WALTR

THE WESTERN AUSTRALIAN LAW TEACHERS' REVIEW

VOLUME THREE – 2025

Western Australian Law Teachers' Review
Volume Three

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Published July 2025

ISSN: 2653-7710

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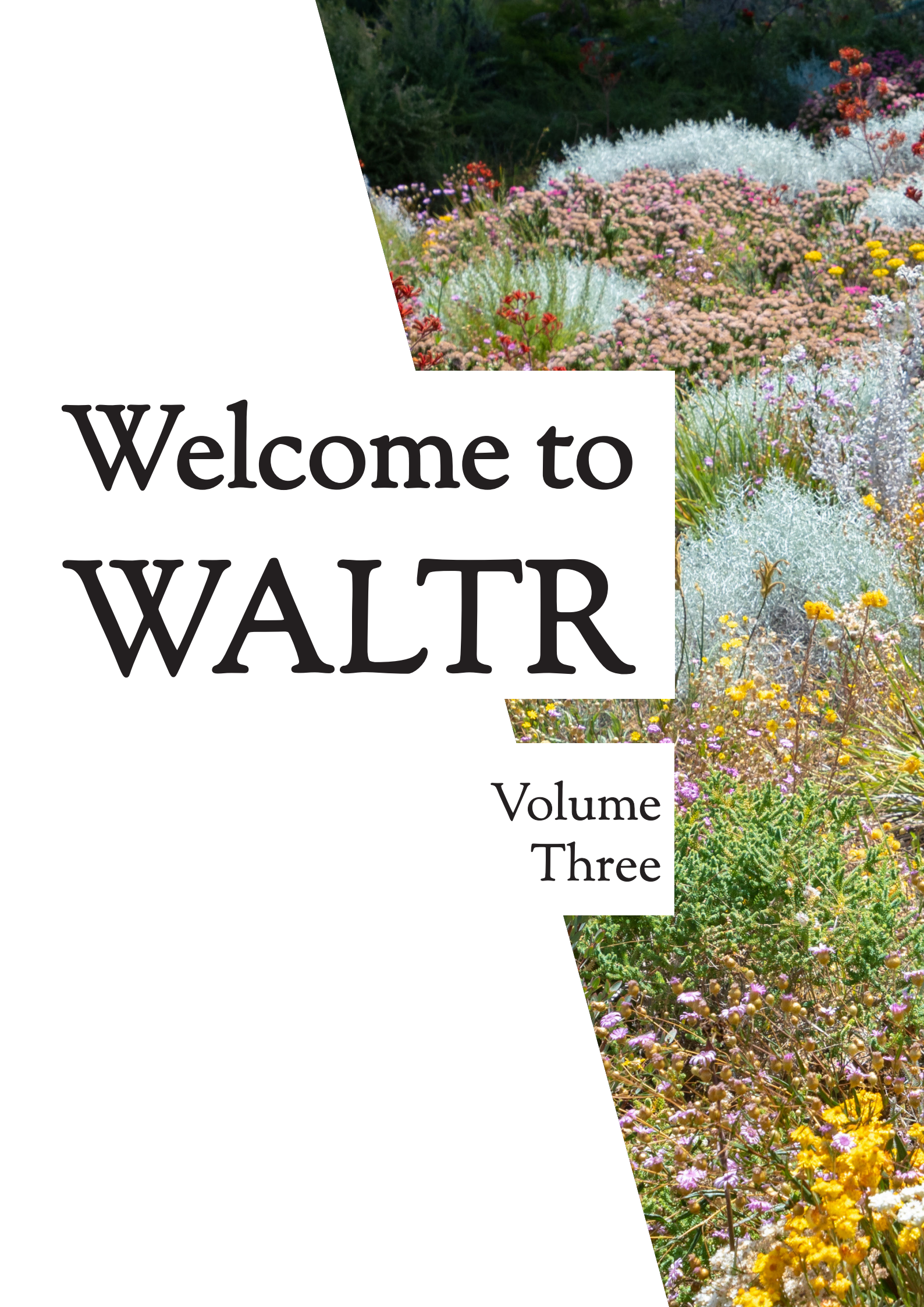

Welcome to WALTR

Volume Three

Editors' Foreword

It is with great pleasure that we present the third volume of WALTR — the *Western Australian Law Teachers' Review*. This volume showcases the continued vibrancy and innovative thinking within our community of legal educators in Western Australia.

This year's volume brings together the work of fifteen authors, whose contributions span seven scholarly articles and two teaching notes. The breadth of topics and perspectives represented here reflects the dynamic and impactful nature of legal education in Western Australia. The scholarly work in this volume demonstrates a strong commitment to evidence-based approaches in legal education, highlighting the value of scholarship of teaching and learning in law. By situating their analyses and innovations in the context of the existing literature, data, and reflective practice, the authors contribute to a culture of continual improvement and advancement in legal education globally.

We extend our sincere gratitude to all contributors, reviewers, and supporters who have made this publication possible. In particular, we appreciate the selfless work of those who reviewed submissions for this volume. Our double-anonymous peer review process ensures the ongoing quality and integrity of articles published in WALTR. We also thank our Editorial Advisory Board, whose expertise and guidance continue to shape the direction of WALTR.

As you explore this volume, we hope you find fresh ideas, interesting perspectives, and valuable insights.

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ARTICLES

Contributions published as **articles** are scholarly works that advance knowledge in legal education and related fields. Articles published in WALTR are expected to demonstrate academic rigour, engage with existing scholarship, and make an original contribution. All articles are subject to a formal double-anonymous peer review process.

GRADES OR WORK EXPERIENCE?

STUDENT PERCEPTIONS OF THE RELATIVE IMPORTANCE OF GRADES & PRACTICE-BASED EXPERIENCE ON GRADUATE EMPLOYMENT

LEIGH SMITH, PNINA LEVINE & BRENDA ROHL *

Which of academic performance or work experience is perceived by students to be more important for graduate employment? The authors surveyed student participants in the Bachelor of Laws, Bachelor of Science and other Science-related degrees at a Western Australian university to investigate. Participants were surveyed in relation to (a) factors related to academic performance and work experience, and (b) curricular work experience and non-curricular work experience, in relation to their perceived importance to employment outcomes. Participants also engaged in a hypothetical job candidate ranking exercise, ranking job candidates with varying academic performance and work experience for a graduate role. The findings show that while many law and science participants perceived academic performance to be important, law participants placed greater importance on academic performance than science participants did. Some participants also appeared to be informed by their perception of the views of industry. Therefore, academic staff and higher education institutions must ascertain and have regard to employer perceptions in relation to the relative importance of academic performance and work experience.

I INTRODUCTION

The connection between attendance at university classes and academic performance has been the subject of considerable research, both in Australia and internationally.[1] Working while studying is often suggested as a reason for student non-attendance and reduced

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[1] See, eg, Louis Winnifred et al, 'Teaching Psychology in Australia: Does Class Attendance Matter for Performance' (2016) 68(1) *Australian Journal of Psychology* 47; R Nazim Khan, 'Attendance Matters: Student Performance and Attitudes' (2022) 30(4) *International Journal of Innovation in Science and Mathematics Education* 42; Siobhan Lucey and Maria Grydaki, 'University Attendance and Academic Performance: Encouraging Student Engagement' (2023) 70 *Scottish Journal of Political Economy* 180.

academic performance.[2] A related, but less-studied question arises; is academic performance or work experience perceived as more important for graduate employment by students? Such a question is important, in terms of outcomes for students, and organisationally where 'graduate employment metrics' are used 'to gauge institutional success'.[3] Should academic staff be emphasising to students the importance of class attendance and participation, or should they be advising students to take every possible opportunity to gain work experience? Is the best approach a combination of the two? These are the questions that inform the present study, which is focused on students' perceptions of the importance of academic performance and work experience across two undergraduate cohorts (law, primarily Bachelor of Laws, and science, primarily Bachelor of Science) at a Western Australian university.

This paper is structured as follows. In the next part, an overview of the relevant literature is provided. The focus here is on studies that examine student perceptions with respect to graduate employability and/or employment outcomes. In Part III, the research question and aims are outlined, with the former relating to whether academic performance or work experience is perceived by students to be of greater value in obtaining graduate employment. In Part IV, the research methodology and participant profile are provided. The current study used a Qualtrics survey to capture the views of 128 law and science students at Curtin University in Western Australia. In Part V, the results of the study are outlined and analysed, with a focus on the extent to which students view: (i) academic performance and work experience as important to obtaining graduate employment and how, and why, they rank their relative importance (ii) there to be a distinction between the value of curricular and non-curricular work experience to obtaining graduate employment, and (iii) the differences between prospective (hypothetical) job candidates as being relevant to potential employers making decisions around who to employ for a graduate position. Part VI provides a brief commentary on the limitations of the study and opportunities for further research. Finally, the article concludes with a discussion of two key implications from the study, (a) that students' perceptions are influenced by their encounters with industry and (b) that there appears to be a disciplinary dimension to the relative importance of grades and work experience, namely that as a general proposition, law students tend to perceive grades as more important than science students.

[2] Khan (n 1) 60; Caitlin Cassidy, '"The Death of Campus Life": First Major Australian University Dumps Face-to-Face Lectures, Leaving Staff "Furious"', *The Guardian* (Web Page, 13 September 2024) <https://www.theguardian.com/australia-news/2024/sep/13/adelaide-university-dumps-face-to-face-lectures>; Jedidajah Otte, '"I See Little Point": UK University Students on Why Attendance has Plummeted', *The Guardian* (Web Page, 28 May 2024) <https://www.theguardian.com/education/article/2024/may/28/i-see-little-point-uk-university-students-on-why-attendance-has-plummeted>; Denise Jackson, 'The Relationship between Student Employment, Employability-Building Activities and Graduate Outcomes' (2024) 48(1) *Journal of Further and Higher Education* 14, 14 citing Ralph Hall, 'The Work-Study Relationship: Experiences of Full-Time University Students Undertaking Part-Time Employment (2010) 23(5) *Journal of Education and Work* 439, 447.

[3] Anna Rowe, Denise Jackson, and Jenny Fleming, 'Exploring University Student Engagement and Sense of Belonging During Work-Integrated Learning' (2023) 75(3) *Journal of Vocational Education and Training* 564.

II LITERATURE OVERVIEW

Employability is frequently discussed in the higher education literature.[4] With higher education funding now often linked to matters such as graduate employment outcomes,[5] this attention is likely to continue. Like others,[6] in this paper we adopt a definition of employability developed by Beverley Oliver,[7] building upon the work of Mantz Yorke.[8] Oliver defines employability as follows:

> Employability means that students and graduates can discern, acquire, adapt and continually enhance the skills, understandings and personal attributes that make them more likely to find and create meaningful paid and unpaid work that benefit themselves, the workforce, the community and the economy.[9]

Employability can be distinguished from employment, specifically employment outcomes,[10] with the latter often focused on a student or graduate's ability to obtain work within a specified period after graduation.[11] Despite their differences, the two concepts of employability and employment are related, with the latter often perceived to be indicative of the former.[12] However, it is not necessarily the case that a student/graduate with high employability will have positive employment outcomes (and vice versa).[13]

A range of activities are identified within the literature as helping to improve students' employability and employment outcomes.[14] For example, Kinash et al refer to '12 different types of strategies' including, for example, 'capstone' units, 'careers advice', 'international

[4] See, eg, Denise Jackson and Anna Rowe, 'Impact of Work-Integrated Learning and Co-Curricular Activities on Graduate Labour Force Outcomes' (2023) 48(3) *Studies in Higher Education* 490; Trina Jorre de St Jorre and Beverley Oliver, 'Want Students to Engage? Contextualise Graduate Learning Outcomes and Assess for Employability' (2018) 37(1) *Higher Education Research and Development* 44; Shelley Kinash et al, 'Discrepant Stakeholder Perspectives on Graduate Employability Strategies' (2016) 35(5) *Higher Education Research and Development* 951; Alex Tymon, 'The Student Perspective on Employability' (2013) 38(6) *Studies in Higher Education* 841.
[5] Jackson (n 2) 15; Denise Jackson and Ruth Bridgstock, 'What Actually Works to Enhance Graduate Employability? The Relative Value of Curricular, Co-Curricular, and Extra-Curricular Graduate Learning and Paid Work' (2021) 81 *Higher Education* 723, 724.
[6] Trina Jorre de St Jorre et al, 'Science Students' Conception of Factors that will Differentiate them in the Graduate Employment Market' (2019) 10(1) *Journal of Teaching and Learning for Graduate Employability* 27, 29.
[7] Beverley Oliver, 'Redefining Graduate Employability and Work-Integrated Learning: Proposals for Effective Higher Education in Disrupted Economies' (2015) 6(1) *Journal of Teaching and Learning for Graduate Employability* 56, 59.
[8] Mantz Yorke, *Employability in Higher Education: What It Is – What It is Not* (Report, Learning and Employability Series 1, 2006) 8.
[9] Oliver (n 7) 59.
[10] Jackson and Rowe (n 4) 490; Tymon (n 4) 842–3.
[11] Kinash et al (n 4) 951–2.
[12] Jackson and Rowe (n 4) 490.
[13] Jackson and Bridgstock (n 5) 725. Cf Jill Alexander and Carol Boothby, 'Stakeholder Perceptions of Clinical Legal Education within an Employability Context' (2018) 25(3) *International Journal of Clinical Legal Education* 53, 56, who have stated that '[b]eing employable is obviously a pre-requisite to being employed but not all employable people can transition to employment'.
[14] Denise Jackson and Michael Tomlinson, 'The Relative Importance of Work Experience, Extra-Curricular and University-Based Activities on Student Employability' (2022) 41(4) *Higher Education Research and Development* 1119, 1120; Kinash et al (n 4).

exchange', and relevantly to the present paper, 'part time employment' and 'work experience'.[15]

Research shows that both employment and work-integrated learning can positively affect student employment outcomes, however, there are 'potentially damaging effects of working full time in unrelated roles'.[16] The concept of work-integrated learning within the higher education context consists of activities designed to blend academic learning and the development of capabilities relevant to the workplace.[17] These exist on something of a scale from, for example, an authentic assessment, such as a letter to a client based on a real-life factual scenario to curricular work experience, such as an internship or placement unit,[18] or clinical legal education (legal education designed to mimic legal practise, usually through a legal clinic overseen by a legal practitioner), the impact of which has recently been explored in the literature.[19]

Notably, although there is considerable research on the different types of activities aimed at improving students' employability and employment outcomes, comparisons between them are limited.[20] Kinash et al have authored one of the few comparative pieces of the impact of various activities on student employability.[21] They identify four key stakeholders in the development of employability and the promotion of employment outcomes, namely, 'higher education personnel', 'employers', 'students' and 'graduates', each of whom has a different role to play.[22] Importantly, according to Jorre de St Jorre et al, the perceptions of students in this space are underexplored,[23] albeit that they do identify three studies which merit further discussion here.[24] The three studies identified are those of (1) Tymon, (2) Qenani, MacDougall and Sexton, and (3) the study by Kinash et al referred to above.[25]

Tymon's study focused on business students in a UK university.[26] Data collection took place through a mixture of focus groups and surveys.[27] Four central questions were asked, relating to (a) defining employability, (b) components of employability, (c) the role of the university in supporting employability, and (d) the importance of employability.[28] Interestingly, one of Tymon's key findings was that the student respondents defined employability, more in reference to employment outcomes, than broader conceptualisations.[29] Importantly, for the purposes of the present research, Tymon reflected on student perceptions around academic performance, stating that '[l]ess than 40% of first and second year groups mentioned

[15] Kinash et al (n 4) 953–5.
[16] Jackson (n 2) 27. See also at 15.
[17] Jorre de St Jorre et al (n 6) 28.
[18] Ibid.
[19] Alexander and Boothby (n 13).
[20] Jackson and Bridgstock (n 5) 725.
[21] Kinash et al (n 4).
[22] Ibid 952.
[23] Jorre de St Jorre et al (n 6) 29–30.
[24] Ibid.
[25] Tymon (n 4); Eivis Qenani, Neal MacDougall, Carol Sexton, 'An Empirical Study of Self-Perceived Employability: Improving the Prospects for Student Employment Success in an Uncertain Environment' (2014) 15(3) *Active Learning in Higher Education* 199; Kinash et al (n 4).
[26] Tymon (n 4) 842.
[27] Ibid 849.
[28] Ibid 849–50.
[29] Ibid 852.

qualifications or grades as being connected to employability, whereas for employers a degree has almost become a prerequisite.'[30]

Qenani, MacDougall, and Sexton's study involved engineering and science students in the United States of America and took the form of a survey,[31] focused on matters including student perceptions of self-employability.[32] For the purposes of the present paper, two findings are worth noting (both of which are also identified by Jorre de St Jorre, Elliot, Johnson, and Bisset).[33] The first is in relation to undertaking an internship, with Qenani, MacDougall and Sexton finding that 'students who report work experience gained through an *internship* during their academic studies had an odds ratio of 2.482 meaning that as a result of an internship they were almost 2.5 times more likely to feel highly confident of their employability,'[34] suggesting that internships are an effective mechanism to boost a student's self-confidence. Second, academic performance was also relevant, with 'a self-reported GPA of 3.00 and above … result[ing] in a student being 1.64 times more likely to feel highly confident of their employability.'[35] Notably, while these results suggest that students perceive both internship and academic performance as contributing to employability, the higher confidence gained through participation in an internship may suggest work experience activities, such as an internship, are more influential.

Given that the current research is concerned with the extent to which students in law and science perceive academic performance and work experience as contributing to employment outcomes, the results of the studies of both Tymon, and Qenani, MacDougall and Sexton provide interesting points of potential comparison. The third study, by Kinash et al is less directly relevant to the present paper. While it focuses on the use by students of a range of 'employability strategies' (twelve are identified, some of which are listed above) the role of academic performance receives limited attention.[36] However, there is one interesting observation, linked to the second of the three key areas the present research explores, namely curricular versus non-curricular work experience. Kinash et al make the point that '[n]umerous project participants shared their perception that part-time employment is rarely aligned with the graduates' future careers and overall is perceived to take away from time available to participate in strategies that authentically develop career experience'.[37] This finding suggests that there is a need for activities such as part-time employment to be sufficiently connected to the student's projected career path, in order to improve employability.

In their research, Jorre de St Jorre et al used data from a mixture of a preliminary survey, focus groups and interviews to examine the 'understanding and priorities related to employment and employability' of 138 undergraduate science students across four

[30] Ibid 850 (citation omitted).
[31] Qenani, MacDougall and Sexton (n 25) 203.
[32] Ibid.
[33] Jorre de St Jorre (n 4) 29–30.
[34] Qenani, MacDougall and Sexton (n 25) 207–8.
[35] Ibid 208.
[36] Kinash et al (n 4).
[37] Ibid 959.

universities.[38] Particularly relevant for present purposes, '[a]lmost all students (96%) reported that they thought about their employment prospects often',[39] suggesting that employment outcomes are an important concern for university students. Connected to that, Jorre de St Jorre et al found that 'students were more focused on employment than employability', that is, finding work to support themselves was the priority, even over, in some cases, the relevance of that job to their future career.[40] While work experience was identified as important, participants distinguished between discipline/career related work experience and unrelated work experience, with some perceiving the latter to be of limited benefit,[41] reflecting a similar point of view to that identified by Kinash et al with respect to the participants in their study.[42] Significantly, in the discussion of their results, Jorre de St Jorre et al observe that '[w]ith the exception of students who required particular grades for further study, grades were not perceived as being particularly influential … as long as the grades were sufficient to pass.'[43] This presents an interesting contrast to other research, such as that of Qenani, MacDougall and Sexton, which, as outlined above, did find that academic performance could help build a student's self-confidence with respect to employability.[44]

Subsequent to the work of Jorre de St Jorre et al, there have been further studies that have examined the relative benefits of different activities to employment.[45] However, these are not focused on students' perceptions of the relative importance of work experience and academic performance to employment outcomes for students, and so will not be considered further.

III RESEARCH QUESTION AND AIMS

The research question guiding the present study is:

> Which of academic performance or work experience is perceived by students to be more important for graduate employment?

As can be seen from the above question, it is the student perspective that is the focus of the data collection and analysis. Consequently, the aims of this study are to:

1. Understand and explore student perceptions on the relative importance of (a) academic performance and (b) work experience for graduate employment;

2. Investigate whether students perceive a difference in the value of (a) curricular and (b) non-curricular work experience for graduate employment; and

3. Identify the implications of (1) and (2) for educators in the higher education sector.

[38] Jorre de St Jorre et al (n 6) 31.
[39] Ibid 32.
[40] Ibid 32–3.
[41] Ibid 34.
[42] Kinash et al (n 4) 959.
[43] Jorre de St Jorre et al (n 6) 37.
[44] Qenani, MacDougall and Sexton (n 25) 208.
[45] See, eg, Jackson (n 2); Jackson and Bridgstock (n 5).

IV METHODOLOGY AND PARTICIPANT PROFILE

The data for this study was collected through a Qualtrics survey of undergraduate students enrolled in law and science courses at Curtin University in Western Australia. A mixture of quantitative data (primarily Likert scales and rankings) and qualitative data (free text) was collected, along with relevant demographic data. The cohort surveyed were Bachelor of Laws (LLB) students and Science students (primarily, but not exclusively, Bachelor of Science students). These cohorts were selected because work experience (for example, legal clerkships) is not specifically required for course completion, as compared to other courses, such as teaching.[46]

This study received approval from the Curtin University Human Research Ethics Committee (approval number: HRE2023-0546). Potential participants were fully informed about the purpose of the survey, their rights as participants, and the potential risks and benefits associated with their participation. Measures to ensure anonymity and confidentiality were assured. Additionally, any conflict of interest and power differentials were considered and mitigated against.

