lerbinger (n 2).

<sup>6</sup> Johnson (n 5) 5.

<sup>7</sup> W Timothy Coombs, 'Parameters for Crisis Communication' in W Timothy Coombs and Sherry J Holladay (eds) *Handbook of Crisis Communication* (Wiley, 2010) 18.

<sup>8</sup> *Cambridge Dictionary* (online at 22 October 2023) 'crisis'.

<sup>9</sup> *Ibid.*

<sup>10</sup> Merriam-Webster Dictionary (online at 22 October 2023) 'crisis'. See also, Ali Farazmand, *Crisis and Emergency Management: Theory and Practice* (Taylor & Francis, 2<sup>nd</sup> ed, 2014) 3–5; Linda Moerschell and Susan Novak, 'Managing Crisis in a University Setting: The Challenge of Alignment' (2020) 28(1) *Journal of Contingencies and Crisis Management* 30, 30.

<sup>11</sup> Laurence Barton, *Crisis in Organizations II* (South-Western College Publishing, 2<sup>nd</sup> ed, 2001), cited in Coombs (n 7) 18.

<sup>12</sup> Thomas W Milburn, Randall S Schuler and Kenneth H Watman, 'Organisational Crisis. Part I: Definition and Conceptualisation' (1983) 36(12) *Human Relations* 1141, 1142.

<sup>13</sup> Robert R Ulmer, Timothy L Sellnow and Matthew W Seeger, *Effective Crisis Communication: Moving From Crisis to Opportunity* (SAGE, 2<sup>nd</sup> ed, 2007), cited in Johnson (n 5) 11.

<sup>14</sup> Coombs (n 7) 19.

<sup>15</sup> Tony Jacques, *Issues and Crisis Management: Exploring Issues, Crises, Risks and Reputation* (OUP, 2014) 6.

<sup>16</sup> *Ibid.* 4.

<sup>17</sup> Larry Smith and Dan Riley, 'School Leadership in Times of Crisis' (2012) 32(1) *Leadership & Management* 57, 58.



A wide range of events and actions that might be described as a 'crisis' impact on educational institutions, including natural disasters (buildings destroyed by floods or fire), financial loss,<sup>18</sup> cyber-attacks,<sup>19</sup> violence on campuses,<sup>20</sup> industrial strikes, large staff turnover and lawsuits.<sup>21</sup> Such crises in educational institutions will inevitably impact on teachers and students, and teaching and learning.

### III TEACHING IN TIMES OF CRISES: ESSENTIAL TEACHER ATTRIBUTES

Whether crises are external or internal, major or minor, teaching during a crisis calls for teaching behaviours and skills that can respond to whatever the crisis presents. This was evident and has been well documented in the context of the COVID-19 pandemic. The question, then, is what kinds of teaching behaviours, qualities, and skills are recognised as essential for times of crisis? This is addressed by drawing on crisis management and leadership theory.

Crisis management essentially refers to strategies, plans and procedures necessary for preparing for, responding to and managing a crisis, no matter the size or nature of the crisis.<sup>22</sup> It is a 'process of many parts, such as preventative measures, crisis management plans, and post-crisis evaluations'.<sup>23</sup> From the literature and research on crisis management and leadership, one can discern common approaches to crisis management as well as, importantly, the leadership attributes needed to deal with crises, including the ability to turn crises into positive learning opportunities. No matter what the crisis, there is consensus in the literature that strong and effective leadership is essential. As noted by Smith and Riley 'a crisis is a major test of leadership' and 'leaders need to take responsibility, and do what needs to be done', even if this means deviating from the 'rules'.<sup>24</sup> Core leadership abilities or attributes that are commonly cited include being decisive, flexible, adaptive, creative, courageous, resilient and sensitive to the situation and people. Three core abilities that stand out in the literature are adaptability, creative thinking and resilience. These may be classified as soft qualities or skills, but they are imperative when dealing with and responding to crises. These core abilities apply equally to teachers teaching in times of crises.

<sup>18</sup> Universities Australia, 'COVID-19 to Cost Universities \$16 Billion by 2023' (Web Page, 3 June 2020) <<https://universitiesaustralia.edu.au/media-item/covid-19-to-cost-universities-16-billion-by-2023/>>.

<sup>19</sup> Alexandria Utting, 'More than 11,000 Employees, Students and Former Staff Affected by Cyber Attack, QUT says', *ABC News* (online, 3 February 2023) <<https://www.abc.net.au/news/2023-02-03/qut-cyber-attack-university-staff-students-affected/101929302>>.

<sup>20</sup> Charollette Gore, 'Two Female Students in Hospital after Stabbing at Australian National University in Canberra', *ABC News* (online, 18 September 2023) <<https://www.abc.net.au/news/2023-09-18/act-two-taken-to-hospital-after-alleged-anu-stabbing/102870900>>.

<sup>21</sup> See, eg, Fair Work Ombudsman, 'University of Melbourne Faces Court for Alleged Underpayments, Serious Contraventions' (Web Page, 10 February 2023) <<https://www.fairwork.gov.au/newsroom/media-releases/2023-media-releases/february-2023/20230210-university-of-melbourne-second-litigation-media-release>>.

<sup>22</sup> See, eg, Edward S Devlin, *Crisis Management Planning and Execution* (Auerbach Publishers, 2006); Jacques (n 15) 2, 9 and 12; Christer Pursiainen, *The Crisis Management Cycle: Theory and Practice* (Taylor & Francis Group, 2017) 2–3.

<sup>23</sup> Coombs (n 7) 20.

<sup>24</sup> Smith and Riley (n 17) 64.

### Adaptability

Calarco and Gurvis describe *adaptability* simply as 'responding effectively to changing events', which they regard as an imperative for leadership.<sup>25</sup> Responding to a crisis requires being able to 'quickly adapt [plans] to meet the current situation'.<sup>26</sup> And according to Yukl and Lepsinger, adaptability 'becomes even more important when the external environment is turbulent and uncertain'.<sup>27</sup> Referencing the school education context, Smith and Riley note that 'each crisis is unique and requires significant flexibility in response by the school leader'.<sup>28</sup> Thus, in times of crisis, adaptability enables one to act decisively and confidently to changing circumstances, uncertainty, and unprecedented demands. Calarco and Gurvis further identify three elements of adaptability in leaders that resonate and apply equally to teachers/academics dealing with and operating in different crisis situations, namely cognitive flexibility (ability to use different mental frameworks and strategies), emotional flexibility (using different approaches to deal with the emotions of one's own and others) and dispositional flexibility (remaining optimistic at the same time being realistic).<sup>29</sup> In times of external and internal crises impacting on teaching and learning, teachers have had to draw on cognitive and emotional abilities in order to adapt positively, resourcefully and efficiently to unexpected or rapid change, unprecedented administrative demands, increased workloads, the use of new technologies (often without the requisite training), and staff shortages.