A total of 128 students participated in the survey, although not every participant answered every question. There were 47 Bachelor of Laws (single degree and double degree) participants ('Law Participants'), 73 Bachelor of Science (single degree and double degree) participants, and another 8 participants enrolled in other, science-related, degrees ('Science Participants'). The vast majority (92%) of participants were studying full time (44 Law Participants, 74 Science Participants). Eleven Science Participants were international students. While no international LLB students participated, this is unsurprising as most of this cohort at the university is domestic.

Participants were at various stages of their degree (36 at 0-24%, 28 at 25-49%, 27 at 50-74%, and 37 at 75% or more completion). There was a mixture of Course Weighted Averages (3 between 0-49%, 12 between 50-59%, 39 between 60-69%, 51 between 70-79%, and 23 at 80% or above). These figures are broken down further in Table 1.

Table 1. Participant Course Completion and Course Weighted Averages

Course	Approximate Completion (%)				Course Weighted Average (%)				
	0-24%	25-49%	50-74%	75%+	0-49%	50-59%	60-69%	70-79%	80%+
Law	16	8	9	14	1	1	20	16	9
Science	20	20	18	23	2	11	19	35	14
Total	36	28	27	37	3	12	39	51	23

[46] See, eg, the compulsory practicum units in Curtin University's Bachelor of Education (Primary Education): Curtin University, *Bachelor of Education (Primary Education)* (Web Page, 2024) <https://handbook.curtin.edu.au/courses/course-ug-bachelor-of-education-primary-education--b-edprv4>.

Information on gender and age was also collected towards the end of the survey, resulting in a reduced response rate. There were an almost equal number of female and male participants (34:33) with one non-binary respondent. While there was some variation in age, most participants (77%) were aged between 18-24. In the following discussion, the primary point of comparison is between the views of Law Participants and Science Participants, not between the views of other demographic groups within these courses.

V RESULTS AND ANALYSIS

The following analysis of the results is organised into three key areas: (a) factor rating and ranking, (b) a comparison of curricular and non-curricular work experience, and (c) the evaluation of hypothetical job candidates.

A Factor Rating/Ranking

Participants were asked to rate the importance (and then rank) nine factors relating to academic performance, work experience, and other matters, through the following question:

> How important do you think each of the factors listed below will be to a prospective employer, when considering who to recruit for a graduate position?

There were 32 Law Participants and 51 Science Participants who responded to this question. The results of the factor rating for Very Important and Important are extracted in Table 2 below.

Table 2. The Rating of Nine Factors perceived by Law Participants and Science Participants as *Very Important* or *Important*.

Factor	Law Participants Importance Percentage (n=32)	Science Participants Importance Percentage (n=51)	Importance Difference
Academic Performance	87.5	68.6	18.9
The amount and/or length of any legal or science-based work experience	81.3	70.6	10.7
The nature and/or tasks of any legal or science-based work experience undertaken	96.9	86.3	10.6
Work experience, not directly relevant to the legal or science-based graduate position	37.5	27.5	10
The business (area of legal or scientific practice) of the host or employer for the legal or science-based work experience)	56.3	51.0	5.3
Legal or science-based work experience within the hiring employer's workplace	87.5	84.3	3.2
Higher education provider (university)	46.9	49.0	-2.1
The reputation of the host or employer for the legal or science-based work experience	59.4	62.7	-3.3
Specific Unit(s) Studied	46.9	54.9	-8

It is possible to make several observations about the data in Table 2. First, speaking generally, Law Participants tended to view the factors as more important than Science Participants, with six of the factors having a higher rating for Law Participants than for Science Participants. Second, Law Participants placed a greater importance on academic performance than Science Participants, with 87.5% of Law students rating it as Very Important or Important, but only 68.6% of Science students giving it the same rating (making it the factor with the greatest importance difference). Overall, however, this aspect of the present research is more consistent with the findings of Qenani, MacDougall and Sexton,[47] in that academic performance is viewed as important by a majority of both Law Participants and Science Participants, contrasted to that of Jorre de St Jorre et al who found it to be of limited importance.[48] Noting that both previous studies involved science students (and not law students), the present findings suggest that there may be a discipline influence on student perceptions. Third, the highest rated factor for both Law Participants and Science Participants is *the nature and/or tasks of any legal or science-based work experience undertaken*, suggesting that both law and science students recognise the value that work-experience related to their career can provide. However, and not shown in Table 2, when considering Very Important only it is *legal or science-based work experience within the hiring employer's workplace*, which is rated highest for both Law Participants (68.8%) and Science Participants (58.8%).

Having rated the importance of each factor, students were then asked to rank them, with Rank 1 as the most important factor. As with the previous question, 32 Law Participants and 51 Science Participants responded here. Table 3 sets out the three highest (or four highest, where there is an equal split) factors for Rank 1 and Rank 2.

Table 3. The Ranking of the Nine Factors (where Rank 1 is the most important).

		Law Participants (n=32)	**Science Participants (n=51)**
Rank 1	Highest	Academic performance (43.8%)	Legal or Science-based work-experience within the hiring employer's workplace (39.2%)
	Second Highest	Legal or Science-based work-experience within the hiring employer's workplace (15.6%)	The nature and/or tasks of any legal or Science-based work experience undertaken (17.6%)
	Third Highest	The nature and/or tasks of any legal or Science-based work experience undertaken (12.5%)	Academic Performance (11.8%)
			The amount and/or length of any legal or Science-based work experience (11.8%)
Rank 2	Highest	Legal or Science-based work-experience within the hiring employer's workplace (31.3%)	The nature and/or tasks of any legal or Science-based work experience undertaken (23.5%)
	Second Highest	Specific unit studied (21.9%)	The amount and/or length of any legal or Science-based work experience (21.6%)
	Third Highest	The amount and/or length of any legal or Science-based work experience (15.6%)	Academic performance (19.6%)
			Legal or Science-based work-experience within the hiring employer's workplace (19.6%)

[47] Qenani, MacDougall and Sexton (n 25) 208.
[48] Jorre de St Jorre (n 6) 37.

As can be seen from Table 3, *academic performance* was the single highest Rank 1 factor (43.8%) for Law Participants, while for Science Participants, it was equal third (11.8%). Clearly, therefore, Law Participants perceive academic performance as more important to gaining graduate employment when compared to Science Participants. By contrast, for Science Participants, *legal or science-based work experience within the hiring employer's workplace* was the single highest Rank 1 factor (39.2%), compared to the second highest Rank 1 factor for Law Participants (15.6%). More so than Law Participants, Science Participants appear to perceive a benefit in seeking to gain employment with an employer with whom they have already worked. However, looking at the ranking more holistically, it is notable that six of the nine factors relate to work experience in some way (excluding *academic performance*, *specific unit(s) studied*, and *higher education provider*). When these are combined, 50% of Law Participants (n=16/32) and 80.4% of Science Participants (n=41/51) ranked a work experience factor Rank 1. While it is still clear that work experience is viewed more importantly by Science Participants than Law Participants, even for Law Participants, 50% deemed an aspect of work experience the most important factor. The qualitative data helps to shed light on why this is the case.[49]

Amongst the Law Participants who perceived academic performance to be more important than work experience, ranking it first, three main themes can be identified from the qualitative data. First, there was a general perception of the importance of academic performance. For example:

> I believe to even get past the initial stage - grades are vital. ... (Law student).
>
> Academic performance is an objective indicator of the intelligence and diligence of a potential employee. ... (Law student).

Importantly, the fact that they perceived academic performance to be the most important did not mean that work experience was unimportant. For example, the second student quoted above went on to say:

> ... Legal experience is the second most important indicator because *almost* anyone can study law but the majority will not be good at practicing it or have any passion for it. (Law student).

Second, Law Participants drew attention to their experience in seeking work, and the views that they had developed through those processes. For example:

> Throughout my experience, my academic performance has always been the baseline for my competitiveness. Throughout my interviews, relatively high importance was placed on my progression throughout my degree, and the narrative that I was able to attach to my academic performance throughout the degree. This may partly be due to me having relatively limited legal experience, however, it did feel like my practical experiences were seen as a bit of a box to be ticked. (Law student).
>
> I left them in the order they appeared because that's what made the most sense to me. Additionally, when speakers came to divulge their experiences when I was in first year, they

[49] Where student quotations have been used, they are unedited and therefore may contain grammatical and other errors.

> stated that employers where scrutinising their academic performance and questioned them about it during interviews. Being that law encourages a lot of networking, it seems to be a lot about who you know AND what you know. (Law student).

For students like these, the voice and perception of those in the legal profession was particularly significant in the formulation of their own views. Interestingly, the voice of academic staff (the third theme) was viewed with a degree of scepticism. For example:

> It was explained by a lecturer in first year that we should focus on getting good grades over working as that was most important thing to employers - it now appears to be quite dated advice. (Law student).

> In first year a lecturer explained that we were better off studying than working as it would detract from our grades, that has made me think that the importance in industry is placed on marks which may be incorrect. I have noticed that the work experience students have a good understanding of practical tasks like legal letters. … (Law student).

Comments such as these highlight the need for academic staff and higher education institutions more broadly to understand what is valued by industry with respect to graduate employment. Engagement with industry could help inform career-related advice provided by academic staff to students.

While only 11.8% of Science Participants ranked academic performance Rank 1, the reasons given broadly reflect those of the Law Participants (ie, a general perception that academic performance is more important and a perception that employers value academic performance above experience). For example:

> I believe , Skill set is more Important than experience . I am from IT background and with rapid changes in technology and frameworks, We have to catch-up with them. (Science student).

> Academic performance would be key for the employers to choose candidates. (Science student).

Given that Science Participants ranked *legal or science-based work-experience within the hiring employer's workplace* as the most prominent Rank 1 factor, it is also useful to consider how they reached their conclusion. Some made relatively general observations about the value of work experience. For example:

> Work experience will trump anything for a employer, academic results are almost a nonfactor once you have worked a couple jobs/positions in the field. (Science student).

> I feel that relevant work experience is highly preferred over academic achievements. (Science student).

Other Science Participants provided a greater level of detail, drawing specific attention to the significance of having previously worked for the prospective employer:

> Having work experience with the hiring employer gives you an extreme advantage when applying, knowing people in the workforce will almost always land you the job over someone who doesn't even if you are slightly less qualified. ... (Science student).

> Unless there were issues, I expect employers would preference people they have already worked with as they have already formed a relationship. Also, if they have already demonstrated some competency in the role either within the business or another similar company, that would be weighted higher than academic performance, which does not always reflect performance in an actual workplace. ... (Science student).

The weight employers are perceived to place on work experience is reflected in multiple responses:

> In the mining industry, companies are desperate for geologists so the work is plentiful. What determines your rank and ability to be employed is due to the amount of experience you have and not determined by academic performance. I have a high weighted average grade and have been turned down by companies because I had no experience. I applied for a vacation program spot ... and got turned down for the role. ... As mining was my only experience with some transferable skills to the oil and gas industry, I thought it would be good to highlight those skills to the interviewers, however I was told I talked too much about it. Overall, I think employers are seeking worker's with experience regarding the nature of their business. (Science student).

> As a recent graduate who went into the work force and has come back my seniors and bosses at my work places all valued work experience and specific industry experience over everything else and lowkey pretty much said the education system does nothing since they teach you everything in the field anyway and recent grads arent taught how to apply their knowledge / real world skills.. which is why ive ranked any sort of work experience above academics ..they also really didnt care where i studied..just that I had the degree they looked for. (Science student).

Law Participants who ranked discipline-related work experience with the hiring employer first (ie, above academic performance) also drew attention to both the value of a prior work experience with the prospective employer and the role of employer perceptions:

> ... I put experience within the employer's workplace #1 because it is the only direct proof to an employer of work quality, the rest are proxies. ... (Law student).

> In my experience as someone who has both worked and studied in law since 2020, I feel that my workplace experience in law has been what has given me access to employment opportunities. I feel this way because when I get through to job interviews for law clerk and paralegal roles, I am asked far more about my work experience in law than my academic experience and academic performance. A job applicant with real-world practical skills but mediocre grades will be looked upon more favourably than one with an exceptional academic record but a lack of real-world experience. (Law student).

> From previous experience I have heard multiple directors of law firms say they prefer experience over grades. However students who are achieving very low grades would likely not be considered. (Law student).

The final student quotation above (noting it is from a law, not a science, student) presents the notion of grades as a threshold, that is, a minimum required for serious consideration by a prospective employer, but beyond which they are of limited utility. To an extent, this echoes Jorre de St Jorre et al's findings discussed above (in that provided a student passes, grades are generally of limited utility).[50] Arguably, however, the most prevalent theme across the responses is that related to the voice of industry. Both Law Participant and Science Participant views as to the relative importance of academic performance and work experience seem to be particularly shaped by what those in industry have told them, whether directly or indirectly.

B Curricular or Non-Curricular?

The second major area of investigation centred on the significance (if any) of a distinction between curricular and non-curricular work experience. Students were asked:

> Do you think it matters to a prospective employer whether the legal or science-based work experience is undertaken as part of a course (eg, internship for credit) or not?

The results, provided by 32 Law students and 49 Science students, are set out in Table 4.

Table 4. Law and Science student perceptions on whether it matters to employers that work experience is undertaken as part of a course.

Response	Law Participants (n=32)	Science Participants (n=49)
Yes	10 (31.3%)	15 (30.6%)
Maybe	13 (40.6%)	18 (36.7%)
No	9 (28.1%)	16 (32.7%)
Total	32 (100%)	49 (100%)

Interestingly, the difference in percentage of Law Participants and Science Participants that responded *Yes* to the question (ie, that there is a difference in curricular vs non-curricular work experience) was very small (within 1%). For these students, the dominant theme was the perception that choosing to undertake work experience (rather than being required to undertake it) showed character and commitment:

> I think it is relatively important as work experience is always valuable, however, showing that you have worked outside of your courses parameters (able to get a job on your own) shows great independence and ability. (Law student).

> There's a big difference between enforced work experience versus work experience of a students own initiative. If a student is willing to seek work experience with their own initiative, it shows interest to develop experience in that respective field. This is a demonstration of the applicants character. (Science student).

[50] Jorre de St Jorre (n 6) 37.

While the *Maybe* and *No* responses had a greater degree of divergence than the *Yes* response (3.9% for Maybe, 4.6% for No), the differences were both under 5%. For the *No* responses, it was the outcome of the work experience, not how it was obtained, that was the central consideration:

> I don't think it matters to a prospective employer whether work experience is undertaken as a part of a course. I think it just matters as to whether there has been ANY work experience. … (Law student).

> Any work experience is good work experience, most employers don't care how you got it but what you did during it and how well you can demonstrate those things in both the resume and interview. (Science student).

Within each discipline, it was the *Maybe* response (40.6% Law Participants, 36.7% Science Participants) that received the most votes. This suggests that there is a degree of uncertainty about the extent to which the curricular vs non-curricular work experience is important. In addition, there is limited difference in the *Yes* and *No* responses (a difference of 3.2% for Law Participants, in favour of Yes, and a difference of 2.1% for Science Participants, in favour of No), suggesting that this area is opportune for additional feedback from employers and industry.

C Hypothetical Job Candidates

The third major area for investigation involved asking students to rank six hypothetical job candidates, with a mixture of academic performance and work experience:

> Consider the hypothetical job candidates below. Please rank them in order (by dragging and dropping) of the likelihood of being recruited by a prospective employer for a graduate position (with one being the most likely). Where the candidate has undertaken any work experience, assume they have performed to a satisfactory standard.

The six hypothetical job candidates were:

- **C** is a final year single degree student in your discipline. They have a course weighted average of 70%. In addition to their academic performance, they have undertaken one discipline-specific internship unit (with a notable employer in your discipline).
- **K** is a final year single degree student in your discipline. They have a course weighted average of 70%. In addition to their academic performance, they have been employed on a part-time (one day per week) basis for the last year with a notable employer in your discipline.
- **S** is a final year single degree student in your discipline. They have a course weighted average of 70%. They have not undertaken any discipline related work experience but have extensive work experience in an unrelated field.

- **X** is a final year single degree student in your discipline. They have a course weighted average of 85%. They have not undertaken any work experience.
- **M** is a final year single degree student in your discipline. They have a course weighted average of 70%. In addition to their academic performance, they have been previously employed by your firm/business on a 4-week summer project.
- **O** is a final year single degree student in your discipline. They have a course weighted average of 60%. In addition to their academic performance, they have worked in the discipline for five years on a part time basis, with a leading employer.

As can be seen from the above description of each hypothetical job candidate, there is a range in Course Weighted Average (60% to 85%) as well as in the nature, duration, and type (curricular or non-curricular) of work experience. Table 5 shows the results of the ranking, focused on Rank 1 and Rank 2, as well as Rank 6, with Rank 1 being the hypothetical job candidate most likely to be recruited. There were 30 Law students and 42 Science students who responded to this question.

Table 5. Law Participant and Science Participant rankings of hypothetical job candidates as to the likelihood of being recruited by a prospective employer for a graduate position (where Rank 1 is the most likely).

		Law Participants (n=30)	**Science Participants (n=42)**
Rank 1	Highest	K (26.7%)	O (42.9%)
		M (26.7%)	
	Second Highest	O (23.3%)	M (23.8%)
	Third Highest	X (13.3%)	K (21.4%)
Rank 2	Highest	K (40%)	K (31.0%)
			O (31.0%)
	Second Highest	M (20%)	M (19.0%)
	Third Highest	X (13.3%)	C (16.7%)
		O (13.3%)	
Rank 6	Highest	S (40%)	S (47.6%)
	Second Highest	O (26.7%)	X (45.2%)
	Third Highest	X (23.3%)	O (4.8%)

Table 5 shows that Law Participants rated candidates K and M the highest. Both are similar, with a 70% course weighted average. The key distinctions between the two are in the duration of the work experience and whether it was with the employer in question or a different, but notable, employer in the field. Candidates K and M also featured highly in the Science Participants' rankings. Consequently, the data would tend to suggest that both Law Participants and Science Participants consider that a mixture of solid academic performance

and some relevant work experience is desirable. This notion of balance is reflected in a number of the qualitative responses to this question:

> I ranked the candidates this way as I tried to find a balance between quality and amount of work experience and grades. Overall, I did place amount of work experience higher than grades. (Law student).
>
> I feel like they would want people with good knowledge of the discipline but also relevant work experience where possible, I feel like a balance of both would be preferred over very good employment experience or very good grades. (Law student).
>
> Although academic performance is important, experience, particularly within the field (and even more so with the specific business) is likely more valuable to employers since they may prioritise applicants that don't need as much training/hand holding and are ready contributors to the business. (Science student).
>
> A balanced good performance in uni and work experience in a related field is the best. (Science student).

However, it is X and O that are arguably the most interesting. Despite being the highest performing student academically (with a course weighted average of 85%), X has no work experience. Law Participants and Science Participants treated X very differently. For Law Participants, X was rated 1st by 4, 2nd by 4, and 6th by 7. However, for Science Participants, X was rated 1st by 0, 2nd by 0, and 6th by 19 (and 5th by 18). The Science Participants' perception on X was clearly, therefore, overwhelmingly negative, whereas for law, X drew both strongly positive and negative views. O (with a course weighted average of 60%), by contrast, was viewed very positively by many Science Participants, rated 1st by 18, 2nd by 13, and 6th by only 2. However, for Law Participants, the response to O was very mixed, rated 1st by 7, 2nd by 4, 3rd by 6, 4th by 2, 5th by 3, and 6th by 8. Two points can be made with respect to X and O. First, there are clearly some Law Participants who view strong academic performance as imperative, and able to overcome a lack of work experience. That view is not shared by those Science Participants. However, the second point is that there are many Science Participants who believe that a weaker academic performance can be overcome by extensive work experience. The Law Participant responses are far more mixed on this point.

Significantly, Law Participants and Science Participants were united in their treatment of S. While S had a decent, but not exceptional, course weighted average (70%), they did not have any discipline related work experience (although they did have some work experience). S was ranked 6th by the most Law Participants and Science Participants, at 40% and 47.6% respectively. S, therefore, reflects the risks identified by Jackson and others that work experience not clearly connected to a student's discipline can pose.[51]

[51] Jackson (n 2) 27. See also: Kinash et al (n 4) 959; Jorre de St Jorre et al (n 6) 34.

VI LIMITATIONS AND FURTHER RESEARCH

While the present research offers insight into student perceptions of the relative importance of academic performance and practice-based experience for graduate employment, there are some limitations, which could help inform further research in this space. First, the qualitative data makes clear that employer/industry voice is a key consideration in how students perceive the relative importance of academic performance and work experience. As part of the broader research project, the research team developed and piloted an employer survey instrument, with a view to wider distribution in the future. While the number of responses from the pilot is too small (five law and three science employers, although not all completed every question) to fully draw out the possible implications, they do allude to the possibility that the student perception of what employers' value in making decisions around graduate employment may not be entirely accurate. For example, five employers (three law and two science) answered the hypothetical job candidate question. Notably, four of the five (two law, two science) ranked O last (the other law employer ranked X last). Further, three law employers indicated that a minimum course weighted average for recruitment existed in their organisation (one between 60-69%, one between 70-79%, and the other did not disclose the range), and two indicated no. One science employer indicated they did (70-79%) and one indicated no. Further research is necessary to explore employer perceptions on matters relating to graduate employment, to better inform stakeholders. Second, the present study is a point-in-time perspective. Further research could incorporate a longitudinal component, measuring changes (if any) in student perceptions over time, looking at the evolution of their views over the course of their degree and into graduate employment. Third, the present study was focused on a single institution; there could be value in a multi-institutional comparison. Finally, the survey did not ask students what their own career aspirations were or if they had a specific job in contemplation when undertaking the survey. Some students may have been thinking about a particular type of position when they completed the survey (for example, even within the legal industry there are potentially a variety of graduate roles). Further research could seek to integrate each participant's specific career aspirations with their responses to broader questions around their perceptions of grades and work experience.

VII CONCLUSION

The present research has sought to build on the existing literature and explore student perceptions on the relative importance of both academic performance and work experience on employment outcomes. Two main implications can be drawn from the analysis. First, many Law Participants and Science Participants appear to view both academic performance and work experience as important for graduate employment outcomes. However, the results show that a distinction may be able to be drawn between the perceptions of students in different disciplines, as Law Participants appeared to place greater importance on academic performance than Science Participants. Whether such a disciplinary distinction is present in the views of employers and industry is a matter for further research. Second, it is imperative

that academic staff and higher education institutions ascertain and have regard to student and employer perceptions of the relative importance of academic performance and work experience. As seen above, some students regard the views of academic staff with a degree of hesitancy. Higher education institutions and their staff must familiarise themselves with current industry expectations, whether that be through research, advice from advisory boards and similar bodies, or even informal discussions with industry contacts. Understanding what industry values in a graduate employee can allow academic staff and higher education institutions to communicate more accurately to their students on the relative merits of academic performance and work experience. Evidence-based messaging, at all stages of a student's degree, could be used to better manage student expectations and inform priorities. Such insights could also help to further shape the embedding of work-integrated learning in higher education.

TRANS-INCLUSIVE PEDAGOGY IN UNIVERSITY REPRODUCTIVE HEALTH EDUCATION

CHALLENGING CISNORMATIVITY IN HEALTH LAW AND BIOLOGICAL SCIENCE

AIDAN RICCIARDO & NICHOLAS FIMOGNARI *

This article examines the pressing need for trans-inclusive reproductive health education in science faculties and in law schools (especially in the context of health and medical law). It traces how traditional curricula in health law and human biology reinforce binary and cisnormative understandings of sex and gender, and argues that educators have duties – ethical, pedagogical, and professional – to challenge these norms. Drawing on critical pedagogy, the article shows how inclusive teaching can enrich legal and scientific education. Through practical examples and reflections from health law and human biology courses, it demonstrates that trans-inclusive pedagogy not only better reflects scientific and legal realities, but also prepares graduates to engage respectfully and competently with the diverse communities they will serve in their future careers.

I INTRODUCTION

In universities, reproductive health has historically been taught according to cisnormative understandings of human bodies and reproduction.[1] This cisnormativity revolves around the notion that there is a strict binary division: male or female in terms of 'biological sex' and dimorphism, man or woman in terms of gender, and that a person's gender will align with their sex assigned at birth.[2] The effect of this is that the teaching of sexual and reproductive health has largely centred on 'traditional'[3] ideas that overlook the existence and experiences

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[1] Gabrielle Maria Finn et al, 'It's Not Alphabet Soup – Supporting the Inclusion of Inclusive Queer Curricula in Medical Education' (2021) 5(2) *The British Student Doctor Journal* 27, 28.

[2] Jojanneke van der Toorn, Ruthie Pliskin and Thekla Morgenroth, 'Not Quite Over the Rainbow: The Unrelenting & Insidious Nature of Heteronormative Ideology' (2020) 34 *Current Opinion in Behavioural Sciences* 160, 160–2.

[3] The term 'traditional' is used here to refer to ways of thinking that are established norms in Western cultures, noting that traditions in many Indigenous and other cultures differ from these norms.

of trans, gender diverse, and intersex people.[4] This is especially true of the way that reproductive health has been taught by science faculties in human biology and medical science courses,[5] but it is also true of the way it has been taught in law schools (for example, in health and medical law units).[6]

These traditionally dominant narratives about binary sex and gender are being increasingly challenged and displaced.[7] There is growing recognition and understanding that sex, gender and bodies are not strictly confined to a binary.[8] The visibility of activism by trans and gender diverse people has played a central role in broadening conceptions of diverse gender experiences, including that a person's gender may not align with the sex they were assigned at birth.[9] Non-binary, agender, genderqueer, and other gender identities that exist beyond the traditional binary are gaining visibility and acknowledgement.[10] There has also been some shift in understandings of intersex people and their innate variations of sex characteristics,[11] with declining acceptance of the medical model which views intersex variations as abnormalities in need of medical intervention, and a greater focus on conceptualising variations of sex characteristics as part of the spectrum of natural diversity of human bodies.[12]

This article argues that there is now a critical need to dismantle cisnormative traditions in our science faculties and law schools, and instead teach reproductive health in a way that is inclusive and respectful of a diversity of sex and gender.

It does so by first setting out the traditional approaches to teaching reproductive health in science and law, noting that cisnormativity is prevalent in both disciplines. It then considers how understandings of sex and gender have changed over time. The article then draws on critical pedagogy (a framework for education grounded in social justice and the disruption of systemic oppression)[13] to set out why there is a need to teach reproductive health in a way that is inclusive of trans and gender diverse people, arguing that teachers owe duties to their students and themselves to do so. It then moves on to consider some of the hurdles to trans-

[4] Pamela L Geller, 'Bodyscapes, Biology, and Heteronormativity' (2009) 111(4) *American Anthropologist* 504, 504; Nicholas Fimognari et al, 'Inclusion of Genital, Sexual, and Gender Diversity in Human Reproductive Teaching: Impact on Student Experience and Recommendations for Tertiary Educators' (2024) 48(4) *Advances in Physiology Education* 698.
[5] Samuel N Dubin et al, 'Transgender Health Care: Improving Medical Students' and Residents' Training and Awareness' (2018) 9 *Advances in Medical Education and Practice* 377, 380; Joshua D Safer, 'Research Gaps in Medical Treatment of Transgender/Nonbinary People' (2021) 131(4) *Journal of Clinical Investigation* 1, 2.
[6] This is established in Part II(B) of this article.
[7] Finn et al (n 1) 28.
[8] See, eg, C E Roselli, 'Neurobiology of Gender Identity and Sexual Orientation' (2018) 30(7) *Journal of Neuroendocrinology* Article No 12562, 2-5; Dubin et al (n 5).
[9] Elijah Adiv Edelman, 'Gender Identity and Transgender Rights in Global Perspective' in Michael J Bosia, Sandra M McEvoy and Momin Rahman (eds), *The Oxford Handbook of Global LGBT and Sexual Diversity Politics* (Oxford University Press, 2020) 62.
[10] Ibid. For definitions of these identities, and other LGBTIQA+ identities, see Human Rights Campaign, *Glossary of Terms* (31 May 2023) <https://www.hrc.org/resources/glossary-of-terms>.
[11] See, eg, Morgan Carpenter, 'Fixing Bodies and Shaping Narratives: Epistemic Injustice and the Responses of Medicine and Bioethics to Intersex Human Rights Demands' (2024) 19(1) *Clinical Ethics* 3. Note though that intersex people and their priorities and experiences are not to be conflated with trans and gender diverse identities and experiences. Intersex inclusion is not the focus of this article.
[12] Ibid.
[13] Jan McArthur, 'Achieving Social Justice Within and Through Higher Education: The Challenge for Critical Pedagogy' (2010) 15(5) *Critical Perspectives* 493, 494–5,

inclusive tertiary education. Finally, it contributes to the literature relating to queering the curriculum by providing examples of what trans-inclusive reproductive health education can look like in both law and science.

Much of the discussion about trans-inclusive pedagogy in this article can be extrapolated beyond the specific context of reproductive health education. This article focuses on the teaching of reproductive health in order to discuss an area which arises in both law and science, allowing for explicit and implicit comparison and a broader understanding of the impact of cisnormativity in higher education.

II BACKGROUND

This part sets out the relevant background information to the matters discussed in this article. It first canvasses the traditional approaches to teaching reproductive health in both science and in law, concluding that both disciplines are heavily influenced by cisnormativity. It then provides a brief overview about how understandings of sex and gender have changed over time.

A Traditional Approaches to Teaching Reproductive Health in Science

In tertiary science education, reproductive health is typically taught in ways that perpetuate cisnormative assumptions. Traditionally, approaches to teaching this topic neither challenge nor critically engage with cisnormative assumptions, even though there is capacity to do so.[14] We identify three key drivers of this cisnormative approach (two of which are discussed in more detail in the sub-parts below). First, the fundamental teaching of sex hormones is routinely tied to understandings of sex and gender. Second, concomitant with the role sex hormones play in development throughout a lifetime, these hormones become all but synonymous with binary forms and anatomy (eg, testosterone = man = penis; oestrogen = woman = vagina). And third, where sexual behaviour and sexuality is explored, teachings are often centred around conception, pregnancy and procreation – typically excluding people with diverse sexualities, genders, and sex characteristics.[15] These practices and understandings are entrenched in many scientific disciplines relevant to reproductive health.[16]

1 Fundamental teaching of sex hormones in reproductive health

The focus on sex hormones around sexual development, fertility and conception has been pivotal to deepening understandings of the reproductive system, and this is indispensable to

[14] See generally Sam L Sharpe et al, 'Sex and Biology: Broader Impacts Beyond the Binary' (2023) 63(4) *Integrative and Comparative Biology* 960.
[15] See generally Tuomas Aivelo, Eva Neffling and Maija Karala, 'Representation for Whom? Transformation of Sex/Gender Discussion from Stereotypes to Silence in Finnish Biology Textbooks from 20th to 21st Century' (2024) 58(2) *Journal of Biological Education* 297.
[16] Ibid.

teach reproductive biology pragmatically. Throughout secondary and tertiary education, the sex hormones are classically discussed in human biology for their integral and differential roles in development and function of the reproductive systems, anatomy, gender, and fertility.[17] Crucially, a region on the Y chromosome drives testosterone dominance with a 46 XY karyotype (endosex male), whereas the absence of this region and 'Y' chromosome in those with a 46 XX karyotype (endosex female) drives oestrogen dominance, with respective reproductive changes and development directed by the dominant sex hormones.[18] Consequently, oestrogen(s) and testosterone(s) have become synonymous with 'femininity' and 'masculinity', respectively, and this has ingrained them in discourse relating not only to sex, but also to gender.[19] To some extent this is balanced by the following key points on the crucial interplay between sex hormones:

1. Dehydroepiandrosterone is a fundamental precursor hormone in biosynthesis of all sex hormones;[20]

2. Oestrogens are converted from testosterones and other androgens by the aromatase enzyme;[21] and

3. All individuals have variable concentrations of all sex hormones – androgens, testosterones and oestrogens.[22]

In the teaching of human biology, reproduction-centric cisnormative assumptions are typically made about people and their bodies on the basis of their sex characteristics and sex hormones – eg, bodies are described as either 'male/man' or 'female/woman' on the basis of their characteristics and hormones.[23]

2 Pathologising forms beyond the binary

Binary perspectives are entrenched in medical sciences. Anatomy and physiology (form and function) relating to bodies beyond the cisnormative and endosex binary are rarely covered in core scientific or medical education or textbooks.[24] When education has paid attention to reproductive variation in forms, this has been historically underscored by a binary lens, and subsequently a pathologising viewpoint.[25] For example, one of the most widely used

[17] See, eg, Aivelo, Neffling and Karala (n 15); Katherine Maslowski et al, 'Sex and Fertility Education in England: An Analysis of Biology Curricula and Students' Experiences' (2024) 58(3) *Journal of Biological Education* 702; Katherine Maslowski et al, 'Reproductive Health Education in the Schools of the Four UK Nations: Is it Falling Through the Gap?' (2023) 26(3) *Human Fertility* 527; Fimognari et al (n 4).
[18] Roselli (n 8) 2.
[19] Sari M van Anders, 'Beyond Masculinity: Testosterone, Gender/Sex, and Human Social Behavior in a Comparative Context' (2013) 34(3) *Frontiers in Neuroendocrinology* 198, 199.
[20] Stephanie J Webb et al, 'The Biological Actions of Dehydroepiandrosterone Involves Multiple Receptors' (2006) 38(1-2) Drug Metabolism Reviews 89, 89.
[21] Melody V Wu, 'Estrogen Masculinizes Neural Pathways and Sex-Specific Behaviors' (2009) 139(1) *Cell* 61, 61–2.
[22] Johanna Olson et al, 'Baseline Physiologic and Psychosocial Characteristics of Transgender Youth Seeking Care for Gender Dysphoria' (2015) 57(4) *Journal of Adolescent Health* 374, 374.
[23] See generally Mel Ferrara and Monica J Casper, 'Genital Alteration and Intersex: a Critical Analysis' (2018) 10 *Current Sexual Health Reports* 1.
[24] Jennifer A Hayes and Meredith J Temple-Smith, 'New Context, New Content – Rethinking Genital Anatomy in Textbooks' (2022) 15(5) *Anatomical Sciences Education* 943, 943–4; Aivelo, Neffling and Karala (n 15).
[25] Fimognari et al (n 4) 699.

graphical representations of genital variation is the Quigley scale,[26] which – whilst depicting a scale between 'fully masculinised' and 'fully feminised' genitalia – is typically used only in the context of categorising so-called genital 'anomalies' and 'abnormalities' that sit between the binary forms.[27] That is, it implies that the binary male and female forms on either side of the scale are normal, and that anything in between is abnormal.

There is typically only fleeting representation of bodies and identities that do not conform to binary norms in reproductive biology and medical science courses.[28] Where there has been representation, this has typically been framed as relating to 'disorders of sexual development'[29] – a term used to refer to variations of sex characteristics (despite being rejected by peak intersex advocacy groups for stigmatising and pathologising intersex people).[30] There is generally poor understanding of genital anatomy and variation amongst the public,[31] creating a need for specialists in anatomy to further develop knowledge and education which presents sex characteristics as a spectrum of features amongst natural variation.[32]

B Traditional Approaches to Teaching Reproductive Health in Law

In law schools, reproductive health is typically taught primarily in medical law or health law units.[33] These units are often seen as an intersection between medicine and law,[34] and thus, the teaching and curricula in these units has been shaped by traditions in both medical science and law.[35] In this way, the traditional approach to teaching reproductive health in science – as discussed above – has had a profound impact on the way that reproductive health has been taught in law schools. That is to say that much of the discussion set out in the preceding sub-part applies equally in the context of legal studies.

Of course, though, legal traditions have also shaped the way that reproductive health has been taught in law schools. As is the case with science, law as a discipline (and indeed, the

[26] Charmian A Quigley et al, 'Androgen Receptor Defects: Historical, Clinical, and Molecular Perspectives' (1995) 16(3) *Endocrine Reviews* 271.
[27] Ibid.
[28] See, eg, Luke Uden, Vanessa Vaughan and Helen Wilcox, 'Building Gender and Sexual Diversity into Case-based Learning' (2024) 25(4) *Focus on Health Professional Education* 17, 17–18.
[29] Tove Lundberg, Peter Hegarty and Katrina Roen, 'Making Sense of 'Intersex' and 'DSD': How Laypeople Understand and use Terminology' (2018) 9(2) *Psychology & Sexuality* 161, 162.
[30] InterAction for Health and Human Rights, *Media and Style Guide* (2 March 2021) <https://interaction.org.au/style/>.
[31] Rebecca Beni, Lauren Fisher and Georga J Longhurst, 'The Importance of Diverse and Accurate Descriptions of Genital Anatomy in Textbooks' (2022) 15(5) *Anatomical Sciences Education* 985, 985–6.
[32] Goran Štrkalj and Nalini Pather, 'Beyond the Sex Binary: Toward the Inclusive Anatomical Sciences Education' (2020) 14(4) *Anatomical Sciences* 513, 514–15.
[33] See, eg, Susan B Apel, 'Teaching Health Law: Teaching Law and Medicine on the Interdisciplinary Cutting Edge: Assisted Reproductive Technologies' (2010) 38(2) *Journal of Law, Medicine & Ethics* 420. Note though that aspects of reproductive health may be taught in other units like Criminal Law and Family Law.
[34] See generally Scott Burris et al, 'Moving from Intersection to Integration: Public Health Law Research and Public Health Systems and Services Research' (2012) 90(2) *The Milbank Quarterly* 375.
[35] Ibid.

law itself)[36] has traditionally been cisnormative and heteronormative in nature.[37] This has shaped the language used in case law and statutes,[38] the law school curriculum,[39] and dominant attitudes within the legal profession.[40] For example, a 2022 study relating to LGBTQI+ diversity in legal education found that participating LGBTQI+ law students thought the law curriculum was not particularly inclusive of LGBTQI+ people in general, and that sources (like textbooks) and law teachers could make a greater effort to use gender-neutral language.[41]

Indeed, legal education often reinforces the binary and cisnormativity by framing reproductive health laws predominantly around the experiences of cisgender women. For example, discussions surrounding abortion rights and access to contraception are typically centred on cisgender women's bodies and experiences. This framing excludes transgender men, non-binary and gender diverse people, as well as some intersex people who may also require reproductive health care but face distinct legal and medical barriers. This framing in legal education is influenced by the law itself, with statutes and case law typically using gendered and binary language, such as references to 'women' and 'mothers',[42] failing to acknowledge the diverse identities of people who can become pregnant or require reproductive healthcare. This exclusion perpetuates a legal framework that marginalises transgender and gender diverse people.[43]

In conclusion, in Western cultures, both law and medical science have been profoundly impacted by cisnormativity. The result of two historically cisnormative disciplines colliding is that these biases and expectations have become doubly entrenched in the teaching of health law.[44]

C Understandings of Sex and Gender over Time

This sub-part provides a brief and selective overview of how sex and gender have been understood over time. First, it provides a number of examples to demonstrate that trans and gender diverse identities are not new phenomena, despite common misconceptions. It then

[36] Paula Gerber and Ronli Sifris, 'Erasing Trans People: How to Ensure Australia Does Not Go Down the Same Path as the United States' (2024) 49(4) *Alternative Law Journal* 249, 250–1.
[37] See, eg, Stevie Leahy, 'Fostering Equity and Inclusion Across the Gender Spectrum in the Law School Classroom' (2020) 65(5) *Villanova Law Review* 1105; Paula Gerber and Claerwen O'Hara, 'Teaching Law Students about Sexual Orientation, Gender Identity and Intersex Status within Human Rights Law: Seven Principles for Curriculum Design and Pedagogy' (2019) 68(2) *Journal of Legal Education* 416.
[38] Florence Ashley, 'The Constitutive In/Visibility of the Trans Legal Subject: A Case Study' (2021) 28(1) *UCLA Women's Law Journal* 423, 424, 435.
[39] Mark Israel et al, 'Fostering "Quiet Inclusion": Interaction and Diversity in the Australian Law Classroom' (2017) 66(2) *Journal of Legal Education* 332, 341–44.
[40] Aidan Ricciardo et al, 'Perceptions of LGBTQI+ Diversity in the Legal Profession: "It's Happening Slow, but it's Certainly Happening"' (2021) 46(2) *Alternative Law Journal* 100, 101–5.
[41] Aidan Ricciardo et al, Understanding, Promoting and Supporting LGBTQI+ Diversity in Legal Education (2022) 56(3) *The Law Teacher* 307, 318–9.
[42] Eg, in Western Australia the statutory provisions relating to abortion referred only to a 'woman's' ability to access an abortion until 2023.
[43] Anniken Sørlie, 'Trans Reproduction: Continuity, Cis-normativity, and Trans Inequality in Law' (2023) 21(2) *International Journal of Constitutional Law* 625, 642.
[44] That is, the heteronormativity and cisnormativity in science provides validation for the heteronormativity and cisnormativity in law, and vice versa.

considers how medical and biological sciences have played a role in entrenching cisnormative understandings of human bodies (especially in Western cultures). Following that, it looks at the other side of that same coin, touching on some developments in science that challenge those cisnormative understandings. Finally, it briefly notes how in contemporary times, there has been less pathologisation and greater acceptance of trans and gender diverse people.

1 Trans and gender diverse identities are not 'new' phenomena

In Western cultures, trans and gender diverse identities are often thought of as relatively new phenomena.[45] However, there are many historical (and in many cases, enduring) examples of gender diversity in many cultures over the world. This is especially apparent in a number of Indigenous cultures where diverse understandings of sex and gender predated colonisation. These examples frame the binary understanding of human bodies as an introduced system of ideas and concepts which does not fully reflect established sociocultural structures and histories.

One example is discussed in work by Oyèrónkẹ́ Oyěwùmí on Yoruba cultural knowledge and gender origins.[46] Oyěwùmí positions generational reproduction at the core of Yoruba society, upheld by social categories which were not gendered, gender-exclusive, or biologically determined, and which preceded colonisation.[47] A common framework in imperialist societies opposes these notions – instead, assuming that sex determines gender, which in turn determines the social categories that coordinate generational reproduction.[48] Yoruba culture offers one example to challenge these imperialist assumptions, but it is not the only example.