### Creative Thinking

*Creative thinking* is key to solving problems and arriving at innovative solutions in times of crisis. Farazmand states that 'thinking creatively and strategically' and 'taking bold decisions and acting courageously'<sup>30</sup> are essential for successfully managing crises. Similarly, Mitroff and Anagnos view crisis management as an 'exercise in creative thinking'<sup>31</sup> or thinking 'far outside of the boxes'.<sup>32</sup> They further argue that managing major crises requires being able 'to do the unthinkable' in times of 'unthinkable demands'.<sup>33</sup> Mitroff and Anagnos emphasise that critical thinking allows one to 'respond to crises after they have occurred' but more importantly to 'anticipate problems before they are upon us'.<sup>34</sup> Responding to crises creatively and productively takes courage, foresight, integrity, tenacity and resilience. This is evident when one considers teaching from a war zone, or the unprecedented demands made on teachers during the COVID-19 pandemic. But these teaching characteristics are just as applicable to dealing with short-term or less major crises.

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<sup>25</sup> Alan Calaroc and Joan Gurvis, *Adaptability: Responding Effectively to Change* (Centre for Creative Leadership, 2006) 8.

<sup>26</sup> Smith and Riley (n 17) 63.

<sup>27</sup> Gary Yukl and Richard Lepsinger, 'Leading Change: Adapting and Innovating in an Uncertain World' in Stephen Rush and Kerry Bunker (eds), *On Leading in Times of Change* (Centre for Creative Leadership, 2012) 1.

<sup>28</sup> Smith and Riley (n 17) 65.

<sup>29</sup> Calaroc and Gurvis (n 25) 12.

<sup>30</sup> Farazmand (n 10) 5.

<sup>31</sup> Mitroff and Anagnos (n 2) 115.

<sup>32</sup> *Ibid* 113.

<sup>33</sup> *Ibid* 121.

<sup>34</sup> *Ibid* 127.

## Resilience

The Oxford dictionary defines '*resilient*' as 'springing back' or 'readily recovering from shock'.<sup>35</sup> Thus resilience can be described as the ability 'to bounce back' or readily recover from a crisis. Resilience is necessary to 'return things to "normal" as quickly as possible'.<sup>36</sup> This requires a state of adaptability, perseverance and self-reliance. As stated by Smith and Riley, crisis leadership requires the 'ability to cope' and the 'tenacity to persevere when all seems lost'.<sup>37</sup> The importance of resilience for teachers is clear from research on teacher well-being and resilience and building resilience in teacher education programs. Although there is no one definition or construct of resilience in terms of teachers, education research builds on Ungar's definition of resilience, being 'a process whereby individuals harness personal and contextual resources in order to successfully navigate challenging circumstances'.<sup>38</sup> Ungar further notes that 'resilience is the process of harnessing resources in order to adapt successfully'.<sup>39</sup> Resilience is viewed as essential for teacher wellbeing, effectiveness and success.<sup>40</sup> Teaching in times of crises requires resilience, perseverance and flexibility in order to cope cognitively and emotionally with unexpected, unpredictable situations, potentially overwhelming expectations, and increasingly limited time and resources.

A cursory foray into crisis management and leadership theory demonstrates that adaptability, creativity and resilience are core qualities that facilitate and enhance quick and efficient decision-making, creative problem-solving and decisive action in times of crisis and when responding to unpredictable, disruptive situations. These core attributes of adaptability, creative thinking and resilience apply equally to teachers teaching in a time of crisis. In times of crisis, teachers also have to manage and adapt to their own work situation, teaching responsibilities and often unprecedented demands on their work and time. How to become more adaptable, resilient, and creative in the workplace is another separate discussion. For the purpose of this article, the discussion that follows considers how teachers can turn a crisis into a learning opportunity, which requires creativity and adaptability.

## IV FROM CRISIS TO PEDAGOGICAL OPPORTUNITIES

Farazmand posits that while crises are destructive 'they may also develop opportunities for a new order, changes that may produce positive results'.<sup>41</sup> Likewise, Friedman argues that a crisis 'is not

<sup>35</sup> *Australian Concise Oxford Dictionary* (6<sup>th</sup> ed, 2017) 'resilient' (def 1 and 2).

<sup>36</sup> Smith and Riley (n 17) 64.

<sup>37</sup> *Ibid* 65.

<sup>38</sup> Michael Ungar, 'Social Ecologies and Their Contribution to Resilience' in Michael Ungar (ed), *The Social Ecology of Resilience: A Handbook of Theory and Practice* (Springer, 2012) 13, cited in Ina Hascher, Susan Beltman and Caroline Mansfield, 'Teacher Wellbeing and Resilience: Towards and Integrative Model' (2012) 63(4) *Educational Research* 416, 418.

<sup>39</sup> Ungar (n 38), cited in Hascher, Beltman and Mansfield (n 38) 419. See also, Kerstin Helker et al, 'An Exploratory Interview Study of University Teacher Resilience' in Marold Wosnitza et al (eds), *Resilience in Education: Concepts, Contexts and Connections* (Springer, 2018).

<sup>40</sup> See, eg, Hascher, Beltman and Mansfield (n 38); Caroline Mansfield et al, 'Building Resilience in Teacher Education: An Evidenced Informed Framework' (2016) 54 *Teaching and Teacher Education* 77; Qing Gu and Christopher Day, 'Teachers Resilience: A Necessary Condition for Effectiveness' (2007) 23(8) *Teaching and Teacher Education* 1302; Marold Wosnitza et al (n 39) 185–202.

<sup>41</sup> Farazmand (n 10) 5.

necessarily a bad thing. It may be a radical change for good as well as bad'.<sup>42</sup> In this regard, Lerbinger notes that 'managers who recognise opportunities [in a crisis] are more likely to change their mindsets to accommodate a situation'.<sup>43</sup> Creativity and adaptability enable a teacher to 'create opportunities out of crises'.<sup>44</sup> One lesson to be learned from the COVID-19 pandemic and other crises is that they present opportunities for learning and, for the purpose of this article, teaching law.<sup>45</sup> Crises — whether it is the war in Ukraine or the conflict in Israel and Gaza, a global financial crisis, a natural disaster, a technological crisis, an institutional crisis or social crises in aged care and housing — open up opportunities for interesting and informative discussion and debates in the classroom on crisis management generally but also on specific discipline topics that incorporate the advancement of discipline knowledge and skills such as creative thinking. For example, in the context of this article, crises provide opportunities for studying specific topics in law, of which a few examples are provided below.

### Contract Law

In March 2020, COVID-19 brought with it a global crisis that had a significant impact on building and construction contracts, as well as other business contracts, across Australia and internationally.<sup>46</sup> Domestically, the construction industry was greatly impacted by the long lockdowns and significant disruption to supply chains. The crisis saw the collapse of small to medium construction/building companies experiencing issues such as the costs of materials, disrupted supply, and labour shortages. Other businesses and industries were likewise affected by prolonged closure of business or restricted business activities, and shortages of supplies.<sup>47</sup>

The crisis significantly affected the performance of contracts, with contracts being terminated, suspended or altered, giving rise to legal issues concerning breaches of contract, liability and compensation or refunds. The crisis situation also gave rise to the question of whether a contract is 'crisis ready'.<sup>48</sup> The COVID-19 crisis provided a golden opportunity to study contracts and principles of contract law from a 'crisis ready' perspective, including the effect of events such as acts of God, war, strikes, flooding, epidemics, pandemics and government interference on contracts, as well as issues relating to the termination of contracts, remedies and, importantly, the role and scope of force majeure clauses,<sup>49</sup> and the common law doctrine of frustration.<sup>50</sup> Students can also develop practical skills by learning to draft a 'crisis ready' building and construction contract.