As further examples, non-binary identities are present in many Indigenous cultures. Amongst some Polynesian peoples, such as in Hawaii, the term 'māhū' is used to refer to individuals who do not embody the exclusive qualities ascribed to any one of the binary genders as understood within the communities, and may identify as a third gender.[49] This third gender is often described as encompassing a mixture of conventionally gendered features and traits, or not embodying gendered traits at all.[50] Non-binary identities are also present in Oaxaca (Mexico), especially in Zapotec cultures, by people who identify as 'Muxe' – individuals who do not conform to traditional gender roles,[51] and who have integral roles

[45] Phillip L Hammack and Adriana M Manago, 'The Psychology of Sexual and Gender Diversity in the 21st Century: Social Technologies and Stories of Authenticity' (2024) *American Psychologist* (online ahead of print).
[46] Oyèrónkẹ́ Oyěwùmí, 'Conceptualizing Gender: The Eurocentric Foundations of Feminist Concepts and the Challenge of African Epistemologies' (2002) 2(3) *Jenda: A Journal of Culture and African Women Studies* 1.
[47] Ibid 3.
[48] Maria Lugones, 'The Coloniality of Gender' in Wendy Harcourt (ed), *The Palgrave Handbook of Gender and Development: Critical Engagements in Feminist Theory and Practice* (Palgrave Macmillan, 2016) 13, 14–15.
[49] Rachel Beth Chapman, *Mahu and Native Hawaiian Culture: Experiences of Non-Heteronormativity* (Dissertation, 2023) <https://scholarsarchive.byu.edu/etd/10084> 3.
[50] Makiko Kuwahara, 'Living as and Living with Māhū and Raerae: Geopolitics, Sex and Gender in the Society Islands' in Niko Besnier and Kalissa Alexeyeff (eds), *Gender on the Edge: Transgender, Gay, and Other Pacific Islanders* (University of Hawai'i Press, 2014) 93, 94.
[51] Jacobo Ramirez and Ana María Munar, 'Hybrid Gender Colonization: The Case of Muxes' (2022) 29(6) *Gender, Work & Organization* 1868, 1868; Alejandra Gall Peña, *Reflections and Conceptions of Muxe Gender Identity in Contemporary Mexican Society* (Dissertation, 2022) <https://www.diva-portal.org/smash/get/diva2:1675237/FULLTEXT01.pdf> 2.

in society alongside 'women' and 'men'.[52] In many Indigenous North American nations, gender is understood to be on a continuum, and these societies embrace gender non-conforming individuals who are referred to as 'Two-spirit'.[53] There are also social categories with long histories which extend beyond a 'third' gender.[54]

The brief overview of gender diversity in cultural histories in this Part is nowhere close to comprehensive, and further diversity exists.[55] But what is apparent from this brief overview is that gender diversity has been accepted in many cultural traditions for a long time, transcending Western understandings of gender and sex that position gender diversity as a new phenomenon.[56] What is also apparent from this overview is the relationship between colonisation and Western globalisation on the one hand, and understandings of sex and gender in many non-Western and Indigenous cultures on the other. When we consider that institutional teaching on reproductive health, sex and gender has largely ignored the reality of diverse genders,[57] these tertiary institutions can be understood as perpetuating colonial values and norms.[58]

2 The role of medical and biological science in entrenching cisnormativity

While developments in medical and biological science have undoubtedly contributed to advancements in human health, the proliferation of this knowledge over the 19th and 20th centuries also perpetuated essentialist views that oversimplify and restrict the complexity of human identity.[59] The roots of essentialist views can be traced to early medical perspectives that linked gender directly to anatomical features,[60] and designated certain traits in association.[61] These perspectives reinforced a binary understanding of sex, associating specific traits and roles with male and female bodies. Biology has provided a foundation for a binary outlook on sex and gender. Gendered associations with sex and sex hormones extend to gametes: sperm ('men') and eggs ('women').[62] As the base biological requirement for sexual reproduction in humans is the fusion of gametes, science has been used to ground

[52] Alfredo Mirande, *Behind the Mask: Gender Hybridity in a Zapotec Community* (Tucson: The University of Arizona Press, 2017) 10.
[53] John R Sylliboy, 'Coming Out is Part of the Life Cycle: A Qualitative Study Using Two-Eyed Seeing to Understand a Two-Spirits Coming Out Process' (2022) 17(10) *Global Public Health* 2428, 2428–30.
[54] Sharyn Davies, *Challenging Gender Norms: Five Genders Among Bugis in Indonesia* (Gale Cengage, 2007) x, 9.
[55] See generally Emmie Matsuno and Stephanie L Budge, 'Non-binary/Genderqueer Identities: a Critical Review of the Literature' (2017) 9(1) *Current Sexual Health Reports* 116.
[56] Volkmar Sigusch, 'On Cultural Transformations of Sexuality and Gender in Recent Decades' (2004) 2 *German Medical Science* 1.
[57] See generally Lugones (n 48) 13–33.
[58] See generally Juliana McLaughlin and Susan Whatman, 'The Potential of Critical Race Theory in Decolonising University Curricula' (2011) 31(4) *Asia Pacific Journal of Education* 365.
[59] See generally Ash T Zemenick et al, 'Six Principles for Embracing Gender and Sexual Diversity in Postsecondary Biology Classrooms' (2022) 72(5) *BioScience* 481.
[60] See generally, Hayes and Temple-Smith (n 24); Štrkalj and Pather (n 32).
[61] Hayes and Temple-Smith (n 24); Štrkalj and Pather (n 32); A M Aramati Casper et al, '"It's completely erasure": A Qualitative Exploration of Experiences of Transgender, Nonbinary, Gender Nonconforming, and Questioning Students in Biology Courses' (2022) 21(4) *CBE Life Sciences Education* Article No 69, 1–2.
[62] Katrina Karkazis, 'The Misuses of "Biological Sex"' (2019) 394(10212) *The Lancet* 1898, 1898–9.

binary and cisnormative understandings of human bodies, and this is so despite sex – in terms of reproduction – not being clearly linked to the concept of gender.[63]

Early advances in genetics led to the identification of sex chromosomes and associated them with dominant sex hormone profiles, reinforcing the idea that sex is a strictly binary, biologically-determined characteristic, with associated binary forms.[64] Historical (and, in some cases, enduring) medical practices reflect both a pattern of diagnosing pathology and chromosomal aberrations, and a tendency to model binary understandings of human bodies and identities. For example, non-consensual sex assignment surgeries performed on intersex infants and children exemplify an emphasis on assigning a fixed binary gender based on anatomical features.[65] Another example is provided by the inclusion of gender identity disorders in psychiatric diagnostic classifications, which until recently pathologised transgender and gender diverse people.[66] Both examples have arguably arisen from essentialist cisnormative and endosexnormative views,[67] and may self-perpetuate these views within a gender-binary cycle,[68] preventing meaningful mainstream discourse about diverse gender identities within the scientific community, and society at large.[69]

3 Developments in science that challenge cisnormative understandings

Although (as set out above) science has played a role in entrenching cisnormative views of sex and gender, there have also been a number of developments and discoveries in science that have challenged those cisnormative understandings.

For example, research in biology has revealed examples of many organisms that require more than two individuals to reproduce,[70] are not constrained or even correctly represented by binary sex,[71] and that do not have a fixed 'biological' sex.[72] Further examples and concepts

[63] See generally Arnold de Loof, 'Only Two Sex Forms but Multiple Gender Variants: How to Explain?' (2018) 11(1) *Communicative and Integrative Biology* e142739. This point is explored further later in this article.
[64] Institute of Medicine (US) Committee on Understanding the Biology of Sex and Gender Differences, 'Every Cell has a Sex' in Theresa M Wizemann and Mary-Lou Pardue (eds), *Exploring the Biological Contributions to Human Health: Does Sex Matter?* (National Academies Press, 2001).
[65] See generally, Peter Hegarty and Annette Smith, 'Public Understanding of Intersex: An Update on Recent Findings' (2023) 35 *International Journal of Impotence Research* 72; Aidan Ricciardo, 'Harm Caused by Medical Interventions which Alter Intersex Variations: Can Negligence Provide a Remedy' (2021) 40(2) *University of Tasmania Law Journal* 91, 94–113.
[66] Rebeca Robles, Tania Real and Geoffrey M Reed, 'Depathologizing Sexual Orientation and Transgender Identities in Psychiatric Classifications' (2021) 2(2) *Consortium Psychiatricum* 45, 46–51.
[67] Ricciardo (n 65) 94–113; Amets Suess Schwend, 'Trans Health Care from a Depathologization and Human Rights Perspective' (2020) 41 *Public Health Reviews* Article No 3, 12; Keely Duggan and Donna McNamara, 'The Blurred Distinction Between Therapeutic and Non-therapeutic Medical Interventions for Intersex Children in Australia' (2021) 27(2) *Australian Journal of Human Rights* 272.
[68] Tamar Saguy, Michal Reifen-Tagar and Daphna Joel, 'The Gender-Binary Cycle: The Perpetual Relations Between a Biological-Essentialist View of Gender, Gender Ideology, and Gender-Labeling and Sorting' (2021) 376(1882) *Philosophical Transactions of The Royal Society B Biological Sciences* Article No 20200141, 5.
[69] See generally Baqar Husain, *Stigma, Cisgenderism, And the Pathologization Of Transness* (Dissertation, 2022) <https://elischolar.library.yale.edu/ysphtdl/2159/>; Suess Schwend (n 67).
[70] John Whitfield, 'Everything You Always Wanted to Know about Sexes' (2004) 2(6) *PLoS Biology* 718, 718–19, 721.
[71] J F McLaughlin et al, 'Multivariate Models of Animal Sex: Breaking Binaries Leads to a Better Understanding of Ecology and Evolution' (2023) 63(4) *Integrative and Comparative Biology* 891, 896–7.
[72] Joan Roughgarden, *Evolution's Rainbow Diversity, Gender, and Sexuality in Nature and People* (University of California Press, 2013) 169–71.

have been extensively discussed in a recent essay by Goymann, Brumm & Kappeler,[73] although many of these discoveries have been well established for decades. Thus, despite traditional cisnormative expectations of *human* bodies, the binary is not unanimous amongst all life forms.

Looking to our common living ancestors, gender and sexuality in many primate species are not determined exclusively by 'biological sex'. Many non-reproductive interactions and sexual behaviours in primates are driven by socialisation,[74] occur outside of our heteronormative understandings of gender, sexuality and sexual behaviour,[75] and do not show significant association with gender.[76] As put by Burton in relation to non-human primates, 'If the hormones determine the roles, one would expect to find the same sex occupying the same role in all societies'.[77] A substantial body of literature now supports the view that in humans, identity is determined by a combination of genetic, hormonal and environmental factors,[78] and that it is also profoundly influenced by social structures, and in accordance with how gender and sex are modelled in our homes and societies.[79]

Cisnormative views of sex are also challenged by the relationship between gametes and sexual behaviours. As discussed by de Loof, the number of gamete types (ie, two: sperm and eggs) do not directly correspond with the number of sexual behaviours and identities (which are considerably more numerous).[80] That is, gametic sex and sex hormones do not unilaterally determine sexual behaviours (eg, sexuality). While some genetic and heritable attributions to non-binary expression of sex are known, evidence suggests that epigenetic switching (turning off and on of certain genes) is significantly deterministic in sexual differentiation.[81] This is not purely dependent on genetic or hormonal factors known to regulate sexual development and identity,[82] but can be shaped by life experiences inconsequential to 'biological sex',[83] which are highly variable throughout a person's life,[84] let alone throughout different brain regions.[85] This suggests that binary extrapolations cannot

[73] See generally, Wolfgang Goymann, Henrik Brumm and Peter M Kappeler, 'Biological Sex is Binary, Even Though There is a Rainbow of Sex Roles: Denying Biological Sex is Anthropocentric and Promotes Species Chauvinism' (2023) 45(2) *Bioessays* e2200173.
[74] Alan Dixson, 'Primate Sexuality' in *The International Encyclopedia of Human Sexuality* (Wiley, 2015) 861, 867–9.
[75] Andrew B Barron and Brian Hare, 'Prosociality and a Sociosexual Hypothesis for the Evolution of Same-Sex Attraction in Humans' (2020) 10 *Frontiers in Psychology* Article No 2955, 2.
[76] Michelle Rodrigues and Emily Boeving, 'Comparative Social Grooming Networks in Captive Chimpanzees and Bonobos' (2018) 60(3) *Primates* 191, 191–2.
[77] Frances D Burton, 'Ethology and the Development of Sex and Gender Identity in Non-human Primates' (1977) 26(1) *Acta Biotheoretica* 1, 14.
[78] See generally Roselli (n 8).
[79] Elizabeth Barr et al, 'Gender as a Social and Structural Variable: Research Perspectives from the National Institutes of Health (NIH)' (2024) 14(1) (2023/04/19) *Translational Behavioral Medicine* 13, 13–14.
[80] De Loof (n 63) 1.
[81] Nancy G Forger, 'Epigenetic Mechanisms in Sexual Differentiation of the Brain and Behaviour' (2016) 371(1688) *Philosophical Transactions of The Royal Society B Biological Sciences* Article No 20150114, 1.
[82] Ceri Weber and Blanche Capel, 'Sex Determination Without Sex Chromosomes' (2021) 376(1832) *Philosophical Transactions of The Royal Society B Biological Sciences* Article No 20200109, 1–2.
[83] Laura R Cortes, Carla D Cisternas and Nancy G Forger, 'Does Gender Leave an Epigenetic Imprint on the Brain?' (2019) 13 *Frontiers in Neuroscience* Article No 173, 5.
[84] Marija Kundakovic and Maria Tickerhoof, 'Epigenetic Mechanisms Underlying Sex Differences in the Brain and Behavior' (2024) 47(1) *Trends in Neurosciences* 18, 1–3.
[85] Weber and Capel 82) 1.

reliably be drawn from sex hormones and gametes, thus providing analogical support for understanding concepts of sex and gender as not inherently linked.

Key evidence for challenging classical and reductive associations between gender, genitals, and identity is provided by 'Guevedoces' in the Dominican Republic. This population has a genetic mutation which impairs the conversion of testosterone to dihydrotestosterone (DHT), a hormone previously thought to be singularly deterministic in male genital differentiation in utero.[86] All individuals with this mutation have vulvas, are assigned female at birth (AFAB) and raised as 'girls', but undergo significant genital changes during puberty in the absence of DHT, with their genitals transitioning from vulvas to penises. Despite being raised with traditional AFAB conventions, many identify differently in adulthood,[87] challenging rigid notions of gender identity. This example recapitulates that gender is not fixed at birth but is a construct; shaped by various biological, social, societal and cultural factors.[88]

Genital and gender diversity are often viewed through a binary, essentialist and procreative lens, and this skews perceptions of some naturally occurring variations that do not necessarily indicate pathology. For example, around 17.5% of people are considered infertile according to the World Health Organisation,[89] yet this statistic predominantly reflects the impaired fertility of cisgender and heterosexual couples trying to reproduce, whilst queer, gender and genital diverse individuals are largely excluded, and classed as 'socially infertile'.[90] However, the most recent preclinical advances demonstrate how modern technologies can produce offspring from two of the same gamete,[91] supporting the potential for same-sex and gender diverse people to access assistive reproductive technologies in the future. Most importantly, this shows that procreation is possible outside of traditional binary conventions. These examples challenge the binary, essentialist and procreative framework. Directly challenging this framework can lead to a broader understanding of what constitutes natural variation of sex and gender, beyond the essentialist procreative lens, emphasising that gender and sex characteristics do not fit neatly into fixed, predetermined structures.[92]

4 Greater acceptance of transgender and gender diverse people: contemporary challenges to medicalised models

Following on from the entrenching of cisnormative essentialism covered above, in more contemporary times there has been growing (though certainly not unanimous) recognition within societies that gender diversity is a reality, and that it is part of the natural diversity of

[86] See generally, Julianne Imperato-McGinley et al, 'Androgens and the Evolution of Male-Gender Identity among Male Pseudohermaphrodites with 5α-Reductase Deficiency' (1979) 300(22) *New England Journal of Medicine* 1233.
[87] Ibid.
[88] Barr et al (n 79).
[89] World Health Organization, *Infertility Prevalence Estimates: 1990–2021* (Report, 2023) xi.
[90] Erika Maxwell, Maria Mathews and Shree Mulay, 'More Than a Biological Condition: The Heteronormative Framing of Infertility' (2019) 1(2) *Canadian Journal of Bioethics* 63, 63.
[91] Zhi-Kun Li et al, 'Adult Bi-paternal Offspring Generated Through Direct Modification of Imprinted Genes in Mammals' (2025) *Cell Stem Cell* (online ahead of print).
[92] L Zachary DuBois and Heather Shattuck-Heidorn, 'Challenging the Binary: Gender/Sex and the Bio-logistics of Normalcy' (2021) 33(5) *American Journal of Human Biology* e236223.

humankind.[93] This shift has also occurred within medical and scientific communities specifically, with efforts to de-pathologise trans and gender diverse identities and provide affirming healthcare.[94]

Feminism(s), queer studies, and LGBTIQA+ activism have paved the way for broader acceptance of transgender and gender diverse identities,[95] with a number of studies from the past decade indicating general acceptance of transgender people,[96] though with variation between nations.[97] Indeed, there is no doubt that despite increased acceptance, considerable stigma, persecution, and transphobia continue to exist and affect transgender and gender diverse people.[98]

III WHY WE SHOULD TEACH REPRODUCTIVE HEALTH INCLUSIVELY

This Part argues that as teachers who cover reproductive health, we have a duty to teach it in a way that is inclusive of trans and gender diverse people. We propose that this duty arises from a number of sources. First, we apply critical pedagogy to this topic and consider the duties arising from that theoretical approach. Second, we consider the duties we owe to others – namely, our students and the communities they will serve in their future professions. Third, we consider the duty we owe to ourselves as teachers – a duty to teach authentically and accurately.

A Critical Pedagogy and the Imperative for Inclusive Education

This article adopts the theoretical paradigm of critical pedagogy to argue that as teachers covering reproductive health, we have a duty to do so inclusively. Critical pedagogy is an educational approach rooted in critical theory, particularly associated with the work of Paulo Freire.[99] It focuses on challenging oppressive power structures, fostering critical thinking,

[93] Jhon Alexander Moreno et al, 'A Brief Historic Overview of Sexual and Gender Diversity in Neuroscience: Past, Present, and Future' (2024) 18 *Frontiers in Human Neuroscience* Article No 1414396, 3–6.
[94] Suess Schwend (n 67). Note though that this has not been a universal experience – see, eg, Gerber and Sifris (n 36).
[95] See generally Wendy Cumming-Potvin, 'LGBTQA+ Allies and Activism: Past, Present and Future Perspectives' (2024) 38(3) *Continuum* 338. There have been many legal dimensions to this LGBTIQA+ activism, including strategic litigation, advocacy for legislative reform, and broader campaigns for systemic change.
[96] Hannah Morgan et al, *Attitudes to Transgender People* (Equality and Human Rights Commission Research Report, 2020) 3–4 <https://www.equalityhumanrights.com/sites/default/files/attitudes_to_transgender_people.pdf>.
[97] Ipsos Public Affairs, *Global Attitudes Toward Transgender People* (Report, 2018) <https://www.ipsos.com/sites/default/files/ct/news/documents/2018-01/ipsos_report-transgender_global_data-2018.pdf>.
[98]Jaclyn M White Hughto, Sari L Reisner and John E Pachankis, 'Transgender Stigma and Health: A Critical Review of Stigma Determinants, Mechanisms, and Interventions' (2015) 147 *Social Sciences and Medicine* 222, 228–9.
[99] Paulo Freire, *Pedagogy of the Oppressed*, tr Myra Bergman Ramos (Continuum, 30th Anniversary ed, 2005); Henry A Giroux, *On Critical Pedagogy* (Bloomsbury, 2nd ed, 2020).

and promoting social justice within educational settings.[100] At its core, critical pedagogy seeks to engage learners in a process of conscientisation, which involves critically analysing societal norms, inequalities, and power dynamics to develop a deeper understanding of the world.[101]

Critical pedagogy is deeply concerned with social justice and equity, aiming to dismantle oppressive structures and inequalities, advocating for inclusion, fairness, and respect for diverse identities.[102] Importantly, critical pedagogy encourages teachers to strive towards these goals by teaching with a social justice agenda.[103] Educators are encouraged to inspire learners to become agents of change in their communities: the goal is to motivate individuals to engage in transformative action, challenging injustice and promoting equity.[104] In summary, critical pedagogy asserts that values like equity and justice should be inherent in education, and that it is not improper for educators to teach with an agenda of justice.[105]

Applying this theoretical approach to the present topic, critical pedagogy gives licence to fostering a more trans-inclusive and respectful learning environment in the teaching of reproductive health.

Critical pedagogy encourages questioning and deconstructing societal norms, including traditional assumptions about sex and gender.[106] In this way, in the context of reproductive health, critical pedagogy encourages ways of learning and teaching that acknowledge and respect the diversity of sex and gender beyond conventional binaries and expectations.

Following critical pedagogy, learners are encouraged to critically examine the implications of power structures and advocate for inclusivity, paying particular attention to injustices and how they can be remedied.[107] Accordingly, students can be encouraged to recognise power dynamics that have historically marginalised trans and gender diverse people in reproductive health contexts, and in traditional understandings of reproductive biology. Students can be encouraged to identify gaps in policy and practice and advocate for reforms that recognise and protect the reproductive rights of transgender and non-binary people.

Overall, an approach based on critical pedagogy encourages students and teachers to critically examine existing knowledge, challenge biases, and advocate for more equitable and

[100] Peter McLaren, 'Critical Pedagogy: A Look at the Major Concepts' in Antonia Darder et al (eds), *The Critical Pedagogy Reader* (Routledge Falmer, 2002) 69, 78, 89; Michelle L Page, 'LGBTQ Inclusion as an Outcome of Critical Pedagogy' (2016) 7(1) *International Journal of Critical Pedagogy* 115, 116–17; Lauren B Clark, 'Critical Pedagogy in the University: Can a Lecture be Critical Pedagogy?' (2018) 16(8) *Policy Futures in Education* 985, 996–7.
[101] Freire (n 99) 104–10; 159–60.
[102] Page (n 100) 116; McArthur (n 13) 494–6.
[103] David W Stinson, Carla R Bidwell and Ginny C Powell, 'Critical Pedagogy and Teaching Mathematics for Social Justice' (2012) 4(1) *The International Journal of Critical Pedagogy* 76, 77–9; McArthur (n 13) 494–5; Clark (n 100) 996–8.
[104] Page (n 100) 116–17, 135–6; McLaren (n 100) 78–89.
[105] Indeed, this is encouraged. See generally Douglas Bourn, 'Teachers as Agents of Social Change' (2016) 7(3) *International Journal of Development Education* 63.
[106] Wayne Martino and Kenan Omercajic, 'A Trans Pedagogy of Refusal: Interrogating Cisgenderism, the Limits of Antinormativity and Trans Necropolitics' (2021) 29(5) *Pedagogy, Culture & Society* 679, 681–90; Eli Kean, 'Advancing a Critical Trans Framework for Education' (2021) 51(2) *Curriculum Inquiry* 261, 262–7.
[107] Freire (n 99) 80–1; Clark (n 100) 997–8.

inclusive approaches.[108] This can be applied readily to the context of reproductive health, and is consistent with teaching reproductive health in a way that is inclusive of trans and gender diverse people. Indeed, as Miller states, 'because gender, sexual, and other forms of social hierarchy are reproduced and regulated through discourse and social institutions, those institutions can and must be changed for the better'.[109]

Opponents of critical pedagogy might assert that educators should be neutral in their teaching: that it is not a teacher's role to transmit values or influence beliefs.[110] But it is worth interrogating what is meant by, and the factors that underpin, 'neutrality'. As a simple example, critics may regard a teacher's use of trans-inclusive language (eg, 'pregnant people' instead of 'pregnant women') as a value-laden and non-neutral choice. However, this critique would fail to recognise that using non-inclusive language is every bit as much of a choice – neither option is inherently neutral. As put by Shaull, 'there is no such thing as a neutral educational process'.[111] Perceptions of neutrality are subjective and shaped by cisnormative societal attitudes.[112] In reality, no one choice is truly neutral, and if both options are non-neutral choices, there is much to be said for making the choice that promotes inclusion and equity.[113]

B Duty to Others

We contend that we should teach reproductive health in a trans-inclusive way because we owe duties to others to do so – namely, our students and those who our students will interact with in their professional lives. Though not disconnected from critical pedagogy, this duty justifies explicit discussion.

As set out by Ricciardo et al in a study of LGBTQI+ diversity in legal education, there is a pressing need to teach our students about diverse people and their experiences, including in relation to transgender and gender diverse people:

> The academic literature on legal education emphasises the need to teach law students about diversity, including issues relating to gender identity and sexual orientation. That literature suggests that this prepares the wider student cohort for the diversity of their future clients and their legal problems, and that it makes students better problem-solvers. Including these issues also situates the law curriculum within the wider, societal normative concerns of civil and criminal justice.[114]

[108] Freire (n 99) 80–1; Clark (n 100) 997–8; Page (n 100) 116; McArthur (n 13) 494–6.
[109] Jennifer Miller, 'Thirty Years of Queer Theory' in Deborah P Amory et al (eds) Introduction to LGBTQ+ Studies: A Cross-Disciplinary Approach (State University of New York Press, 2022) chapter 1. See also, Eli Kean, 'Advancing a Critical Trans Framework for Education' (2021) 51(2) Curriculum Inquiry 261.
[110] See generally Peter Gardner, 'Neutrality in Education' in Robert Goodin and Andrew Reeve (eds) *Liberal Neutrality* (Routledge, 1989).
[111] Richard Shaull, preface to Freire (n 99) 34.
[112] Gerber and O'Hara (n 37) 421, 452.
[113] See generally Julie Taylor, 'Education Can Never be Neutral — Teaching for Subversion' (1993) 13(1) *Nurse Education Today* 69
[114] Ricciardo et al (n 41) 330.

Indeed, as previously put by the now Sex Discrimination Commissioner, Anna Cody, the 'lived experiences of clients [affect] how they interact with the law. To be good lawyers we must be able to listen to and understand our diverse clients.'[115] These sentiments can be applied equally to graduates from health and science degrees, as well as the clients they will encounter in their careers.[116]

In short, in order to equip our students to deal with the diversity of clients and communities they will encounter in their careers, we need to teach them about that diversity (and how to navigate it inclusively and respectfully) in their tertiary studies.[117] This can even be conceptualised as part of an educator's duty to ensure that course content is relevant and up to date.

Relatedly, educators should also strive to make course content relevant to their students and their lives.[118] Of course, it is also a reality that our students themselves may be just as diverse as the clients and communities they will come to serve.[119] It is an undeniable fact that trans and gender diverse students are in our universities.[120] Thus, for reasons quite apart from their future careers, we owe it to our students to teach with that diversity in mind, making choices that include (rather than alienate) them. In the context of teaching about reproductive health, it is also worth considering that some of our students will have a personal stake in learning information relating to trans and gender diverse people, and having access to content that is relevant to their own bodies and experiences is important to them. Failing to teach that content, or failing to teach it in an inclusive way, only contributes to any existing invisibility and inaccessibility of that information.

To recognise the diversity – including gender diversity – of student cohorts is also to recognise the diverse experience and expertise that our students bring to their classes. It is to recognise that students themselves – including trans and gender diverse students – can contribute to class discussions and course content on the basis of their experiences, knowledge and identities (eg, by speaking on the basis of lived experience or identifying gaps in course content). In doing so, we are able to engage our diverse students not only as passive learners, but also as stakeholders who co-construct the learning journeys that take place in our classes. This is consistent with the dialogical problem-posing process central to critical pedagogy, whereby all classroom participants – including students – are involved in 'teaching'.[121]

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[115] Anna Cody, 'The Importance of Diversity in our Profession' (2019) 154 *Precedent* 2, 2.
[116] See, eg, Uden, Vaughan and Wilcox (n 28) 18–19.
[117] Cody (n 115) 2.
[118] Clark (n 100) 986, 997; Page (n 100) 122.
[119] Samantha Marangell et al, 'Students' Attitudes Toward Diversity in Higher Education: Findings from a Scoping Review' (2024) 34(1) *Issues in Educational Research* 97, 97–8.
[120] See generally Australian Bureau of Statistics, *Estimates and Characteristics of LGBTI+ Populations in Australia: Data on gender, trans and gender diverse, sexual orientation, and people born with variations of sex characteristics* (2024) <https://www.abs.gov.au/statistics/people/people-and-communities/estimates-and-characteristics-lgbti-populations-australia/latest-release>; Jennifer L Marino et al, 'Sexuality and Gender Diversity Among Adolescents in Australia, 2019-2021' (2024) 7(10) *JAMA Network Open* e2444187.
[121] Freire (n 99) 72, 80.

C Duty to Ourselves as Teachers

As set out above, there is no 'neutral' option when it comes to teaching reproductive health in a trans-inclusive way. On a simplified view, there are two options: either take steps to teach it inclusively, or don't. Each of these options is a choice and neither is neutral. We argue that when presented with these options, we owe a duty to ourselves as teachers of reproductive health to be guided by critical pedagogy and choose the option that best promotes justice and equality.[122]

Choosing to teach reproductive health in a trans-inclusive way is not only consistent with justice and equality – it is also consistent with the values held by many teachers who (like the authors of this article) strive to create inclusive classroom environments and support trans and gender diverse rights. By making choices that align with our values, we are able to be more authentic teachers. Relevantly, there is a body of scholarship which supports teaching with authenticity.[123] Whilst authenticity in teaching has been described as a 'multifaceted concept',[124] it includes (amongst other things) genuineness and acting in a way that is consistent with one's values, beliefs, and feelings.[125]

The relevant literature establishes that authentic teaching has benefits for both teachers and for student learning.[126] As put by Melissa J Marlow:

> It is difficult to do our best as teachers if we are not coming from a place of integrity and transparency… [As] teachers, we have to be "real" and genuine in our dealing with students. They deserve to know us, and we deserve to experience passionate, related, and authentic teaching.[127]

Indeed, we are doing ourselves (and in turn, our students) a disservice if, in pursuit of some false sense of neutrality, we ignore our own values and choose not to take steps to teach reproductive health inclusively.

[122] Page (n 100) 116; McArthur (n 13) 494–6.
[123] See, eg, Carolin Kreber, 'Academics' Teacher Identities, Authenticity and Pedagogy' (2010) 35(2) *Studies in Higher Education* 171; Angus Brook, 'The Potentiality of Authenticity in Becoming a Teacher' (2009) 41(1) *Educational Philosophy and Theory* 46; Arthur W Chickering, Jon C Dalton, and Liesa Stamm, *Encouraging Authenticity and Spirituality in Higher Education* (Jossey-Bass, 2006); Patricia Cranton, *Becoming an Authentic Teacher in Higher Education* (Krieger, 2001); Christina Do and Aidan Ricciardo, 'Meaningful Connectedness: A Foundation for Effective Legal Teaching' (2019) V *Curtin Law and Taxation Review* 3, 27–8.
[124] Melissa J Marlow, 'Does Kingsfield Live? Teaching with Authenticity in Today's Law Schools' (2015) 65(1) Journal of Legal Education 229, 230–1; Patricia Cranton and Ellen Carusetta, 'Perspectives on Authenticity in Teaching' (2004) 55(1) *Adult Education Quarterly* 5, 7–8; Lauren Bialystok, 'Should Teachers be Authentic?' (2016) 10(3) *Ethics and Education* 313, 316–18.
[125] Marlow (n 124) 231; Cranton and Carusetta (n 124) 7.
[126] See, eg, Kreber (n 123). See also Carolin Kreber and Monika Klampfleitner, 'Lecturers' and Students' Conceptions of Authenticity in Teaching and Actual Teacher Actions and Attributes Students Perceive as Helpful' (2013) 66(4) *Higher Education* 463.
[127] Marlow (n 124) 241.

IV HURDLES TO TEACHING REPRODUCTIVE HEALTH INCLUSIVELY

This article has thus far argued that teachers in law and science *should* take steps to teach reproductive health in ways that are inclusive of trans and gender diverse people. But what challenges might teachers encounter in trying to take those steps? After setting out the hurdles that might be encountered in any discipline, this Part considers the particular hurdles that might arise in teaching about reproductive health in law and science.

A Hurdles in All Disciplines

There are a number of hurdles that a university teacher in any discipline might encounter when seeking to teach reproductive health in a trans-inclusive way. For example, there may be resistance to trans-inclusive pedagogy from a number of sources. Institutional resistance is a possibility,[128] especially in courses with interrelated knowledge where the content (and the way content is taught) is scaffolded across individual units. Resistance might also come from individual students and colleagues, especially from those who hold rigid binary views on sex and gender.[129] This resistance could manifest as anything from subtle discomfort to active pushback,[130] and may result in retaliation in formal student satisfaction surveys.

Adapting course content to be more trans-inclusive can also pose other challenges – for example, it might be difficult for teachers to find appropriate and resources that address reproductive health in an inclusive way. Textbooks and materials might not include trans-inclusive content, and might even undermine the teacher's trans-inclusive framing and terminology.[131] Adapting course content might also be particularly difficult considering the time, workload and curriculum constraints already faced by many academics.[132] There is also unlikely to be any workload recognition or reward for making these changes.

Another hurdle for many teachers will be their own lack of confidence and knowledge in delivering trans-inclusive reproductive health content.[133] Many educators may have limited personal understanding or formal training in gender diversity and inclusive teaching practices, leaving them uncertain about how to effectively teach in a trans-inclusive way. Without adequate training, teachers might struggle with the correct terminology or understanding of the specific health needs of trans and gender diverse people. This knowledge gap can create hesitation in addressing these topics and perspectives.[134]

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[128] Catherine Bovill et al, 'Addressing Potential Challenges In Co-Creating Learning And Teaching: Overcoming Resistance, Navigating Institutional Norms And Ensuring Inclusivity In Student-Staff Partnerships' (2016) 71 *Higher Education* 195, 199–203.
[129] Ibid 199– 201.
[130] See, by analogy, Jill M Hermann-Wilmarth and Caitlin Law Ryan, 'Navigating Parental Resistance: Learning from Responses of LGBTQ-Inclusive Elementary School Teachers' (2019) 58(1) *Theory Into Practice* 89, 91–2.
[131] See Hayes and Temple-Smith (n 24); Beni, Fisher and Longhurst (n 31); Aivelo, Neffling and Karala (n 15).
[132] J Watts and N Robertson, 'Burnout in University Teaching Staff: A Systematic Literature Review (2011) 53(1) *Educational Research* 33, 34.
[133] Gerber and O'Hara (n 37) 416.
[134] Ibid.

Relatedly, a fear of making mistakes — such as using incorrect language or unintentionally offending students — can deter educators from fully engaging with trans-inclusive content.[135] This fear may be exacerbated by concerns about being publicly criticised or facing backlash from students or colleagues,[136] which can discourage teachers from taking proactive steps to practice trans-inclusive pedagogy.

A final challenge present in education generally is that the responsibility to drive change in this space often falls on LGBTQ+ academics or students,[137] placing an undue burden on those directly affected by exclusionary pedagogy.[138] There is a pressing need for cisgender and heterosexual educators to actively participate as allies in fostering inclusive education.

Overcoming these challenges requires institutional support, access to professional development opportunities, and fostering a learning environment where educators feel safe to expand their understanding and adjust their teaching practices.[139]

B Particular Hurdles in Law

In legal education specifically, a particular hurdle to teaching in a trans-inclusive manner is that the law itself – especially statute law – is often written in rigid cisnormative terms. For example, reproductive rights legislation often explicitly refers to 'women' without acknowledging that trans men and non-binary people can also experience pregnancy and associated reproductive health issues.[140] Properly teaching students the law itself while highlighting its inherent limitations requires a careful balance that can be challenging.

Beyond the law itself, legal education as a discipline often prioritises doctrinal analysis, which can constrain discussions around the social and human rights dimensions of trans-inclusive reproductive health. Law teachers may feel pressure to focus on black-letter law and may feel that it is difficult to justify the inclusion of broader socio-legal perspectives that critically examine how the law impacts transgender people. However, as noted by Gerber and O'Hara, inclusive law teaching 'involves resisting the notion that the law school

[135] Ibid; Carolina Snaider and Trystan Reese, 'You Don't Want to Say Anything Wrong: Teachers Fearing Uncertainties and Trans Parents (In)Visibility in Early Childhood Education' (2025) *Gender and Education* 11 (online ahead of print).
[136] See generally Elizabethe Payne and Melissa Smith, 'The Big Freak Out: Educator Fear in Response to the Presence of Transgender Elementary School Students' (2014) 61(3) *Journal of Homosexuality* 399, 412–15.
[137] Raquel Wright-Mair, 'The Costs of Staying: Experiences of Racially Minoritized LGBTQ+ Faculty in Higher Education' (2023) 48(20 *Innovative Higher Education* 329, 336–9; Finn et al (n 1) 32.
[138] Finn et al (n 1) 32. This is consistent with the experiences of other marginalised groups, and those at the intersections of multiple marginalised identities – see Wright-Mair (n 137) 336–9.
[139] See, eg, Marco Reggiani, Jessica Dawn Gagnon and Rebecca Jane Lunn, 'LGBT + Academics' and PhD Students' Experiences of Visibility in STEM: More than Raising the Rainbow Flag' (2024) 87 *Higher Education* 69, 84.
[140] Indeed, in relation to abortion this was the case in Western Australia until 2024 – see *Health Act 1913* (WA) s 334 as it existed prior to 27 March 2024. The new Western Australian legislative provisions relating to abortion instead use the term 'a person' – see, eg, *Public Health Act 2016* (WA) s 202MC. It may be noted that public consultation materials relating to this abortion law reform stated that pregnancy may be experienced by a person of any gender, but then referred to 'a woman' rather than 'a person' throughout – a matter that the first author of this article raised in their consultation submission – see Aidan Ricciardo, *Submission to the Abortion Legislation Reform Inquiry* (Public Health Regulation Directorate, 17 December 2022) 3–4.

curriculum is "neutral" and teaching students to unpack the ideologies and assumptions behind the material.'[141]

C Particular Hurdles in Science

Teaching reproductive health in a trans-inclusive manner within science disciplines presents distinct challenges rooted in both the structure of scientific knowledge and the culture of scientific education. Related to the point discussed in Part II(A), a key hurdle is the deeply ingrained use of gendered language when describing biological systems. This can be further complicated by not clearly explaining the distinction between different meanings of terms in differing societal and scientific contexts.[142]

Reproductive biology often relies on binary frameworks – categorising bodies strictly as male or female – which can make it difficult to discuss complex terms, reproductive anatomy and processes without reinforcing cisnormativity. Using terms like 'those who ovulate' or 'sperm-producing individuals' are viable alternatives, but shifting to more inclusive language can be difficult when this is considered novel,[143] highlighting the little uptake in the discipline more broadly. Indeed, much of the foundational scientific literature and existing educational resources remain heavily gendered.[144]

Additionally, scientific research relating to transgender, non-binary, and queer health issues is still limited.[145] The relative scarcity of empirical studies addressing the unique reproductive health needs of trans and gender diverse people creates a gap in evidence-based content for educators to draw upon. This lack of research not only limits what can feasibly be taught but also perpetuates the invisibility of trans and gender diverse people in scientific discourse.

Institutional priorities and funding patterns further exacerbate these challenges. Research funding and curriculum development in reproductive health often focus on heteronormative and cisnormative experiences. Without dedicated funding and institutional support, efforts to diversify teaching materials, expand knowledge and fields of research, and develop specialised medical treatment may remain isolated and underdeveloped.[146] Indeed, institutional priorities tend to be concerned with increasing representation without meaningful inclusionary changes.[147] Collectively, these issues compound and further deprive a consensus on issues relating to natural variation and trans and gender diverse (including non-binary) bodies in scientific educational frameworks.

[141] Gerber and O'Hara (n 37) 452
[142] Fimognari et al (n 4) 699.
[143] Ibid.
[144] Lisa Campo-Engelstein and Nadia Johnson, 'Revisiting "The Fertilization Fairytale": An Analysis of Gendered Language used to Describe Fertilization in Science Textbooks from Middle School to Medical School' (2014) 9 *Cultural Studies of Science Education* 201; Hayes and Temple-Smith (n 24) 943–4; Beni, Fisher and Longhurst (n 31) 985–6; Aivelo, Neffling and Karala (n 15).
[145] See, eg, Safer (n 5).
[146] Ibid.
[147] Emily Yarrow and Karen Johnston, 'Athena SWAN: "Institutional Peacocking" in the Neoliberal University' (2023) 30(3) *Gender, Work & Organization* 757, 757–8.

V TEACHING REPRODUCTIVE HEALTH INCLUSIVELY: OUR EXPERIENCES

In this final Part, we provide examples setting out some ways in which reproductive health might be taught more inclusively in both law and science. We draw substantially from our own practice, teaching experiences, and reflections. Of course, these subjective experiences and perspectives may not always align with objective realities. However, the discussion in this Part is presented in the context of the relevant literature, and research has established that 'properly contextualised reflective practice can produce knowledge of the mechanisms at work in the contemporary academy.'[148]

This Part can be understood as an example of what Freire calls *praxis* – the dynamic integration of reflection and action in the pursuit of transformation.[149] By critically engaging with our own teaching experiences and using them to inform efforts toward more inclusive reproductive health education, we aim not only to analyse existing practices but to actively challenge and reshape them.

First, the first author – a law academic – sets out how reproductive health can be taught in a more trans-inclusive way in a health and medical law unit. Second, the second author – a science academic – sets this out with respect to human biology education. We then come together to provide some combined interdisciplinary reflections on inclusive reproductive health teaching across law and science.

Our teaching practice, experiences and reflections are shaped by our positionalities as cisgender gay men – while we are part of the LGBTIQA+ community generally, we are not part of the trans or gender diverse community specifically. In this regard, we identify as 'internal allies' – as put by Ricciardo and Elphick:

> Although we typically think of 'allies' of LGBTQIA+ people as those from outside the community who are supportive of us, those of us within the LGBTQIA+ community can, and should, also think of ourselves as allies. In thinking of ourselves as allies, we are reminded that we must comply with the principles and guidance relating to effective and appropriate allyship – eg, obligations to self-educate, engage in appropriate consultation and co-design, and platform marginalised voices… conceptualisation of oneself as an ally is especially important when an LGBTQIA+ [academic's] work concerns specific LGBTQIA+ identities to which they do not belong.[150]

Although this passage relates to 'internal allyship' (ie, those within the LGBTIQA+ community acting as allies to one another) in the context of LGBTIQA+ researchers who research about LGBTIQA+ issues, it can apply equally to LGBTIQA+ educators who, like us, teach content

[148] Sue Clegg, 'Knowing Through Reflective Practice in Higher Education' (2000) 8(3) *Educational Action Research* 451, 451, 466. See also Aidan Ricciardo, Julie Falck and Joe Louis Robinson, 'Academic Experiences of Gradeless Learning' (2022) 1 *Western Australian Law Teachers' Review* 27, 28.
[149] Freire (n 99) 128.
[150] Aidan Ricciardo and Liam Elphick, 'Under My Umbrella: LGBTQIA+ Rights, LGBTQIA+ Researchers and 'Internal Allyship' (2024) 49(2) *Alternative Law Journal* 126, 126–7.

that relates to LGBTIQA+ people. Accordingly, our teaching (and our scholarship of teaching and learning) is underpinned by a commitment to educating ourselves about trans and gender diverse matters so that we can represent them adequately to our students;[151] seeking feedback from our students and trans and gender diverse people generally to ensure that our work is designed and delivered appropriately;[152] and platforming trans and gender diverse voices in our teaching and pedagogical scholarship (eg, through selecting course materials and citing works by trans and gender diverse people with relevant lived experience).[153]

A Trans-inclusive Reproductive Health Teaching in Health & Medical Law

I (the first author) teach an undergraduate law unit at The University of Western Australia called 'Birth, Life and Death: Health and Medical Law'. The first parts of the unit ('birth' and 'life') are most relevant to reproductive health, covering topics relating to pregnancy, the legal status of the unborn, abortion, assisted reproductive technologies, as well as gender affirmation. In my teaching of all aspects of the unit I endeavour to conscientise students as to how law is often framed as an objective set of rules, whereas in reality it reflects the social, political, and historical contexts in which it is made. I encourage students to consider how the relevant legal frameworks are shaped by prevailing norms about bodies, gender, ability, and morality, meaning they are not neutral but deeply value-laden.