<sup>42</sup> Mark L Friedman, 'Everyday Crisis Management: How to Think Like an Emergency Physician' (First Decision Press, 2002), cited in Coombs (n 7) 18.

<sup>43</sup> Lerbinger (n 2) 14. See also, Moerschell and Novak (n 10) 31.

<sup>44</sup> Smith and Riley (n 17) 67.

<sup>45</sup> As the authors work within a School of Law and Business, it is acknowledged that the business discipline offers the greatest possible opportunities for studying crisis management and teaching in crisis situations. There are thus opportunities for collaborative research between law and business in this area.

<sup>46</sup> See, eg, Phil Evans, Chinelle van der Westhuizen and Jacques Duvenhage, 'Avoiding Construction Contract Risk in a COVID-19 Environment' (2022) 38 *Building and Construction Law Journal* 88, 88–9; Chinelle van der Westhuizen and Phil Evans, 'ACL Unfair Contract Terms in Construction Contracts' (2019) 21 *The University of Notre Dame Australia Law Review* 1.

<sup>47</sup> Michele O'Neil, 'The Australian Industrial System in the Era of COVID-19' (2021) 63(3) *Journal of Industrial Relations* 422.

<sup>48</sup> Holding Redlich, 'Are Your Contracts Crisis Ready'? (Website, 18 March 2020) <<https://www.holdingredlich.com/are-your-contracts-crisis-ready>>.

<sup>49</sup> The force majeure clauses are subject to interpretation of the construction contract, see, eg, *Acciona Industrial Australia Pty Ltd v Kwinana WTC Project Co Pty Ltd* [2022] WASC 380.

<sup>50</sup> An example can be drawn from the article on crisis management and tourism: Gui Santana, 'Crisis Management and Tourism: Beyond Rhetoric' (2004) 15(4) *Journal of Travel and Tourism* 299. Crises in the

## Constitutional Law

At various times, federal and state laws have been passed to respond to a crisis, which has in some instances given rise to legal challenges to their constitutional validity. For example *Pape v Commissioner of Taxation* (2009) 238 CLR 1 dealt with the validity of the *Tax Bonus for Working Australians Act (No 2) 2009* (Cth) that was passed in response to the impact of the global financial crisis, *Thomas v Mowbray* (2007) 223 CLR 307 challenging provisions of the *Criminal Code* (Cth) on terrorism in the wake of 9/11 and the 'war on terror', and *Palmer v Western Australia* (2021) 272 CLR 505 challenging the constitutional validity of the Quarantine (Closing the Border) Directions (WA) issued under the *Emergency Management Act 2005* (WA) that restricted the movement of persons into and out of WA during COVID-19 lockdowns. Judicial decisions can also generate and/or contribute to a crisis situation as is evident from the recent High Court case of *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] HCA 37 in which 'indefinite detention' was ruled unconstitutional resulting in the immediate release of a number of 'unlawful non-citizens', many of whom had committed very serious crimes. Constitutional law is therefore another area of law that offers the opportunity to discuss crises within the context of constitutional law, federal-state relations and the validity of laws.

## Administrative Law

Crises whether arising out of war, natural disasters, economic events, government action or institutional leadership, are often met with public response in the form of protest action. This is seen almost on a daily basis worldwide. Most recently this has once again drawn media attention in relation to pro-Palestinian marches in Sydney.<sup>51</sup> In administrative law (and constitutional law), this invites the opportunity to teach about the law and crises in terms of executive power, the scope and use of emergency legal powers, state abuse of emergency powers, human rights issues and international perspectives on the use of emergency powers.

The controversial use of emergency powers was also evident at the height of the COVID-19 pandemic lockdowns. During the pandemic, expansive emergency powers were exercised by the National Cabinet and state and territory governments to significantly restrict the movement of people and enforce mandatory vaccination. This gave rise to several legal challenges. To this end, legislation dealing with emergency powers<sup>52</sup> and cases such as *Palmer v Western Australia* (2021) 272 CLR 505 (WA border closures), *Newman v Minister for Health and Aged Care* [2021] FCA 517 (prohibition on people returning to Australia from India), *Kassam v Hazzard* [2021] NSWSC 1320 (mandatory vaccination) and the recent Queensland case of *Johnston v Carroll (Commissioner of the Queensland Police Service)* [2024] QSC 2 (mandatory vaccination) provide a rich source of legal materials for students in administrative law to critically examine and debate the scope and use of emergency powers in times of crises.

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tourism and travel industry from which Australia has not been immune in recent times can be examined from a legal perspective that covers contract law, consumer law and insurance law, as well as crisis management generally.

<sup>51</sup> 'Sydney Police Plan to Use 'Extraordinary' Powers to Search pro-Palestinian Protesters and Demand ID', *The Guardian* (online, 13 October 2023) <<https://www.theguardian.com/australia-news/2023/oct/13/sydney-police-search-powers-pro-palestine-protest-id-hyde-park-israel-hamas-war>>.

<sup>52</sup> See, eg, *Biosecurity Act 2015* (Cth); *Emergency Management Act 2005* (WA); *Public Health and Wellbeing Act 2008* (Vic); *Public and Environmental Act 2011* (NT).

## Corporations Law

A key aspect of corporate governance is risk and crisis management. As indicated above, businesses face a myriad of potential crises, including regulatory and legal crises,<sup>53</sup> some of which have a momentous human, reputational, financial and legal impact.<sup>54</sup> Examples include the 2023 Optus outage,<sup>55</sup> Qantas' class actions,<sup>56</sup> the PwC tax scandal,<sup>57</sup> Medibank's cyber-attack<sup>58</sup> and the Royal Commission into the banking and finance industry.<sup>59</sup> In corporations law, these events provide useful case studies for examining the corporate legal and regulatory environment, especially in terms of compliance, legal duties, liability (including corporate criminal liability) and regulatory reform.<sup>60</sup> Corporate insolvency law 'in a time of crisis' has also received business and media attention with a view to reforming insolvency laws.<sup>61</sup> This provides a further area of law to be included when teaching about the development and reform of law in times of crises.

## Employment Law

Employment law is an ideal area of law to study the impact of crises on the workplace such as physical disasters, technological crises, financial crises, industrial action, workplace bullying and harassment, and so on.

Take workplace bullying as an example. Bullying in the workplace is a serious issue and is itself considered a crisis in various sectors (eg, nursing). Workplace bullying is also 'thriving in the remote-work era',<sup>62</sup> which was evident during the COVID-19 pandemic. The crisis of workplace bullying provides an opportunity for law students to learn about workplace bullying and the relevant laws. This is useful for students as future employees and legal practitioners.