When I first took on coordination of the unit in 2020, I taught the topics in the same way and with the same terminology that had been used in previous years. For example, when speaking of pregnancy, I almost invariably used the term 'pregnant woman' without acknowledging that people who do not identify as women can also be pregnant.[154]

Reflecting on my teaching throughout that semester in 2020, I realised that although I personally valued the inclusion of trans and gender diverse people and understood some of the ways in which the topics applied to trans and gender diverse people, this was not adequately reflected in my teaching. I felt as though I was oversimplifying the concepts I was teaching, and used terms of convenience (eg, 'pregnant woman') to avoid grappling with the complexity of gender diversity in the classroom. I felt that my teaching was not adequately preparing my students for the diversity they might actually encounter 'in the real world'. I also worried that any trans and gender diverse students in my class might perceive my teaching as deliberately non-inclusive and feel unsafe in my class.[155]

In 2021, I made an effort to rethink the way that I spoke of sex and gender throughout the course. Importantly, I chose to move away from the term 'pregnant woman' and instead use the term 'pregnant person'. However, I worried that I might be dismissed by students as somewhat of a 'radical' – that they might interpret this use of language as me overtly trying

[151] Ibid 131.
[152] Ibid 131–2.
[153] Ibid 132.
[154] Contrary to best practice – see Sørlie (n 43) 637–8, 641–2.
[155] See generally Ricciardo et al (n 41) 317–19, 330.

to 'indoctrinate' them with my personal views about gender.[156] To abate this risk, I chose to introduce the choice of terminology in the context of external sources which might be perceived as more neutral and objective than my own opinions.[157] The following text appeared on the first slide when moving to consider pregnancy in the course:

> **A NOTE ABOUT TERMINOLOGY**
>
> This unit aims to reflect developments in science, society, and in healthcare practice. Part of this is using the terminology used in those settings.
>
> **The Australian Government's Pregnancy Care Guidelines:** *'The Guidelines recognise that individuals have diverse gender identities. Terms such as pregnant person, childbearing people and parent can be used to avoid gendering birth, and those who give birth, as feminine. [Whilst terms like woman and mother are often used], it is not meant to exclude those who give birth and do not identify as female.'* [158]
>
> **Kinnon R MacKinnon et al, 'Recognizing and Renaming in Obstetrics' (2021) 14(4) *Obstetric Medicine* 201:** *'… the term 'pregnant person' does not discredit cisgender women; rather it opens the umbrella to cover everyone seeking obstetrical care. Language evolves, and words matter. Providing comprehensive and accessible healthcare to all includes broadening gender-neutral and affirming language in obstetrics.'* [159]

As can be seen from the text of the slide, I anchored the choice to government guidelines and research from the health sciences, expecting that these authorities might provide a solid grounding for the choice (quite apart from my own views). Doing so also has the added benefit of teaching students professional skills about the importance of keeping up with contemporary standards relating to diversity and inclusion in applied contexts.[160]

As the topic went on, my subjective impression was that students generally accepted this choice of language (indeed, I noticed that they used that same terminology when participating in class). I also found that explicitly engaging with the reality that people who are not women might become pregnant had further benefits: it actually enabled further, more nuanced analysis of the law itself.[161] For example, when walking through legislation relating to abortion, students questioned the cisnormative language used in legislation. They asked questions like 'If a person who isn't a woman is pregnant, can they still seek an abortion even though the law refers only to "a woman" who is pregnant?'. This provided a fantastic opportunity to ask students to critically consider whether the law is adequate when it does not reflect reality, and to think about how that might create practical problems for those

[156] See generally Lydia Fagan and Victoria Rawlings, 'Gender Fluidity And "Other Left-Wing Superstitions": Problem Representations In The Inquiry Report On The Nsw Parental Rights Bill' (2024) *Educational Review* 3–4 (online ahead of print); Human Rights Watch, *"I Became Scared, This Was Their Goal": Efforts to Ban Gender and Sexuality Education in Brazil* (Report, 2022); Payne and Smith (n 136) 412–15.
[157] A similar approach – anchoring choices to sources of perceived objectivity – is recommended by Gerber and O'Hara (n 37) 432.
[158] Australian Government, *Clinical Practice Guidelines: Pregnancy Care* (Guidelines, 2020). A slightly different passage appears in the updated 2025 version of these Guidelines – see Australian Living Evidence Collaboration, *Clinical Practice Guidelines: Pregnancy Care* (Guidelines, 2025) 9.
[159] Kinnon R MacKinnon et al, 'Recognizing and Renaming in Obstetrics: How do we Take Better Care with Language?' (2021) 14(4) *Obstetric Medicine* 201, 202.
[160] Cody (n 115) 2.
[161] See generally Gerber and O'Hara (n 37) 452–5.

people seeking access to, and those people providing, reproductive healthcare (including abortions).[162] In 2022, based on that experience, I explicitly embedded discussion of this issue into the class plan, noting that abortion legislation which uses the term 'woman' in place of 'pregnant person' fails to recognise the medical, social, and psychological realities that there is a diversity of sex and gender,[163] and that people who might legally be classed as any gender can become pregnant and might choose or require an abortion. This may occur for many reasons – for example, many trans people obtain social and/or legal recognition of their affirmed gender whilst retaining their reproductive characteristics.[164] People with non-binary gender identities may also become pregnant. Some intersex people who were assigned male at birth might also become pregnant (depending on the variations of sex characteristics they have).[165]

Beyond the topics relating to pregnancy, I did my best to consider trans and gender diverse perspectives throughout the course. For example, when discussing the law relating to public health,[166] I chose to teach about barriers to access to healthcare for marginalised groups, including transgender and gender diverse people. I encouraged students to discuss the role the law has played in establishing those barriers, then asked them to consider any legal, policy or other regulatory solutions.

As another (perhaps obvious) example, a terminology issue also arose when covering the law relating to gender affirmation.[167] Although it is soon set to change,[168] the current legislation in Western Australia uses the term 'gender reassignment' – indeed, it is called the *Gender Reassignment Act 2000* (WA). That terminology is considered inaccurate and outdated by many trans people,[169] so I made sure to explicitly grapple with this in classes, noting that trans people – and healthcare practitioners – now typically use the term 'transition' or 'affirmation' rather than 'reassignment'.[170] In choosing sources for this topic (including academic and media sources), I made an effort to focus on transgender and gender diverse voices, enabling students to engage with authentic perspectives informed by lived

[162] Abortion can be conceptualised as reproductive health – see, eg, Enze Xing et al, 'Abortion Rights are Health Care Rights' (2023) 8(11) *JCI Insight* Article No 171798.
[163] See generally, Štrkalj and Pather (n 32); Janet Hyde et al, 'The Future of Sex and Gender in Psychology: Five Challenges to the Gender Binary' (2019) 74(2) *American Psychologist* 171; Sarah Hunt, 'Embodying Self-Determination: Beyond the Gender Binary' in *Determinants of Indigenous Peoples' Health: Beyond the Social* (Canadian Scholars, 2nd ed, 2018); Matsuno and Budge (n 55); Ada S Chung et al, 'Non-Binary and Binary Gender Identity in Australian Trans and Gender Diverse Individuals' (2020) 49(1) *Archives of Sexual Behaviour* 2673.
[164] See, eg, *AB v Western Australia* [2011] HCA 42.
[165] It should also be noted that an intersex person – like any person – may have any gender identity.
[166] Public health can include reproductive health – see eg, Farzana Kapadia, 'Reproductive Justice Matters: A Public Health of Consequence' (2022) 112(8) *American Journal of Public Health* 1107.
[167] Though not itself technically reproductive health, gender affirming treatments intersect with reproductive health – see, eg, Kenny Rodriguez-Wallberg et al, 'Reproductive Health in Transgender and Gender Diverse Individuals: A Narrative Review to Guide Clinical Care and International Guidelines' (2022) 24(1) *International Journal of Transgender Health* 7.
[168] John Quigley, 'Government Delivers Important Reforms for LGBTQIA+ Community' (Media Release, September 2024) <https://www.wa.gov.au/government/media-statements/Cook-Labor-Government/Government-delivers-important-reforms-for-LGBTQIA%2B-community--20240917>.
[169] Aidan Ricciardo et al, 'Supporting LGBTQI+ Diversity and Inclusion in Legal Education: A "How To" Guide for Law Schools and Law Teachers' (2022) 1 *Western Australian Law Teachers' Review* 3, 6.
[170] Marin McCoy et al, 'Understanding Sex and Gender: Concepts and Terminology for Gender Affirming Care' (2024) 54 *Pediatric Radiology* 1345, 1349–50.

experience. This focus also helps to counter the pathologising perspectives that can be present in the law and other sources.[171]

In a broad sense, there is capacity to apply these approaches to other law courses beyond health and medical law. The guiding question I ask myself when planning my lessons is *'Quite apart from the words and approaches used by the law, does the way I am teaching each topic consider and include trans and gender diverse people and their experiences?'*. This requires me to think about the language I use and my choices about what content and sources to include in the course. If the law itself isn't inclusive of trans and gender diverse people, there is scope to invite students to engage in analysis in this regard. This is an approach which has been instructive in my own teaching of health and medical law, but which is likely to be helpful for those teaching in any area of law.[172]

B Trans-inclusive Reproductive Health Teaching in Science

I (the second author) teach into a second-year undergraduate anatomy and human biology unit at The University of Western Australia called 'Human Reproductive Biology'. This unit encompasses study of the human reproductive system(s) from conception, gestation and throughout a person's life. The key focus is reproductive anatomy, cell biology and physiology, but the unit includes linkage with other major systems, developmental changes, and genetics. Often considered peripheral to the 'science' of reproductive biology; sexual health, development, behaviour and identity are important themes deeply entangled in this field that manifest and change throughout an individual's life.[173] As an educator in this space, I feel that reproductive biology is well positioned to bring awareness to some inequalities and contemporary issues that impact identity, sexual/reproductive health and biology. Accordingly, I consider that I have a duty to explore these nuances within the framework of the unit, especially at a time when many students – as new adults – are just beginning to explore these matters themselves in personal and interpersonal aspects of their lives.

When I started to teach into this unit in 2021, I observed amongst others in the teaching team a clear intention to enhance knowledge of gender diversity and queer issues in reproductive biology, and a desire to enable students to tackle some major incumbent and contemporary societal issues. This was the first time in my educational career – as a student, professional, and teacher in human biology – that I had experienced such a dedication to increasing queer visibility in tertiary education. It also expanded my knowledge of societal understandings of gender as a construct (including views which were not unanimously supported by the scientific community). Additionally, as a cisgender gay man, I felt that the team of academics in the unit upheld a shared vision with authentic intentions, and I admired that these efforts

[171] Sheherezade Kara, *Gender is Not an Illness: How Pathologizing Trans People Violates International Human Rights Law* (GATE Publications, 2017) 5; Maria Elisa Castro-Peraza et al, 'Gender Identity: The Human Right of Depathologization' (2019) 16(6) *International Journal of Environmental Research and Public Health* Article No 978, 5–8; Husain (n 69); Suess Schwend (n 67).
[172] Indeed, inclusive pedagogy scholarship specific to human rights education has been helpful in informing my own teaching in other areas of law – see generally Gerber and O'Hara (n 37).
[173] See generally Fimognari et al (n 4).

came from a largely cisgender, non-queer team. This demonstrated bona fide allyship, and was supported by the unit coordinators' genuineness and openness in asking for feedback, and subsequently giving me the opportunity to drive further changes in the unit. While there was a clear commitment to adopting de-gendered language and incorporating some inclusive content, I felt that more could be done to embed inclusive content relating to LGBTIQA+ people and their bodies throughout the unit's curriculum. Additionally, I believed the best opportunity for encouraging meaningful engagement with this content was by requiring students to address it in the unit's major assessment. Indeed, research indicates that students often focus their engagement on content that is directly assessed, highlighting the impact of assessment on learning priorities.[174]

Since 2021, I have led some significant changes to the unit's content through altering the scope and framework of a major group assignment to increase visibility of queer, gender diverse and other diverse groups in reproductive biology. This infographic-based group assignment previously related to blocking or preventing fertility as a novel contraceptive and potential future medical application – in other words, it required students to focus on *creating* a reproductive barrier. Instead, we shifted the lens to require students to consider how assisted reproductive technologies could be used to improve fertility status and reproductive outcomes. The new assignment requires students to focus on overcoming the anatomical and biological limitations they learn throughout the unit – so it requires students to instead focus on *surpassing* a reproductive barrier. This new assignment aimed to deepen understanding of gender diversity, increase visibility of various forms of diversity, enhance inclusive content, and allow students to connect scientific publications in the field to potential solutions for reproductive issues faced by marginalised groups.[175]

In preparing to make these changes, I – and the broader teaching team – considered the potential effect of these reforms with reference to the existing pedagogical scholarship in this area.[176] We wondered *'Would these changes actually have the intended impact on the student cohort?'*. We also knew from our own expertise and consultation that gender diverse representation was so lacking in this field that any changes would be impactful –[177] *'is this enough without any formal impact assessment?'*. Additionally, changing the scope of the assignment to capture more diverse reproductive challenges required removal of key content around contraception – *'Are these changes at the detriment of other issues and populations (eg, cisgender women and societal inadequacies around contraception)?'*.[178]

[174] Annemette Kjærgaard, Elisabeth N Mikkelsen and Julie Buhl-Wiggers, 'The Gradeless Paradox: Emancipatory Promises but Ambivalent Effects of Gradeless Learning in Business and Management Education' [2022] *Management Learning* 1, 2; Aidan Ricciardo and Julie Falck, 'Letting them Learn How to be Law Students: Student Perceptions of "Ungraded Pass/Fail" Assessment in the Foundational Subject of a Qualifying Law Degree' (2022) 15 *Journal of the Australaisan Law Academics Association* 77, 84.
[175] Fimognari et al (n 4) 700–3.
[176] See, eg, Hayes and Temple-Smith (n 24); Beni, Fisher and Longhurst (n 31).
[177] Fimognari et al (n 4) 700.
[178] See, eg, John Cleland, Sarah Harbison, and Iqbal H Shah, 'Unmet Need for Contraception: Issues and Challenges' (2014) 45(2) *Studies in Family Planning* 105. See also Amanda Francis, Sona Jasani and Gloria Bachmann, 'Contraceptive Challenges and the Transgender Individual' (2018) 4 *Women's Midlife Health* Article No 12.

To ensure that our approach to teaching reproductive health in an inclusive way was impactful and effective, we were guided by a principled approach as part of a holistic framework whereby we tried to:

1. Increase visibility and understanding of issues affecting queer, trans and other marginalised groups in reproductive biology, especially through a major assignment, and integration of new inclusive content;

2. Ensuring balance by promoting these inclusive efforts whilst maintaining scientific rigour and key educational outcomes;

3. Enhance coverage of under-represented issues whilst ensuring other important issues receive warranted attention (eg, by running a laboratory which focussed specifically on contraception);

4. Highlight challenges in society and reproductive biology that entrench cisnormative and heteronormative understandings and views; and

5. Measure the social impact of changes through empirical and collaborative means, including dedicated student evaluation surveys before and after semester, mapping the discussion of diversity-related content in student assignments, and engaging with students for feedback which could be used to further develop the unit.

The cumulative changes made to enhance inclusionary content in reproductive biology by our team of academics, and an impact assessment for the changes to the major assignment have been detailed in a recent publication.[179] In brief, student feedback and indicators of social impact were overwhelmingly positive –[180] eg, student survey respondents were 'unanimous in their agreement that the unit was inclusive of LGBTIQA+ issues and that the unit made them think about societal issues related to reproductive health differently'.[181] However, some student feedback requested more information around genital diversity, including non-binary forms and genitals with mutilation. Reflecting on our approach, and taking account of the impact and feedback we received around wanting more teaching on genital diversity, I am reminded of the need to enhance coverage of under-represented issues in our teaching generally (as set out in our holistic framework). There is a need to increase the visibility of many diversity and inclusion issues in this space, including in relation to other marginalised groups (which may or may not intersect with LGBTIQA+ communities). Having used my teaching to increase visibility of issues within queer communities, I am also committed to using this platform to bring greater awareness and competence in relation to the nuances experienced by other minority and marginalised groups in reproductive biology. I also feel that we have a duty – consistent with critical pedagogy – to treat our students as

[179] Fimognari et al (n 4).
[180] This data collection has approval from the University of Western Australia Human Research Ethics Office – reference 2022/ET000415.
[181] Fimognari et al (n 4) 702.

stakeholders and co-creators of course content,[182] and that we must listen to and act on their feedback where possible and appropriate.

This being said, as a science academic I can acknowledge that in some cases, significantly restructuring a unit to incorporate trans-inclusive content may not be feasible, practical, or pedagogically appropriate. For example, in certain science disciplines like chemistry, the subject matter and learning objectives may not directly intersect with concepts of gender, identity, or human experience. Of course, is only appropriate to cover academic content relating to trans and gender diverse people where it is relevant to the course. However, this should never serve as a justification for avoiding inclusive practices or neglecting the needs of gender diverse students – trans-inclusive practice in the science classroom can extend beyond content and curriculum.[183]

C Interdisciplinary Reflections on Inclusive Reproductive Health Teaching Across Law and Science

Our experiences teaching reproductive health inclusively in law and science settings reveal both important parallels and meaningful points of divergence between the two disciplines. In reflecting on our practice, it is apparent that while the disciplinary traditions and expectations of law and science differ in many respects, there are significant commonalities in the challenges faced, the strategies employed, and the benefits observed when reproductive health is taught in a way that is inclusive of trans and gender diverse people. These reflections suggest that there are lessons to be learned across disciplines, as well as from within them.

Both our experiences suggest that, in law and science alike, teaching reproductive health inclusively is not simply a matter of adding isolated content relating to trans and gender diverse people. Instead, it requires a more fundamental engagement with the assumptions and frameworks that underpin the discipline itself. In law, these assumptions often relate to the ways in which legal sources and legal analysis are framed as objective and neutral, despite being shaped by social and political contexts that have historically marginalised trans and gender diverse people. In science, they relate to the ways in which binary models of sex and gender have been treated as natural and biologically determined, despite significant scientific evidence to the contrary. In both cases, teaching inclusively requires a willingness to critically interrogate the foundational assumptions of the discipline, and to be transparent with students about the ways in which disciplinary knowledge has been, and continues to be, socially situated.

Our reflections also suggest that similar pedagogical strategies can be effective across disciplines, even where the subject matter and epistemological traditions differ. In both law and science, we found that framing inclusive teaching practices as aligned with disciplinary

[182] Bovill et al (n 128); Alison Cook-Sather and Kelly E Matthews, 'Pedagogical Partnership: Engaging with Students as Co-creators of Curriculum, Assessment and Knowledge' in Lynne Hunt and Denise Chalmers (eds), *University Teaching in Focus* (Routledge, 2nd ed, 2021) ch 11.
[183] Fimognari et al (n 4) 698–9.

values — such as legal coherence or scientific accuracy — helped to situate these practices as an extension of, rather than a departure from, disciplinary norms. For example, in health law, drawing attention to the way legislation may fail to capture the realities of all people capable of pregnancy not only made trans and gender diverse people visible, but also encouraged students to think critically about the adequacy of the law. In reproductive biology, refocussing on assistive reproductive technology rather than contraception not only challenged cisnormative assumptions but also better reflected the complexity and diversity of human biology. In both cases, inclusive teaching practices were framed not as ideological interventions, but as necessary to achieve the core goals of the discipline.

Despite these commonalities, our experiences also highlight some differences that arise from the distinct nature of law and science as fields of study. In law, language itself is central: it is the primary medium through which legal meaning is constructed and communicated.[184] As a result, changes in language — such as using 'pregnant person' rather than 'pregnant woman' — can feel particularly significant, and can prompt critical reflection on how the law constructs and regulates bodies and identities. In science, by contrast, language is often perceived as secondary to empirical observation and description.[185] Consequently, challenges to traditional language in science education may be less immediately visible, but are no less important, given the ways in which language shapes what is observed, described, and understood.

Our reflections also highlight the importance of considering student experience and engagement across both disciplines. In both health law and reproductive biology, we observed that students were generally receptive to inclusive teaching practices, especially when these practices were introduced thoughtfully and situated within the broader aims of the course. Students demonstrated a willingness — and, in many cases, an enthusiasm — to grapple with the complexities that arise when traditional assumptions are questioned. This demonstrates the ongoing need for careful framing, scaffolded engagement, and explicit discussion of why inclusive teaching is not a departure from disciplinary rigour, but an enhancement of it.