Another example of a workplace crisis has arisen in the aged care sector, which has had a significant impact on aged-care workers as well as the elderly people in care. Aged care facilities

<sup>53</sup> See, eg, Australian Institute of Company Directors, 'Crisis Management' (Web Page) <<https://www.aicd.com.au/company-policies/crisis-management.html>>.

<sup>54</sup> See, eg, ACCC, 'Court Orders Volkswagen to Pay Record \$125 million in Penalties' (Web Page) <<https://www.accc.gov.au/media-release/court-orders-volkswagen-to-pay-record-125-million-in-penalties>>.

<sup>55</sup> Mikaela Orlan, 'More than 10 Million Customers were Affected by the Optus Outage. Here's How it Played Out', *ABC News* (online, 10 November 2023) <<https://www.abc.net.au/news/2023-11-09/how-the-optus-outage-played-out/103079768>>.

<sup>56</sup> Ayesha de Kretser, 'Qantas Sued over "Misleading" Flight Credits, Refunds', *Australian Financial Review* (online, 21 August 2023) <<https://www.afr.com/companies/transport/qantas-sued-over-misleading-flight-credits-refunds-20230821-p5dy5o>>.

<sup>57</sup> Edmund Tadros, 'Hunt for the "Dirty Six": PWC Accused of Hiding Tax Leaks Report', *Australian Financial Review* (online, 9 February 2024) <<https://www.afr.com/companies/professional-services/hunt-for-the-dirty-six-pwc-accused-of-hiding-tax-leaks-report-20240209-p5f3sj>>.

<sup>58</sup> See, eg, Australian Government Defence, 'Cyber Sanction in Response to Medibank Private Cyber Attack' (Web Page) <<https://www.minister.defence.gov.au/media-releases/2024-01-23/cyber-sanction-response-medibank-private-cyber-attack>>.

<sup>59</sup> See, eg, Royal Commissions, 'Misconduct in the Banking, Superannuation and Financial Services Industry' (Web Page) <<https://www.royalcommission.gov.au/banking>>.

<sup>60</sup> An example of a crisis management case study in large corporations, which would extend to dealing with potential legal issues and avoiding legal action, is found in: Achyut Telang, 'Keep Calm and Carry On: A Crisis Communication Study of Cadbury and McDonalds' (2016) 11(1) *Managing and Marketing. Challenges for the Knowledge Society* 371.

<sup>61</sup> John Purcell, 'Corporate Insolvency Law in Crisis in a time of Crisis', *Accountsdaily* (online, 19 August 2020) <<https://www.accountantsdaily.com.au/regulation/14732-corporate-insolvency-law-in-crisis-in-a-time-of-crisis>>.

<sup>62</sup> Johanna York, 'Workplace Bullying is Thriving in the Remote-work Era, as Technology Opens New Avenues for Unkind Behaviour', *How Workplace Bullying Went Remote*, *BBC* (online, 22 August 2022) <<https://www.bbc.com/worklife/article/20220819-how-workplace-bullying-went-remote>>.

have also experienced reputational damage as a result of the crisis.<sup>63</sup> The crisis in aged care can be examined from different aspects of law including employment law and health law. It is also an important area for legal research and law reform.

Specific crises impacting on the workplace can be used to develop case studies and scenarios for students to work on and provide advice, which not only includes legal advice but advice on managing a crisis.

### Public International Law

Public international law ('law of nations') covers a wide area of international law. Ongoing armed conflicts around the world are a core feature of teaching public international law which covers a range of topics relating to the use of force, statehood, war crimes, foreign fighters, international humanitarian law, the protection of cultural property during armed conflict, and the role of institutions such as the United Nations and the International Criminal Court. The current Ukrainian-Russian war<sup>64</sup> and the Israeli-Hamas<sup>65</sup> conflict provide opportunities for teaching a range of international legal issues.<sup>66</sup>

## V CONCLUSION

The theme 'teaching in times of crises' invited the opportunity to reflect on what constitutes a 'crisis' and what this means for teaching and learning. The word 'crisis' immediately evokes a whole range of different crises from the extreme to the more mundane. As highlighted in this article, there is no generally accepted definition of a 'crisis' or the categorisation of 'crises'. Crises come in many forms. There is, however, wide agreement on the significant impact crises may have on the 'life of organisations', including educational institutions. Such crises require educational institutions to respond quickly and effectively to mitigate negative consequences, but also provide opportunities to learn. In reflecting on teaching law in times of crises, this article has highlighted some essential attributes teachers need to teach in times of crises and has demonstrated how different kinds of crises can be used as a springboard to incorporate learning opportunities in selected law courses.

<sup>63</sup> See, eg, Committee for Economic Development in Australia (CEDA), *Duty of Care: Aged Care Sector in Crisis* (CEDA 2022) <<https://www.ceda.com.au/getmedia/a7bc2f9e-4999-4c6b-9795-0eff89f0b94b/Duty-of-Care-Aged-Care-Sector-in-Crisis.pdf>>; 'Absolutely a Crisis: Almost a Quarter of Australia' Aged Care Shifts Unfilled Each Week', *The Guardian* (online, 3 February 2022) <<https://www.theguardian.com/australia-news/2022/feb/03/absolutely-a-crisis-almost-a-quarter-of-australias-aged-care-shifts-unfilled-each-week>>; Ellen Coulter and Laura Kewley, 'Aged Care Workers are Facing a "Crisis Level of Exhaustion" as the COVID-19 Pandemic Continues', *ABC News* (online, 3 February 2022) <<https://www.abc.net.au/news/2022-02-03/aged-care-workers-crisis-level-exhaustion-covid19-pandemic/100801108>>.

<sup>64</sup> International Criminal Court, 'Ukraine ACC-oi/22' <<https://www.icc-cpi.int/situations/ukraine>>.

<sup>65</sup> See, eg, Catherine Gegout, 'Where the ICC Stands if War Crimes are Committed on Either Side of the Israel-Hamas War' *The Conversation* (online, 24 October 2023) <<https://theconversation.com/where-the-icc-stands-if-war-crimes-are-committed-on-either-side-of-the-israel-hamas-war-216093>>.

<sup>66</sup> For example, Lara Pratt, School of Law and Business, The University of Notre Dame Australia, teaches an elective course on 'Law and War' that looks specifically at the 'rules of war'.





# TEACHING NOTES

Teaching notes provide authors with opportunities to publish pieces which are not scholarly articles, but are still of interest to other law teachers. Teaching notes are subject to editorial review. If a member of the editorial board submits a teaching note to WALTR, the review process is managed by another editor, with the author having no involvement.



*TEACHING NOTE*

# INCORPORATING VISUAL LEARNING AIDS IN TEACHING LAW

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NATALIE BROWN \*

## I INTRODUCTION

Prior to teaching law as a casual tutor and later as a full-time lecturer, I enjoyed previous career incarnations as a commercial artist and a literacy aide in a primary school. During my stint as a literacy aide it was natural to use my abilities to create visual learning aids for students who struggled with written and oral learning, such as cartoons, diagrams or illustrated stories for specific learning needs. I found that visual methods assisted breaking down psychological barriers by building student confidence in their own capacity to learn. When I commenced tertiary teaching, I modified these tools and incorporated them into my tertiary teaching pedagogy without really considering why or how it worked. I knew it helped me because I had used visual aids as a law student: mind-maps or flow-charts for legal concepts or illustrating connections between principles in an entire unit; or what I referred to as case illustrations, a simple picture to trigger the case facts. As a tutor my whiteboards were filled with cartoons, illustrations, and mind-maps because it had helped me, and student feedback confirmed it helped others also. Encouraged by the feedback, I continued to refine my visual learning techniques. It was a natural progression to incorporate this teaching style into my lecture slides as a lecturer. Fear not, you do not need to have any artistic ability to engage with visual learning — in fact some of my poor attempts at illustration on the whiteboard have injected much-needed humour into otherwise potentially dry explanations.

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## II WHY VISUAL LEARNING WORKS

For me, including this methodology in my tertiary law teaching was an organic process because it worked for me as student and during my previous teaching experience, rather than it being a well-researched choice to develop my teaching pedagogy. However, I was not surprised to find there were many teachers — before I even thought about teaching — who had explored and written on the subject.<sup>1</sup> I was heartened to see that not only did other teachers see the benefit, but it was also backed up by science. The literature on visual learning is mostly aimed at primary and high school education but it is equally applicable at a tertiary level.

Visual learning is not an entirely accurate term, it is perhaps better described as multi-sensory learning or dual-coding that engages both sides of the brain — for example, an image, and explanation and an example for context.<sup>2</sup> Our preferred learning style will depend on which side of our brain is dominant, the left-side is the seat of language and processes logically, and the right side processes intuitively.<sup>3</sup> Right side dominant thinkers are sequential, vertical, or convergent (aural or auditory learners) and left side dominant thinkers are spatial, non-linear, lateral or divergent (visual learners).<sup>4</sup> Both sides of the brain are engaged in nearly every human activity.<sup>5</sup>

Our dominant side is a preference not an absolute.<sup>6</sup> Developing both learning styles can help us learn more effectively.<sup>7</sup> Early literature identified that law students who were poor organisers (left side dominant) were assisted by visual representations that provided conceptual patterns to aid analysis.<sup>8</sup> Visual tools assist students who find aural and written material more challenging (left side dominant), and augments auditory sequential learners (right side dominant) by strengthening less-used neural pathways so they become more flexible thinkers.<sup>9</sup>

Visual learning develops visual thinking — ie, the capacity to retain and understand information by association ideas, words and concepts with images —<sup>10</sup> which in turn develops our visual literacy (the ability to create visual instruction).<sup>11</sup> Comic strips as a means of explaining contracts are gaining traction so visual literacy may soon become not only a tool for students, but a useful skill for practicing lawyers.<sup>12</sup> During a tutorial I once set a group

<sup>1</sup> William Wesley Patton, 'Opening Students Eyes: Visual Learning Theory in the Socratic Classroom' (1991) 15(1) *Law and Psychology Review* 1.

<sup>2</sup> Jesse Berg, *Visual Leap, A Step-by-Step Guide to Visual Learning for Teachers and Students* (2015, Taylor and Francis) 20–1, 29–30.

<sup>3</sup> Riad Asani, 'Learning Styles and Visual Literacy For Learning And Performance' (2015) 176 *Social and Behavioural Sciences* 538, 540.

<sup>4</sup> Berg (n 2) 31.

<sup>5</sup> Asani (n 3) 540.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> Patton (n 1) 1–3, 12–13.

<sup>9</sup> Berg (n 2) 9.

<sup>10</sup> Jamal Raiyn, 'The Role of Visual Learning in Improving Students' High Order Thinking Skills' (2016) 7(24) *Journal of Education and Practice* 115, 115.

<sup>11</sup> Asani (n 3) 544; Michael D Murray, 'Cartoon Contracts and Proactive Visualization of Law' (2021) 16 *University of Massachusetts Law Review* 98, 101, 112–13.

<sup>12</sup> Murray (n 11) 102–114. See example of a comic strip contract at 101 of this source.

task of developing a mind-map to illustrate a case principle. A majority of students appeared to find that task very difficult, however, exposure to visual teaching will improve students' visual literacy. By the end of the semester many of my students create their own task-specific visual aids based on the examples they see in tutorials and lectures.

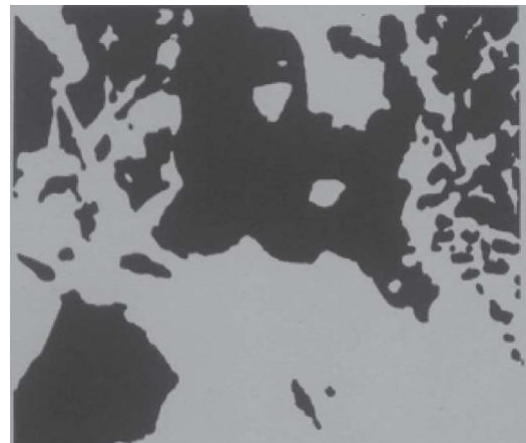
One of the reasons visual learning works is because it reflects our cognitive thinking process in the hippocampus — this is the part of our brain that stores memory and solves problems, and does not operate by archiving word documents, but by recognising and developing cognitive maps.<sup>13</sup> Visual aids allow the brain to do what it does best: find patterns, identify gaps, make associations and play with the pieces of the jigsaw puzzle.<sup>14</sup> This is demonstrated in a study by Raiyn, which considered the development of higher-order thinking skills necessary for problem based learning (ie, analytical or critical thinking skills consisting of selecting, ordering, comparing and evaluating; and creative thinking consisting of problem finding, efficiency, flexibility, originality and elaboration).<sup>15</sup> Raiyn's study found that these higher-order thinking skills were better in students who engaged in visual learning as opposed to traditional methods.<sup>16</sup> A concrete visual image is more easily remembered than an abstract word. For example, if you are required to remember the words dog, bike and street in sequence, it is easier to retain the sequence for longer if we add a visual (eg, the dog got on the bike and rode down the street) compared to repeating the sequence ten times and then trying to recall it a week later.<sup>17</sup>

Why does it stick? It is not entirely about the visual representation but also about the cue we receive with the image. For example, without reading the cue at footnote number 18, try to interpret the image at Figure 1.

To most the image appears to be grey and black regions and it is hard to categorise without an additional cue. Once you receive the cue it will be hard to see the image without your brain immediately adding the cue, even months later.

In the following section, I provide examples of the visual aids I commonly use, mind-maps or flowcharts and illustrations, but

**Figure 1.** Image to demonstrate the power of visual cues.



**Note:** This image is reproduced with express permission from its creators.<sup>18</sup>

<sup>13</sup> Raiyn (n 10) 115–16.

<sup>14</sup> Berg (n 2) 16.

<sup>15</sup> Raiyn (n 10) 115. See also Asani (n 3) 542.