Finally, our interdisciplinary reflections reinforce the importance of ongoing self-education and consultation in developing and delivering inclusive pedagogy. As cisgender academics working as allies,[186] we recognise that our perspectives are necessarily limited. In both law and science, we have found it essential to seek feedback and guidance from students, to consult external sources (including scholarship and voices from trans and gender diverse communities), and to approach our teaching as a continual process of learning, reflection, and adaptation.[187] Inclusive teaching in any discipline is not a static achievement but a dynamic and iterative practice.

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[184] Timothy Endicott, 'Law and Language' in Edward N Zalta et al (eds), *The Stanford Encyclopedia of Philosophy* (Stanford University, Spring 2022) <https://plato.stanford.edu/archives/spr2022/entries/law-language/>.
[185] Matthew Normand, 'The Language of Science' (2017) 42(3) *Perspectives on Behaviour Science* 675, 676–8.
[186] Ricciardo and Elphick (n 150) 126–7.
[187] This is consistent with the role of teachers in critical pedagogy. As put by Freire (n 99) 80, '[t]he teacher is no longer merely the-one-who-teaches, but one who is himself taught in dialogue with the students, who in turn while being taught also teach.'

Taken together, these interdisciplinary reflections suggest that while disciplinary differences matter, the broader imperatives for inclusive reproductive health education transcend individual fields. Teaching inclusively enhances the accuracy, relevance, and integrity of our disciplines, and better prepares our students to engage with the diversity of the communities they exist in.

VI CONCLUSIONS AND RECOMMENDATIONS

Reproductive health education in tertiary settings must move beyond its historically cisnormative frameworks. As this article has demonstrated, both science and law have traditionally relied on binary and cisnormative assumptions about sex and gender, perpetuating exclusions that distort biological and social realities. We have duties to our students, our communities and ourselves to teach reproductive health in a way that includes and accurately depicts trans and gender diverse people. A trans-inclusive approach is not just a progressive ideal – it is about ensuring that future professionals in science and law are equipped to work competently and ethically with diverse populations. Trans and gender diverse people exist within every field, every patient population, and in every jurisdiction. Their realities cannot be ignored or treated as peripheral. A reproductive health curriculum that fails to account for this is not only incomplete but actively harmful.

A fundamental step in this shift is uncoupling sex assigned at birth from gender, sexuality, and identity. While biological differences exist between people, they do not map neatly onto rigid categories of 'male' and 'female,' nor do they determine identity or lived experience.[188] This reality must be reflected in course content, dismantling outdated narratives that falsely equate anatomy with identity.

Educators must critically consider how they can develop assessments, syllabi, and learning materials to ensure that inclusion is not an afterthought but an integral part of the curriculum.[189] Our courses should challenge binary assumptions rather than reinforce them, and students should be encouraged to engage with the complexity of reproductive health beyond traditional frameworks. Authentically engaging students as stakeholders in these developments (eg, by being responsive to their feedback and seeking their input throughout) ensures that inclusion is not imposed top-down but developed in conversation with those it seeks to benefit.

Institutional support is also necessary. Universities must actively support educators in this shift, providing resources, training, and recognition for those working on inclusive pedagogy. Consulting representatives from marginalised groups is crucial to ensure that content is not just inclusive but also accurate and affirming.

[188] See generally McCoy et al (n 170).
[189] For specific recommendations and strategies in this regard see Finn et al (n 1).

At the same time, educators must be prepared to challenge resistance – whether from students, colleagues, or institutional structures. Avoiding difficult conversations only entrenches the status quo. Inclusive education demands active engagement with pushback, addressing misunderstandings with evidence and fostering an environment where critical inquiry is encouraged rather than dismissed.

Reforming the way we teach reproductive health is a collective responsibility, and the path forward is clear. By embedding inclusion within our teaching, we foster learning that encompasses the diversity of human experience.

WHY ISN'T ALL LEGAL EDUCATION PRACTICAL?

JAMES McMILLAN & ROB LILLEY *

In this article, the authors draw on their experience as law academics, practical legal training ('PLT') instructors, and as legal practitioners, and argue that reform of legal education to better meet the expectations of the profession and community requires a re-evaluation of the continuum of legal education, from commencement of primary law studies (ie, Bachelor of Laws 'LLB' or Juris Doctor 'JD') until first admission as a legal practitioner, and potentially beyond. To focus solely on the deficiencies of the current approach to PLT, as has recently played out in the media, is to miss the point. As the title of this article suggests, would it not be better to integrate 'practical' training throughout a trainee lawyer's legal studies? As this article demonstrates, there is duplication between primary legal studies and PLT and removing that duplication can help to reduce the burden and cost of a separate PLT program. In reconsidering the pathway to legal practice, there is scope for much of the necessary 'practical' training to be delivered during primary law studies and thereby reduce the need for students to complete a lengthy and costly postgraduate PLT course.

I INTRODUCTION

This paper is the third in a series of articles published in this journal which address the current approach to practical legal training ('PLT') in Australia.[1] As noted previously,[2] in every jurisdiction in Australia, PLT represents the final hurdle for most, if not all, aspiring legal practitioners. PLT emerged in its modern form in Australia in the 1970s, 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.[3]

There is emerging evidence that the current form of PLT in Australia does not achieve this goal.[4] The purpose of this article is to consider alternative ways to train new legal

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[1] 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; Jim McMillan and Rob Lilley, 'After Law School: A Critical Evaluation of Practical Legal Training in the Australian Context' (2024) 2 *Western Australian Law Teachers' Review* 1.

[2] McMillan and Lilley (n 1) 1.

[3] Frank Langley, 'Preparing for the Practice of the Law: Post-Graduate Pre-Admission Training in Australia' (1985) 3(2) *Journal of Professional Legal Education* 81, 82.

[4] 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.

practitioners to better meet the needs of the legal profession and the broader community. It is too early in the debate about the future of professional legal education in Australia to be definitive about one approach or another. However, it is appropriate as the debate evolves to ensure that all options for improvement are on the table, and this article is a contribution to that debate. In this article, we argue that consideration should be given to making primary legal studies (Bachelor of Laws 'LLB' or Juris Doctor 'JD' – in this article referred to as 'academic' law study) more practical and thereby reduce the need for further postgraduate PLT study for most new legal practitioners, whilst ensuring that the effectiveness of legal education and the outcomes for students are enhanced.

II THE ORIGINS OF PLT IN AUSTRALIA

Most Australian jurisdictions, including New South Wales, South Australia, Victoria, Queensland and the Australian Capital Territory, introduced PLT courses in the 1970s and 1980s as a replacement for the former articles-based training approach, and completion of PLT progressively became the sole pathway to legal practice for a law graduate. The PLT course (known as 'Legal Workshop') taught at the Australian National University in the Australian Capital Territory accepted its first students in 1972.[5] The South Australian PLT course commenced in 1976.[6] Western Australia was the last Australian jurisdiction to adopt the PLT model in 2010.[7] Numerous PLT courses are now available in Australia, delivered by both university and non-university providers.

There is an extensive body of academic literature about PLT in an Australian context, with a dedicated journal (the *Journal of Professional Legal Education*)[8] published between 1983 and 1998 by the Centre for Publication & Information of the College of Law on behalf of the Australian Professional Legal Education Conference.[9] A perusal of the index to the 16 volumes of that journal indicates the extent of scholarship at that time about the development of the Australian approach to PLT, much of which still resonates to an interested reader in 2025 and therefore remains relevant to reviews of the Australian PLT approach.

The lead author of this article was a student in the PLT course delivered by the South Australian Institute of Technology in 1985, described by Burnett.[10] The course was taught full-time (ie, 9am to 5pm each day) over a three-term academic year, with a mandatory attendance requirement, and all students completing 15 days of external legal workplace experience placements. The course was taught through a workshop format, simulating a legal practice environment, with students allocated to small 'firms' of 3 students each, with interaction between the 'firms' in undertaking various tasks. Most PLT students were then

[5] Alan Hogan, 'The Legal Workshop at the Australian National University Canberra, A.C.T.' (1983) 1(1) *Journal of Professional Legal Education* 1, 2.
[6] Elizabeth Burnett, 'The South Australian Course in Legal Practice' (1983) 1(1) *Journal of Professional Legal Education* 24.
[7] Lilley and Do (n 1) 21; Kelli MacMillan, 'The End of an Era: WA Farewells ATP' (2010) 37(8) *Brief* 35.
[8] Available online at <https://heinonline.org/HOL/Index?index=journals/proleged&collection=journals>.
[9] Christopher Roper, 'Editorial' (1983) 1(1) *Journal of Professional Legal Education* i.
[10] Burnett (n 6).

admitted to practice in December, following completion of the course. At that time, a newly admitted legal practitioner in South Australia was entitled to an unrestricted practising certificate, and although not common, some new practitioners would establish their own firms (either alone or with other practitioners) immediately after admission. Of course this is no longer possible, with a new practitioner now required to complete a period of supervised legal practice, and subject to a further requirement to complete a practice management course, before obtaining an unrestricted practising certificate. Nevertheless, the historical point is somewhat relevant, with the emphasis of the early Australian PLT courses (at least in part) being the development of skills to allow a new practitioner to run their own legal practice. Times have changed and the issues and concerns that led to the introduction of the first Australian PLT courses in the 1970s are not the same as those facing new practitioners and the profession more than 50 years later in the 2020s. This reality should be reflected in any review now undertaken of the adequacy of contemporary Australian legal education. The demands placed on new practitioners in the mid-2020s should now be the primary focus of any redesign of the Australian approach to practical legal education in the future, with an emphasis on teaching students how to perform the type of tasks new practitioners are likely to encounter in their early years of practice to meet the demands of the legal profession for new practitioners who are better equipped with the necessary skills required for legal practice (referred to in this article as 'practice ready').

III THE MOVEMENT FOR CHANGE TO PLT

We previously wrote about the initiative of the Council of Australian Law Deans for a reconsideration of the adequacy of legal education in Australia (including both the Priestley 11 requirements and the PLT standards set by the Law Admissions Consultative Committee 'LACC') in preparing law graduates for professional practice.[11] In that article we described the current approach to PLT in Australia, including a broad description of how PLT courses are structured. We also noted a recently published study on the attitudes of legal practitioners, which indicates widespread dissatisfaction with the level of 'work-readiness' among newly admitted legal practitioners in Queensland.[12] Since then, there has been further impetus for change, especially following a speech given by the Honourable Andrew Bell, Chief Justice of the New South Wales Supreme Court, at the 2025 Opening of Law Term Dinner on 6 February 2025.[13] In that speech, His Honour expressed concern about the cost of PLT courses and also about their quality and content, with a particular focus on the course offered by the NSW-based College of Law.

Reflecting these concerns, the NSW Legal Profession Admission Board ('LPAB') sponsored a survey of practitioner attitudes to PLT, the results of which were the subject of a statement

[11] McMillan and Lilley (n 1) 6.
[12] Cantatore, Atwill and Field (n 4).
[13] Andrew Bell, 'Present and Future Challenges to the Rule of Law and for the Legal Profession' (Opening of Law Term Dinner Address, 6 February 2025) <https://supremecourt.nsw.gov.au/documents/Publications/Speeches/2025-speeches/bellcj/CJOLTD_20250206.pdf>.

by His Honour on 14 April 2025,[14] with further details of the report available from the LPAB's website.[15] His Honour's statement noted the following 'themes' identified in the Report:

- PLT is seen as a box-ticking exercise, lacking deep relevance to legal practice;
- the move to most of the course being delivered online has led to a lack of in-depth learning;
- a lack of academic rigour was reported with the course being seen as hard to fail;
- PLT costs can be prohibitive and are not seen as providing value;
- work undertaken during study, such as paralegal work, was reported to be more useful than PLT; and
- employer-funding of PLT could steer new lawyers towards private practice, deepening the existing workforce imbalance across practice areas.[16]

It should be noted that the LPAB's Report, and the remarks of Chief Justice Bell, are focused on the PLT component of legal education. This article has a broader focus and suggests that PLT is part of a continuum of legal education that commences with LLB or JD study at law school (or equivalent). If, as the LPAB Report suggests, there is a high level of dissatisfaction with the adequacy of the current PLT approach, we argue that changes to PLT should not be considered in isolation from a broader review of the curriculum taught in primary academic law studies.

Moreover, standards for entry to the legal profession are now set by a national body, the Law Admissions Consultative Committee ('LACC), of which the Chair of the NSW LPAB is a member, along with representatives of the other Australian admission bodies, the Council of Australian Law Deans (representing the law schools at Australian universities), and the Australasian Professional Legal Education Community Inc (representing most of the PLT providers).[17] Presumably, it remains the case that the Australian legal profession admission bodies will seek to maintain consistency in their approach to admissions standards and other legal education issues, through the LACC forum, and that a period of consultation will be necessary to achieve consensus about future education requirements for new Australian legal practitioners.

[14] Letter from Andrew Bell to the New South Wales Legal Profession, 14 April 2025 <https://lpab.nsw.gov.au/documents/rules/LPAB_PLT_letter_CJ_2025.pdf>.
[15] Urbis, 'The Legal Profession's Experience of Practical Legal Training' (Report, 9 April 2025) <https://lpab.nsw.gov.au/documents/rules/LPAB_Urbis_Experience_of_Practical_Legal_Training_Research_Report_Final.pdf>.
[16] Bell (n 14).
[17] Details of LACC membership can be found here: <https://legalservicescouncil.org.au/about-us/law-admissions-consultative-committee.html>.

IV INTEGRATING PLT WITH ACADEMIC LAW STUDY

The next part of this article examines some of the contextual issues that need to be considered in reforming legal education in Australia to ensure that new-entrant lawyers are practice-ready before considering a possible 'blueprint' for reform.

A The Role of Law Schools in Training New Lawyers: the Academic v Practical Tension

As explained earlier in this article, any review of the adequacy of legal training for new lawyers should extend beyond the existing PLT approach and should consider how PLT can be better integrated with academic law studies. There is already an impetus to embed practical skills in the foundational law degrees. For instance, the *Australian Law School Standards* require that (as a minimum) Australian law schools must endeavour to:

> …provide, so far as practicable, experiential learning opportunities for its students, including, but not limited to, clinical programs, internships, workplace experience, and pro bono community service.[18]

Additionally, the Higher Education Threshold Standards require all Australian Universities (ie, not limited to law schools) to demonstrate:

> …engagement with employers, industry, and the professions in areas in which it offers courses of study. This engagement may include…work-integrated learning…[19]

We acknowledge, of course, that the role of a law school at an Australian university extends beyond that of training new lawyers for professional practice, especially when one considers that many law graduates do not practice law after graduation.[20] Legal research, including in higher degree by research academic programs, is a core function of a law school and, by its nature, that research tends to be more theoretical than practical. In the contemporary Australian university environment, research output (especially publication of journal articles) is an important performance measure for most academics, including legal academics. This creates a tension, and a potential barrier to advancement, for those academics with a more 'practical' legal education focus. As explained by Hutchinson, it is important for legal scholars in the twenty-first century to embrace social science research methodologies, reflecting the existence of law within a social setting rather than in 'an

[18] Council of Australian Law Deans ('CALD'), *Australian Law School Standards* (Standards, 30 July 2020) 2.2.4 <https://cald.asn.au/the-australian-law-schools-standards/>.
[19] *Higher Education Standards Framework (Threshold Standards) 2021* (Cth) pt B1.3.
[20] This is evident from the difference in the number of practising solicitors between 2011 and 2022 and the available data on law school graduate numbers. For example, approximately 5,700 lawyers joined the profession between 2016 and 2018, but there were approximately 16,000 law graduates in that same period. Given the demographics of the profession, it is unlikely that the difference is attributable to attrition alone. As to solicitor demographics, see Urbis, *2022 National Profile of Solicitors* (Report, 26 April 2023) 7. As to graduate numbers, see CALD, *2018 Data Regarding Law School Graduate Numbers and Outcomes* (Report, 2018) <https://cald.asn.au/wp-content/uploads/2023/11/Updated-Factsheet-Law_Students_in_Australia-20-04-2019.pdf>.

objective doctrinal vacuum',[21] which can be challenging for legal researchers with primarily doctrinal research interests. A law school's role in training future lawyers co-exists with the research demands placed on legal academics. It must also accommodate students who do not intend to engage in legal practice after graduation. However, we contend that a foundational law degree should teach both theory and practice such that a law graduate is 'practice ready'. Accordingly, theoretical legal research and the practical training of future lawyers both remain core functions of all modern Australian law schools, and one cannot be placed above the other in its importance, at least from the perspectives of the universities and legal academics themselves.

It remains the case that law schools must also meet the needs of external stakeholders: the judiciary, the legal profession more generally, and the community. There are some clear messages that key external stakeholders desire changes to legal education, to ensure new entrants to the legal profession are better equipped and skilled to meet the demands placed on them when they commence practice. In an Australian context, this is reinforced by the requirement for external accreditation of law degrees offered by law schools to meet the admission requirements of the admission bodies in each jurisdiction. In that sense, the admission bodies quite rightly have a significant say in how legal education is provided in Australia, and law schools must meet the requirements reflected in the several LACC standards which have been promulgated, most notably, the so-called 'Priestley 11' requirements, which specify core areas of legal knowledge that must be studied by law students aspiring to enter legal practice.[22] There is an existing challenge for law schools to manage these inherent tensions and ensure that a focus on training future lawyers can comfortably co-exist with a parallel focus on legal research, including purely theoretical or doctrinal research. We contend that a move towards a greater focus on practical skills development during an aspiring practitioner's academic law studies can be achieved as a natural extension of the significant role already played by law schools in preparing graduates for legal practice.

B The Role of the Legal Profession: Setting Expectations for New Practitioners

Reports such as those commissioned by the Queensland Law Society[23] and the NSW LPAB[24] establish the need for change to the current legal education approach in Australia. In implementing change, the legal profession can also play another related role, which is highly significant: identifying and articulating the skills that entry-level lawyers require to be better practitioners. The legal profession (including the judiciary) needs to work hand-in-hand with legal educators and admission bodies (through LACC) to identify what new practitioners need to know and the skills they need to have. It then falls to legal educators to work within their

[21] Terry Hutchinson, *Researching and Writing in Law* (3rd ed, 2010) 97.
[22] LACC (n 29).
[23] Cantatore, Atwill and Field (n 4).
[24] Urbis (n 15).

areas of expertise to ensure that students gain the skills and knowledge in those areas of critical need identified by the profession.

C How Best to Teach Skills? Challenging Assumptions about PLT

As noted above, much of the current focus on the need for change relates to the way in which PLT is taught. However, any assumption that *only* PLT needs to change must be challenged. At a minimum, future reviews of legal education should also consider the extent to which legal skills can be taught as part of academic legal study. In Part V of this article, we explore in more detail what this means and how it might be achieved. Changes in legal education over the past 50 years already include legal educators' acceptance of the need to incorporate more practical skills training into LLB/JD studies, including through 'authentic' learning and assessment.[25] The way in which law students are taught in the 2020s is more practical when compared to 50 years ago. There is evidence from the literature that a focus on integrating practical legal skills development with core LLB curriculum is not a recent phenomenon, with Woellner describing the development of a 'practical skills program' by the Faculty of Law at the University of Western Sydney in the mid-1990s.[26]

Examples of authentic assessments in the authors' own recent experience as legal academics at Curtin Law School include an interview-based assessment in the *Introduction to Torts* course, and the preparation of a statement of claim as an assessment in the *Civil Procedure* course, as well as elective units available to students in advocacy and opportunities to gain academic credit for *Internship* and *Law Clinic* units. Mooting can also play a role in introducing law students at an early stage of their studies to the skills of advocacy and developing legal arguments.

Earlier this year, the second author developed and taught a *Succession Law* unit at Curtin Law School as a theoretical-clinical hybrid. The unit was designed around the central premise of this article: that legal education can (and should) be both theoretical and practical. The unit starts by building a solid foundation in the theory of succession law and culminates in the student taking instructions for, preparing, and executing a simple will in the John Curtin Law Clinic (which is part of the Curtin Law School), under the direct supervision of an experienced legal practitioner. It is early days yet, and there is currently no empirical data available on the success (or otherwise) of this approach in the context of this particular unit, but informal feedback obtained from students thus far has been extremely positive.

We hypothesise that this hybrid approach is better for students as it allows the practical aspects to be scaffolded onto the theoretical underpinning of the subject.[27] This allows

[25] See, eg, Linda Kam et al, 'Get Real! A Case Study of Authentic Learning Activities in Legal Education (2012) 19(2) *Murdoch University Law Review* 17; Toni Collins, 'Authentic Assessment: The Right Choice for Students Studying Law?' (2022) 32(1) *Legal Education Review* 1.

[26] Robin H Woellner, 'Developing and Presenting a Skills Program in the LLB: A Discussion of Design and Operational Issues' (1998) 16(1) *Journal of Professional Legal Education* 87.

[27] As to scaffolding as a learning theory, see, generally, David Wood, Jerome S Bruner and Gail Ross, 'The Role of Tutoring in Problem Solving' (1976) 17 *Journal of Child Psychology and Psychiatry* 89; L S Vygotsky, *Mind in Society: The Development of Higher Psychological Processes* (Harvard University Press, rev ed, 1978). As to scaffolding in legal education, see Kam et al (n 25) 19; Collins (n 25) 3, 13.

students to put the theory into practice, further reinforcing their knowledge, before their memory of the subject fades with time. The existing PLT model is such that several years may pass between a student's theoretical study of a subject and the student encountering the subject again in PLT. However, we acknowledge that there are some constraints in embedding practical skills training in foundational legal education, not the least of which is a lack of experienced legal practitioners on law school faculties.