<sup>16</sup> Raiyn (n 10) 119–20.

<sup>17</sup> Asani (n 3) 542.

<sup>18</sup> The image is of a bearded man. Image sourced from Mariv Ahissar and Shaul Hochstein, 'The Reverse Hierarchy Theory of Visual Perceptual Learning' (2004) 8(10) *Trends in Cognitive Sciences* 457, 457–8. You can see a visual cue at

<[www.cs.princeton.edu/courses/archive/spring08/cos598B/Readings/AhissarHochstein\\_TCS2004.pdf](http://www.cs.princeton.edu/courses/archive/spring08/cos598B/Readings/AhissarHochstein_TCS2004.pdf)>.

Permission for reproduction of the image obtained from Mariv Ahissar via email on 7 February 2024.

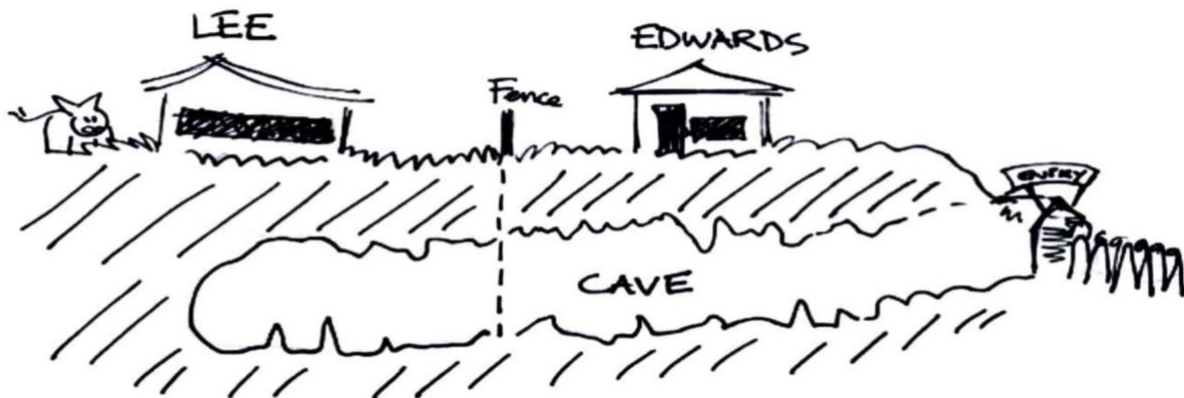
visual learning aids can include symbols, video games, films, graphs, posters, board games or flashcards,<sup>19</sup> the only limit is your imagination.

### III INCORPORATING VISUAL LEARNING IN THE TEACHING OF LAW

This Part presents just a few examples of the many illustrations I use in teaching Property Law. Illustrations are useful to demonstrate the facts of case, and this visual cue can be followed by the facts in writing (which is what I usually do). It allows students to focus on what you are saying rather than try to read the facts, and it also allows the student to easily find the case when reviewing the slides. If you enjoy illustrating, you can incorporate a cartoon, but a compilation of images can be used instead.

For example, Figure 2 is a fact illustration for a case about subsurface rights. The cave extended from the defendant's land onto the plaintiff's land, but only had one entrance (on the defendant's land). The defendant was profiting from the cave by charging an entry fee, and the issue was whether the defendant was trespassing on the plaintiff's land.

**Figure 2.** Image drawn by the author and used in lecture slides to demonstrate the facts of the case *Edwards v Sims* (1929) 24 SW (2nd) 619 (Ken CA).



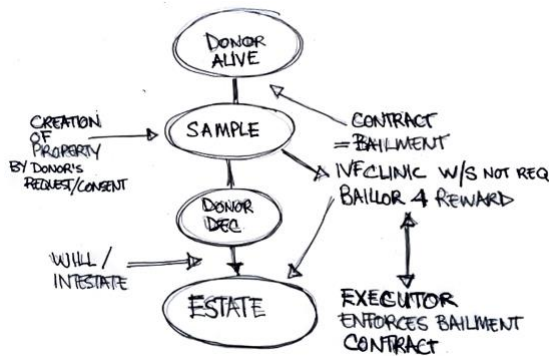
Another example I use in lecture slides relates to *Davies v Bennison* [1927] Tas LR 52, in which the defendant neighbour argued there was no trespass because the offending bullet was not on his neighbour's land, it was imbedded in the cat. In my slides I have inserted the following cartoon-like images: a man with a firearm; a bullet; a cat sitting on a roof; and a cat that has fallen off the roof. I use arrows to connect these individual pictures, showing the journey of the bullet from the gun, to the cat on the roof, and then to the dead cat that has fallen off the roof. It would also be possible to use PowerPoint to animate the scene for extra impact — eg, by shooting the bullet.

<sup>19</sup> Asani (n 3) 541; Raiyn (n 10) 115. For an example of boardgame designed specifically for law see Patton (n 1) 8–10. For discourse on creating different types of flowcharts and mind maps see Berg (n 2) ch 11.

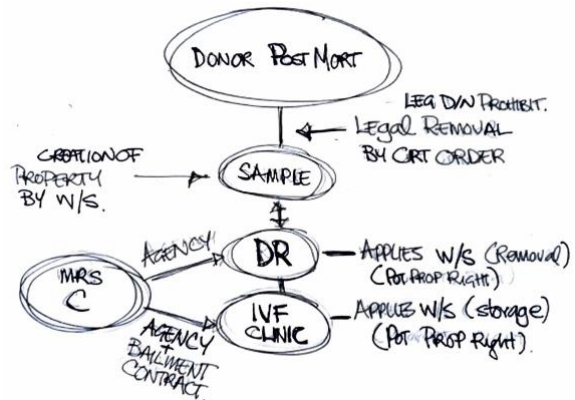
Mind-maps are also helpful. The development of mind-maps takes time, and I continually adjust and refine my mind-maps. Mind-maps can be used to illustrate case principles or broad concepts, I use both hand drawn mind-maps and those I construct using a word processor.

The mind-maps shown at Figure 3 and Figure 4 illustrate the case principle in a tutorial problem that discusses rights to sperm samples (including the different principles that apply depending on whether the sample is created while the donor is alive, or whether the sample is extracted from the donor post-mortem). As shown in Figure 3, when the donor is alive they can create property from their body by separating the sample (eg, by cutting off their hair and selling to a wigmaker) in this instance, on the donor's death the property falls into their estate. But as shown in Figure 4, a post-mortem donor cannot create property — the property is created by the work and skill of the doctor acting as an agent for the donor's partner.

**Figure 3.** Mind-map showing the principles relating to a sperm sample from a live donor.



**Figure 4.** Mind-map showing the principles relating to a sperm sample from a dead donor.



Mind-maps like these can be illustrated on the whiteboard during tutorial teaching or can be constructed using a word processor to add to lecture slides or topic outlines.

## IV CONCLUSION

At first, it may seem that law as a language-based discipline is not amenable to graphs and charts or other visual aids, which are normally seen in science disciplines. However, visual aids are an excellent tool to explain otherwise difficult concepts and their use has been successfully explored as a means of explaining the law to laypersons.<sup>20</sup>

Seeing is a process that affects our other sensory perceptions. The old adage says 'we eat with our eyes', meaning something will taste better if it looks appetising. For sighted people, our sense of taste is affected by what we see — if we are blindfolded and eat something, it is much harder to identify what we are tasting because we are not receiving the visual cue. Similarly, a visual cue can help us understand better. So, when teaching, consider providing a visual

<sup>20</sup> Murray (n 11).

cue to the word-based explanation, or vice versa, a visual explanation with word-based cues. In doing so, it is important to ensure that learners who are blind, have low vision, or are otherwise vision-impaired need to be given the same learning opportunities as their sighted peers. Accordingly, anything shown in images should always be explained adequately in class.

It is time consuming to create high quality visual learning mind-maps, diagrams, and illustrations. However, the work is worth the effort. I find it not only improves student learning, but it also improves my teaching because of the thought I have had to apply to create a visual aid that has clarity and illustrates the principle. The research suggests that these experiences are not merely anecdotal or perceived, but are grounded in reality.

*TEACHING NOTE*

# TEACHING ABOUT CONSENT

## REFLECTIONS FROM AN UNDERGRADUATE LAW UNIT

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AMY THOMASSON \*

### I INTRODUCTION AND BACKGROUND

Since the beginning of 2024, it has been mandatory for schools across Australia to teach consent from pre-primary to Year 10.<sup>1</sup> This is largely in response to research showing that consent is not taught consistently or effectively within schools, as well as activism calling for sexual consent education (including from Australian student Chanel Contos, who runs 'Teach Us Consent').<sup>2</sup> So what happens to the students who did not have the benefit of the change in curriculum, some of whom are now tertiary students?

While some — myself included — may have thought that undergraduate university students would be more progressive than most when it comes to understanding consent, a recent study in the United Kingdom by the Crown Prosecution Service and Equally Ours found that 58% of young people mistakenly believe consent is assumed in the context of a relationship.<sup>3</sup> This is a stark statistic, and one that reflects not only my experience teaching consent to undergraduate students, but also to the importance of teaching those students — many of whom may be entering their first formative intimate relationships — what consent really means. Further, increasing rates of sexual assault amongst teenagers and young people demonstrate why consent education

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<sup>1</sup> Hamish Hastie, 'WA Mandates Consent Education From Pre-Primary', *Sydney Morning Herald* (online, 11 October 2022) <<https://www.smh.com.au/education/wa-mandates-consent-education-from-pre-primary-20221011-p5boy6.html>>; Giselle Natassia Woodley, 'Mandatory Consent Education Is A Huge Win For Australia — But Consent Is Just One Small Part Of Navigating Relationships', *The Conversation* (online, 21 February 2022) <<https://theconversation.com/mandatory-consent-education-is-a-huge-win-for-australia-but-consent-is-just-one-small-part-of-navigating-relationships-177456>>.

<sup>2</sup> Hannah Margaret Ruth Hayes, Kellie Burns and Suzanne Egan, 'Becoming 'Good Men': Teaching Consent and Masculinity in A Single-Sex Boys' School' (2024) 24(1) *Sex Education* 31, 31–2.

<sup>3</sup> Crown Prosecution Service, 'Summary Report: Rape and Serious Sexual Offences: Public Understanding and Attitudes and Reframing Rape: Effective Communication About Rape', *CPS and Equally Ours: Research Into The Public Understanding Of Rape And Serious Sexual Offences (RASSO) And Consent* (Web Page, 24 January 2024) <<https://www.cps.gov.uk/publication/cps-and-equally-ours-research-public-understanding-rape-and-serious-sexual-offences>>.

is so important.<sup>4</sup> There is, however, little research on how to teach sexual consent to tertiary students as part of the formal curriculum (outside the health context) or the effectiveness of such teaching. In this article, I reflect on my own experiences and perceptions of teaching undergraduate students about consent to sexual activity in the context of a level-one law unit.

## II HOW I TAUGHT ABOUT CONSENT

In semester 1 of 2024, I taught into an undergraduate unit which aims to teach students about the law that they need, and will use, in their everyday lives. While the unit is technically part of a sociolegal studies major in a Bachelor of Arts degree, many students take it as a 'broadening' unit.<sup>5</sup> This means that the cohort includes students from a variety of disciplines who may never have taken a law-related unit (or even a unit in the Bachelor of Arts) before.

I lectured about affirmative consent as part of the weekly topic titled 'Consent, Relationships, Family Violence & the Law'. I approached this by first outlining the current legal position in WA in relation to consent, then explaining the ways in which it differs from positive/affirmative consent. In making decisions about how I taught affirmative consent, I considered the Law Reform Commission of Western Australia's recent report: *Project 113 – Sexual Offences*.<sup>6</sup> I thought this was a good way to demonstrate how legal and social understandings of consent currently differ, and what might change if the law were to require affirmative consent to sexual activity. The content I taught in the lecture was then reinforced in the associated tutorial, with students asked the following questions:

1. What is positive/affirmative consent?
2. In what way(s) is the concept of positive/affirmative consent different to the current definition of consent in the *Criminal Code*?
3. What might change if the *Code* requires positive consent (in terms of education, social understandings of consent, legal proceedings, what matters are prosecuted etc)?

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<sup>4</sup> Burton et al, 'Teaching Sexual Consent To Young People In Education Settings: A Narrative Systematic Review' (2023) 23(1) *Sex Education* 18, 18–19; Ursula Malone 'Sydney School Students Call For Earlier Education On Sexual Relationships And Consent In Wake Of Petition', *ABC News* (online, 9 March 2021) <<https://www.abc.net.au/news/2021-03-06/students-call-for-earlier-education-consent-sexual-assault/13223620>>; Gavin Fernando, 'Sex, Slut-Shaming And Sydney Schools: Why Chanel Contos Is Calling For Education Reform Across Australia', *SBS News* (online, 8 March 2021) <<https://www.sbs.com.au/news/article/sex-slut-shaming-and-sydney-schools-why-chanel-contos-is-calling-for-education-reform-across-australia/hice51qki>>.

<sup>5</sup> The unit is titled 'LAWS1112 Adulting: Law for Everyday Lives' and is taught at the University of Western Australia ('UWA'). Students enrolled at UWA are required to complete four 'broadening' units outside of their degree-specific major over the course of their undergraduate degree.

<sup>6</sup> Western Australia Law Reform Commission, *Project 113 – Sexual Offences* (Report No 113, May 2024).



### III PERCEPTIONS OF STUDENT ENGAGEMENT AND UNDERSTANDING

As interaction between the lecturer and students is relatively limited in the lecture itself (especially as most students in our Law School choose to listen to lectures online rather than attend in person),<sup>7</sup> my perceptions of how students engaged with the consent content derive mainly from my tutorial teaching and exam marking in the unit.

#### Tutorials

In teaching the relevant tutorial, I found that female students were much more willing to contribute to the discussion than male students were. This did not surprise me given that women — including trans women — and gender diverse people tend to bear the weight of changing social constructs that contribute to sexual violence.<sup>8</sup> However, it was disappointing that male students were not interested in — or did not feel able, comfortable, or confident enough to contribute to — the conversation.<sup>9</sup> It is worth noting that this was not the experience of all tutors teaching in the unit, and perhaps the response in my tutorials was shaped by a range of factors (including my own gender, the gender balance in my classes, and the individual experiences of the students themselves). The experience in my tutorials does, however, seem to reflect the experience of expert stakeholders who have worked with cisgender heterosexual men and boys in relationships and sexuality education.<sup>10</sup> In a study of 23 such stakeholders, several participants 'noted hostility, and a lack of identification with potential concepts and ideas concerning men's behaviours, and gendered and sexual violence, thus leading to decreased engagement with program content'.<sup>11</sup>

More work needs to be done in identifying ways in which male students, and indeed all men, can be encouraged to engage in the consent conversation. Meanwhile, groups like Teach Us Consent are raising awareness about the importance of all genders participating in the consent conversation, eg, by creating resources that explain how patriarchy also negatively impacts men.<sup>12</sup>

#### Exam

In addition to the tutorial discussion, there was also a short-answer question in the unit's final exam which was closely modelled on the tutorial task:

What is the current definition of consent in s 319(2) of the Criminal Code? Describe two ways in which it is different to the concept of positive/affirmative consent.

<sup>7</sup> See generally Natalie Skead et al, 'If You Record, They Will Not Come – But Does It Really Matter? Student Attendance And Lecture Recording At An Australian Law School' (2020) 54(3) *The Law Teacher* 349; Meredith Blake et al, 'Student and Staff Experiences of Online Learning: Lessons from Covid-19 in an Australian Law School' (2022) 32(1) *Legal Education Review* 129.

<sup>8</sup> See, eg, Elisabeth McDonald, 'Gender Neutrality and the Definition of Rape: Challenging the Law's Response to Sexual Violence and Non-Normative Bodies' (2019) 45(2) *University of Western Australia Law Review* 166.

<sup>9</sup> Burton et al (n 4) 26; Laina Y Bay-Cheng, 'Agency Is Everywhere, but Agency Is Not Enough: A Conceptual Analysis of Young Women's Sexual Agency' (2019) 56(4) *The Journal of Sex Research* 462, 470.

<sup>10</sup> Andrea Waling, Alexandra James and Jackson Fairchild, "'I'm Not Going Anywhere Near That': Expert Stakeholder Challenges In Working With Boys And Young Men Regarding Sex And Sexual Consent' (2023) 43(2) *Critical Social Policy* 234, 234.

<sup>11</sup> *Ibid* 247.

<sup>12</sup> jack\_toohey and teachusconsent (Instagram, 11 June 2024) <<https://www.instagram.com/p/C8EI6RbyH1g/>>.

The quality and accuracy of answers to this question varied significantly. Despite my teaching the unit, some students gave concerningly incorrect responses – eg, by stating that consent is to be presumed in intimate relationships. But many students gave a nuanced and detailed response indicating strong engagement with the content. It was hard to tell whether the former category of student simply did not listen to the lecture, or whether my lecture needed to be more specific and make fewer assumptions about the baseline knowledge students had. I think it is also likely, as some have observed, that affirmative consent does not represent the ‘real life practices of young people, with actual consent (such as communication, understandings and social norms) varying widely’.<sup>13</sup> Put another way, affirmative consent ‘is not (yet) reflective of many young people’s practices of sexual negotiation, where non-verbal cues are often relied upon instead’.<sup>14</sup>

## IV REFLECTIONS

In future, I would spend more time explaining what affirmative consent is in the lecture, rather than leaving the substantive discussion to the tutorial. This may empower students who would otherwise be hesitant to contribute due to a lack of confidence or understanding. It is important in this context to explain the ‘why?’ by situating consent in a broader conversation that encourages students to question social norms,<sup>15</sup> and ensuring students understand that consent is not just about following the law but *preventing harm*.<sup>16</sup>

I would also more actively encourage discussion from male students who may not feel it is their place to contribute. I might, for example, show some of the content created by Teach Us Consent (as discussed in Part III)<sup>17</sup> to situate the discussion in the broader context of challenging gender norms and hetero- and cis-normativity.<sup>18</sup> There is a fine line to tread between specifically targeting inclusion by men without making them feel like they are the problem or ‘already in the wrong’.<sup>19</sup> Ultimately, the hesitation to engage may be rooted in ‘social taboos’, which may be difficult — if not impossible — to tackle in a two-hour lecture in which consent is taught as one of many topics.<sup>20</sup> It may be beyond my capabilities alone to address the root cause of this lack of engagement, with some scholars noting the importance of a whole-society approach.<sup>21</sup> That said, in preparation for teaching this unit next year, I will certainly be guided by the extant research in determining how I can best do my part to encourage men to engage in conversations about consent.<sup>22</sup>

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<sup>13</sup> Burton et al (n 4) 19.

<sup>14</sup> Ibid 28.

<sup>15</sup> Ibid 27.

<sup>16</sup> Let’s Talk About X, ‘Teaching Consent In Secondary Schools: 10 Ways To Make Sure We Get Consent Education Right For High School Students’, *Let’s Talk About X* (Blog Post, 14 December 2023) <[<sup>17</sup> jack\\_toohey and teachusconsent \(n 12\).](https://www.talkaboutx.org/post/teaching-consent-in-secondary-schools#:~:text=Teachers%20can%20use%20every%2Dday,for%20someone%20to%20say%20no.>.”</a>>.</p>
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<sup>18</sup> Hayes, Burns and Egan (n 2) 40–1.

<sup>19</sup> Waling, James and Fairchild (n 10) 248–9.

<sup>20</sup> Ibid 249.

<sup>21</sup> Ibid 250.

<sup>22</sup> For example, Nicola Gavey et al, ‘Shifting The Line: Boys Talk On Gender, Sexism And Online Ethics’ (Research Monograph, University of Auckland, June 2021).

## V CONCLUSION

My experience teaching affirmative consent reflects broader systemic issues noted by expert stakeholders.<sup>23</sup> More research is needed into how men can be encouraged to participate in conversations about consent, not just at a tertiary level but across society. This involves everyone — parents, teachers, lecturers and others involved in care of young adults — taking responsibility for consent education. Students *want* consent education.<sup>24</sup> As law teachers we are well-placed to provide spaces for that discussion, which inherently involves the law itself.

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<sup>23</sup> See Waling, James and Fairchild (n 10).

<sup>24</sup> Australian Institute of Health and Welfare, 'Consent', *Family, Domestic And Sexual Violence* (Web Page, 12 April 2024) <[https://www.aihw.gov.au/family-domestic-and-sexual-violence/understanding-fdsv/consent#:~:text=Over%201%20in%205%20\(22,sexual%20violence%20\(Heywood%20et%20al.>](https://www.aihw.gov.au/family-domestic-and-sexual-violence/understanding-fdsv/consent#:~:text=Over%201%20in%205%20(22,sexual%20violence%20(Heywood%20et%20al.>)>.