At the minimum, we argue that a further expansion of these kinds of unit design and assessment approaches could be part of the answer to how we change the current approach to legal education, thereby better meeting expectations held by the legal profession and the broader community about capabilities of entry-lawyer lawyers. In other words, there may be greater scope for 'skills' development to be shifted into the program of academic law studies and reduce (or potentially eliminate?) the need for those skills to be taught separately and independently in a PLT course.

D Obstacles to Integration: LACC and Priestley 11 Pre-requisites

At present, LACC already contemplates that a law school may be accredited to provide a combined academic law/PLT course and has published a document entitled 'Guiding Principles for Integrating Academic and PLT Courses'.[28] These principles nevertheless contemplate a separation of 'academic' and 'PLT' components, and they expressly require that students must complete all Priestley 11 requirements before PLT studies are commenced.[29] Illustratively, with this requirement in place, it would not be possible to incorporate instruction and assessment of the PLT 'Civil Litigation Practice' component with the 'academic' study of *Civil Dispute Resolution* (one of the Priestley 11 required areas of academic study). Similarly, it would not be possible to incorporate PLT advocacy training as part of academic study of *Evidence* or *Criminal Law*.

Viewed in its historical context, when legal educators teaching foundational law courses had little interest in teaching practical skills, this separation between 'PLT' and 'academic' study made sense, with the PLT serving as the skills top-up to supplement undergraduate law studies. This article challenges the assumption that such a separation should continue in the 2020s and beyond, and poses the question: 'Why isn't all legal education practical?' It follows that a review of the current approach to legal education should extend beyond PLT to consider how the Priestley 11 subject areas are taught and assessed, to allow for greater integration of academic law studies with PLT, to avoid duplication, and to provide a better learning experience for students.

[28] LACC, 'Guiding Principles for Integrating Academic and PLT Courses' (Document, rev October 2017) <https://legalservicescouncil.org.au/documents/Guiding-principles-for-tntegrating-academic-and-PLT-courses-revised-Oct-2017.pdf>.

[29] The Priestley 11 requirements are formally referred to by LACC as 'Prescribed academic areas of knowledge', covering Criminal Law and Procedure, Torts, Contracts, Property, Equity, Company Law, Administrative Law, Federal and State Constitutional Law, Civil Dispute Resolution, Evidence, and Ethics and Professional Responsibility. The guidelines can be accessed from the Legal Services Council website, here: <https://legalservicescouncil.org.au/documents/prescribed-academic-areas-of-knowledge.pdf>.

V A BLUEPRINT FOR CHANGE?

This part of the article addresses some of the issues that would arise in achieving greater co-ordination and integration of PLT and academic education for aspiring future legal practitioners. We note that an integration process may be resisted by some law schools and law academics, due to the challenges (particularly those associated with resourcing) of implementing significant changes to curriculum design and delivery, and specialist PLT course providers might also be resistant to change due to the impact on their business models. Extensive consultation with all stakeholders (especially through LACC) is required and the process of change will take time to implement.

A Aligning PLT and Priestley Requirements

It is outside the scope of this article to examine the adequacy of the current Priestley 11 requirements and whether changes are needed, and for the purposes of this discussion we have assumed the existing Priestley 11 requirements will continue.

As things stand, there is obvious cross-over between LACC's 'Prescribed academic areas of knowledge' (ie, the Priestley requirements) and LACC's 'Practical Legal Training Competency Standards for Entry-Level Lawyers'.[30] As can be readily observed, Priestley-prescribed areas of knowledge such as *Criminal Law, Property, Administrative Law, Company Law, Civil Dispute Resolution, Evidence,* and *Ethics and Professional Responsibility* all, to some extent, overlap with requirements of the Compulsory and Optional Practice Areas under the PLT competency standards. For example, many of the PLT 'Lawyers Skills' requirements could conceivably be taught and assessed in one or more of the Priestley 11 prescribed areas of study. These 'PLT' skill requirements encompass communication, cross-cultural awareness, interviews, letter writing, drafting, negotiating settlements and agreements, early representation of disputes and representing a client in a legal forum.[31] Each of these 'skills' could be the subject of well-designed assessments and other learning tasks taught within the framework of a Priestley LLB or JD unit.

There are some other PLT requirements, especially with the 'Work Management and Business Skills' competency standard,[32] which do not fit so neatly with academic law studies. These skills might be better taught as part of a short postgraduate 'work-readiness' intensive course prior to admission, in a similar way to the Practice Management course.

More generally, if the teaching of the current PLT requirements can be integrated with academic legal study, it would make sense for students to complete the practice-oriented

[30] Accessible from the Legal Services Council website, here: <https://legalservicescouncil.org.au/documents/PLT-competency-standards-for-entry-level-lawyers-Oct-2017.pdf>.
[31] Ibid 18–20
[32] Ibid 27–8.

Priestley 11 subjects towards the end of their LLB or JD study program, meaning that some restructuring of the sequence in which law subjects are taught might then be necessary.

B Challenges Facing Law Schools and Regulators Under a New Model

If integration of PLT and academic law studies can be achieved, law schools would face challenges in making the transition. This would include new curriculum development and ensuring that staff teaching the practice-oriented subject areas have appropriate qualifications and skills to do so. It is relevant that under the current PLT competency standards, PLT instructors are expected to have current or recent experience in the practice of law. Many current law academics would not meet this requirement. It makes sense that legal skills are best taught by legal practitioners with relevant experience, so this is another challenge that needs to be addressed, both in setting new standards for law academics involved in teaching in practice-oriented areas and ensuring that sufficient suitably qualified staff are available. It may be that 'team-teaching' approaches become necessary, where legal academics and experienced legal practitioners work together to deliver law courses incorporating both theoretical and practical/skills-based elements.

Law schools would also need to satisfy legal regulators that curriculum and assessments are sufficiently 'practical' to meet the objectives currently set for PLT courses. It may be that the resulting increased curriculum demands in academic law studies would require that some existing units be split, and perhaps the minimum length of full-time academic law study to meet LACC's admission requirements would need to be reconsidered. At present, several Australian academic law courses can be studied over 3 years, whereas a combined academic law/PLT course should be taught over 3.5 years.[33] In re-designing the law curriculum, other options could also be considered to ensure that 'academic' and 'practical' legal skills are taught in the optimum manner. We are confident these challenges can be met, and we cite the recent example of the new *Succession Law* course taught at Curtin Law School (discussed in the preceding part) in support of the proposition.

It should be noted that several Australian law schools already provide PLT courses, and there are other schools which have previously taught PLT but no longer do so. At some law schools, agreements have been made with PLT providers to deliver a co-ordinated academic law/PLT course. At least one law school has fully integrated its LLB and PLT courses in combination with its law clinic. If nothing else, this demonstrates the capacity within law schools to deliver traditional PLT-style courses and skills training, as well as flexibility for collaboration with independent PLT providers, and indicates that a move towards greater integration of academic law study with practical legal skills training is feasible.

[33] LACC (n 28).

C Future of Legal Workplace Experience: A Staggered Approach to Admission?

In our previous article, the authors expressed reservations about the varied approach to legal workplace experience requirements and differences between Australian jurisdictions.[34] We note the favourable views expressed by practitioners about the value of workplace experience, commented on by the NSW Chief Justice, the Honourable Andrew Bell.[35] Nevertheless, we remain of the view that the current PLT legal workplace experience requirement should be abolished, to bring the Australian approach into line with the long-standing approach taken in New Zealand.[36] However, we also think it would be worthwhile considering an alternative 'stepped' approach towards obtaining an unrestricted practising certificate.

Perhaps inspiration can be drawn from the Australian approach to motor vehicle driving licences and the well-known 'L Plate/P Plate' model – so that a newly admitted practitioner would be subject to close supervision for a preliminary training period (say, 6 months – the 'L' plate), on completion of which they could move up to a less restricted supervised work period (say, 18 months – the 'P' plate) in which they would be permitted to perform more tasks independently, following which they would become eligible for an unrestricted practising certificate.

Another alternative might be the requirement to provide evidence of satisfactory performance through the completion of PLT competency assessments in the workplace during the existing two-year restricted practice period. This form of assessment would allow students to develop and gather evidence of their skills in a way that is directly relevant to their work, and which aligns with workplace competency assessments in other professions, including medicine, nursing, policing, and teaching. Under this possible regime, law graduates might be immediately eligible for admission to practice, but unable to obtain an unrestricted practising certificate until they have gathered sufficient evidence to demonstrate the required competencies. This approach, combined with the embedding of practical skills into foundational legal training, could eliminate the need for law graduates to incur the cost of a separate PLT course altogether.

In considering changes of this nature, it might also be appropriate to consider more rigorous testing and evaluation of ethics and professional standards as part of the transition to unrestricted practising status. Likewise, there is scope to consider enhanced continuing professional development requirements for new practitioners as they transition towards unrestricted practice rights. These considerations all form part of the mix in a reconsideration of how legal education can be improved to ensure new practitioners are better equipped for practice.

[34] McMillan and Lilley (n 1) 8.
[35] Bell (n 13).
[36] Sir Andrew Tipping, *Review of the Professional Legal Studies Course* (Report, August 2013) 1–2, 9.

VI OBSERVATIONS AND CONCLUSION

Over recent months, there has been a marked acceleration in the movement for change to the way in which law graduates are taught practical skills, to prepare them for legal practice. Scrutiny of the cost and effectiveness of existing PLT courses has grown. Concerns have increased about the adequacy of the current Australian approach to legal education to ensure new entrants to the legal profession are practice-ready.

Much of the recent scrutiny has been on PLT courses. In this article, we argue that in designing future legal education reform, options for greater integration of academic law and PLT courses need to be considered. We suggest that one of the potential solutions is that more practical skills training and assessment could be integrated with academic law studies and delivered as part of a law student's LLB or JD studies. Change is needed, and a shift towards making all legal education more practical could be one way to address the current concerns.

BUILDING FOUNDATIONS FOR SUCCESS

COMPREHENSIVE SKILL-BUILDING FOR HIGHER DEGREE RESEARCH STUDENTS IN LAW

ERIKA J E TECHERA *

Growth in Higher Degree Research (HDR) programs and student enrolments has led to the development of university research training programs. Such training is frequently delivered by central university areas and designed for HDR students across multiple fields of education. Comprehensive legal research training programs in Australian Law Schools are uncommon and therefore examples of programs that do exist may provide valuable models. In 2023, UWA Law School piloted a training program aimed at building skills and improving the student experience to meet the specific needs of its students in the fields of law and criminology. The comprehensive HDR training package includes a suite of modules, resources and practical workshops to accommodate a range of candidates and projects. The program harnesses the wealth of knowledge, expertise and experience in the Law School by engaging research leaders through recorded modules and live sessions. The training program also brings all law and criminology HDR students together to facilitate a cohort experience and exposes students to a wider range of Law School academics beyond their supervisory team. This paper outlines the design, development and delivery of the training program, and highlights some early lessons learned that may be of benefit to other Law Schools.

I INTRODUCTION

Higher Degrees by Research (HDR) programs and enrolments have grown significantly since the 1990s.[1] The majority of Australian universities offered some form of HDR programs, commonly a Doctorate in Philosophy (PhD), but also shorter Masters by Research and professional doctorates involving a thesis component.[2] HDR students come from various backgrounds (professional and cultural), study in different modes (part-time, full-time and offshore), and explore research topics across many fields of education.[3] Commonly, HDR programs are administered through a central graduate research school or department, although students are usually physically located and supervised in subject-specific schools.

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[1] Tracii Ryan et al, 'How Can Universities Better Support The Mental Wellbeing Of Higher Degree Research Students? A Study Of Students' Suggestions' (2021) 41(3) *Higher Education Research & Development* 867.
[2] A search of online databases demonstrates multiple programs across most Australian universities: see, eg, <https://www.phdportal.com/search/phd/australia>; <https://www.findaphd.com/guides/phd-study-in-australia/>.
[3] Charlotte Brownlow et al, 'The Higher Degree Research Student Experience In Australian Universities: A Systematic Literature Review' (2023) 42(7) *Higher Education Research and Development* 1608.

Undoubtedly, the supervisory team for any given HDR student is vitally important, but so too are institutional supports.[4] Indeed, Australian education standards require that research training is guided by an institutional policy that covers matters such as rights and responsibilities, induction, monitoring progress and examination and that on completion specific and generic learning outcomes related to research can be demonstrated.[5] It is also well-recognised in the literature that HDR skills-based training is needed,[6] and central graduate research schools frequently offer such research training programs.[7] Although the scope and delivery of each program differs, the common elements include an induction for new students, and sessions on conducting research, research integrity and ethics, the student-supervisor relationship and co-authorship, as well as presenting, writing and publishing.[8]

Necessarily, because these central programs provide training for HDR students across all fields, the skills and expertise are general in nature and not discipline specific. Science, health and technology fields have offered specialised skills-based compulsory training, lectures and lab workshops for some time, yet comprehensive and effective legal research training programs (particularly involving research methods) are less common.[9] Often it is left to individual supervisors to provide specific theoretical and methodological knowledge and expertise, as well as training and development in legal research, critical analysis and writing. The above two matters raise several concerns. First it places a considerable burden on these academic supervisors and increases their workloads in circumstances where administrative requirements are known to have grown[10] and academics are experiencing burnout due to their levels of work.[11] Secondly, it relies upon academics having broad knowledge beyond their own narrow research areas and specific methodologies. Furthermore, supervisors are often selected because of their content knowledge and supervision experience rather than their ability to train and build skills. These academics may not be experts in theories and methodologies and/or multi-disciplinary or mixed methods relevant to the student's project. In addition, new digital research and support tools are constantly emerging and supervisors may not be fully equipped to assist HDR students in

[4] Scholarship drawn from student experiences of HDR candidature supports this, see Kelsey Halbert, 'Students' Perceptions Of A 'Quality' Advisory Relationship' (2015) 21(1) *Quality in Higher Education* 26, 27.
[5] See *Higher Education Standards Framework (Threshold Standards) 2021* made under the *Tertiary Education Quality and Standards Agency Act 2011*.
[6] Philip G Altbach, 'Doctoral Education: Present Realities And Future Trends' in James JF Forest and Philip G Altbach (eds) *International Handbook of Higher Education* (Springer, 2007) 65, 66.
[7] See, eg, the University of Sydney <https://www.sydney.edu.au/students/hdr-training-modules.html>; and University of Queensland <https://cdf.graduate-school.uq.edu.au/sessions>.
[8] Some universities require enrolment in Graduate Certificate programs, although not without some criticism: Kim Beasy et al, 'Drowning In The Shallows: An Australian Study Of The PhD Experience Of Wellbeing' (2021) 26(4) *Teaching in Higher Education* 602, 610.
[9] This is supported by anecdotal evidence from colleagues across various law schools. Research by Lindley, Skead and Montalto highlighted that students want more training on law-specific methodologies given that these are not widely taught prior to PhD studies: Jade Lindley, Natalie Skead and Michael Montalto, 'Enhancing Institutional Support To Ensure Timely PhD Completions In Law' (2019) 29 *Legal Education Review* 1. Hutchinson also noted that opportunities for methodology training are limited within law curriculum at the undergraduate and postgraduate levels: Terry Hutchison, 'Developing Legal Research Skills: Expanding The Paradigm' (2008) 32 *Melbourne Law Review* 1065.
[10] Academy of the Social Sciences in Australia (2021), *State of the Social Sciences 2021*, 25.
[11] Gillian Vesty et al, 'Burnout Among University Accounting Educators In Australia And New Zealand: Determinants And Implications' (2018) 58(1) *Accounting & Finance* 255.

their use. This can result in mixed experiences for students depending on their supervisory team and highlights the need for comprehensive programs that 'level the playing field' for all students.

The lack of tailored research training leaves a gap for HDR students in law schools. Furthermore, lack of adequate training and support can exacerbate the stress of undertaking HDR studies and impact on student well-being. It is acknowledged that HDR studies can be challenging with a negative effect on student well-being.[12] Although a research training program cannot remove all stressors, such as family relationships, employment and finance strains and ill-health, it can have a positive effect on academic confidence, reduce feelings of isolation and facilitate supportive networks and connections with fellow students.[13] In this sense a training program can improve student well-being. This is evidenced by scholarship indicating that student experiences are improved where appropriate skill-building and support programs are in place,[14] and that HDR students value supervision that balances both 'academic and emotional support'.[15] This latter aspect adds to literature indicating that students do not believe quality supervision depends purely on scholarly expertise,[16] and that students value personal qualities in their supervisors more than specific content knowledge and research expertise.[17] Further valuable insights into students' perspectives are provided by Ryan et al who identify a number of matters that HDR students themselves want universities to address to support their well-being.[18] The analysis divided student responses into nine categories with a total of 23 themes.[19] Relevantly, the suggestions made by students included the following themes:

1. Fostering an inclusive and supportive departmental research culture;
2. Recognising diverse backgrounds and life pressures;
3. Promoting integration between academics and students;
4. Creating opportunities for peer engagement; and importantly
5. Integrating workshops on research skills, methods and thesis writing.[20]

These findings are complemented by literature exploring the perceptions of PhD students in 16 Australian law schools supporting the need for law-specific methodological training.[21] Students identified the most helpful aspects of their law school's PhD program as training

[12] Brownlow et al (n 3) 1609.
[13] See Halbert (n 4) 1615–16.
[14] Carolyn Dickie, 'Winning The PhD Game: Evocative Playing Of Snakes And Ladders' (2011) 16(5) *Qualitative Report* 1230. See also Kirsti Lonka et al, 'Doctoral Students' Writing Profiles And Their Relations To Well-Being And Perceptions Of The Academic Environment' (2019) 77 *Higher Education* 587.
[15] Halbert (n 4) 31.
[16] Ibid 32.
[17] Although scholarship suggests Brownlow et al (n 3) 1613 citing Diana F Davis, 'Students' Perceptions Of Supervisory Qualities: What Do Students Want? What Do They Believe They Receive?' (2019) 14 *International Journal of Doctoral Studies* 431.
[18] Ryan et al (n 1).
[19] Ibid.
[20] Ibid 872.
[21] Lindley, Skead and Montalto (n 9) 23–4.

that enhances academic skills, opportunities for informal academic mentoring and peer bonding, and activities to improve connectedness and the overall cohort experience.[22] The least helpful aspects of these law school PhD programs included the generic university-wide training programs, negative law school culture and poor online support.[23]

It is against the backdrop of the need for law-specific HDR training that the UWA Law School developed, in house, a comprehensive tailored research program in 2023 to respond to the need for Law discipline-specific training, and to rehumanise HDR studies to enhance the student experience. This paper outlines the design and delivery of the program as a case study of how one Australian law school has sought to address student needs aligned with the literature outlined above. Both the content and scope, as well as the process of creating the training package, provides a useful case study for other law schools who might wish to build such a program. This article outlines the context and design principles for the UWA Law School program. It then explains the content and delivery of the UWA program. The final section highlights some feedback from staff and students and revisions and expansions following the first year of delivery.

II UWA CONTEXT AND DESIGN PRINCIPLES

UWA offers a PhD and MPhil program whereby candidates are centrally enrolled in the Graduate Research School which then offers students a range of generic training workshops and well-being support services. The UWA Law School program was intended to supplement and complement, not replace or duplicate, these centralised offerings. In addition, UWA offers a Doctorate in Juridical Science (SJD) program which combines coursework units and a thesis. Students in this program are enrolled directly through the Law School as the program is administered at the school level, with the added obligation to provide a dedicated research training coursework unit for credit. This unit provided a useful vehicle through which to develop the broader HDR training program.

In keeping with other universities, the UWA Law School student cohort includes domestic and international, full time and part time, students as well as distance students located offshore. The training program had to meet the needs of this diverse group in terms of its design and delivery. In addition, UWA Law School comprises study in both law and criminology with staff and students drawn from both fields. Many of the HDR students in the Law School are not legally (or criminologically) qualified and may have backgrounds in other social sciences or engineering, science, health or technology. Although they may be undertaking legal research their projects frequently incorporate elements of related areas such as international relations, public policy, and environmental studies, for example. Therefore, the Law School attracts a greater diversity of HDR students than might otherwise

[22] Ibid.
[23] Ibid.

be expected, exploring a variety of topics utilising various theories and methodologies, and sometimes involving multi-disciplinary and mixed methods research.

UWA requires HDR research projects to be supervised by at least one level 3 supervisor, being a staff member who has supervised other students to completion.[24] For any given student area there might be only one or two suitable supervisors with a necessarily limited range of content knowledge and methodological expertise. Therefore, the pool of supervisors, and particularly senior supervisors, is relatively small with the likelihood that the supervisory team may not have expertise in all of the theories and methodologies any given student intends to consider in their project.

Not only did the training needs of these students need to be met in terms of legal theory and law/criminological methodology, the program also had to provide opportunities to build a cohort experience across the diverse and distributed group of students. A key aim was to overcome feelings of detachment from supervisors, schools, research communities and fellow students noted generally in PhD students and which could potentially be exacerbated by such diversity.[25] So the design of the training program took these factors into account and also responded to the need to expose HDR students to other staff beyond their supervisory team, and to promote engagement and connectedness between staff and students.

In summary, the project aimed to support students (1) by complementing and building upon the training program run by the central university Graduate Research School to raise the skills of all HDR students in the Law School, and (2) by enhancing well-being through whole-of-cohort engagement opportunities and stronger student-staff networks and research culture. A secondary goal was to reduce the workload for individual supervisors by providing a School-centred, training program that utilised the knowledge and expertise of all relevant academics to provide a pool of resources that could be used on an ongoing basis from year to year.

III THE UWA PROGRAM

As noted above, UWA Law School attracts students from around the world, researching part time and full time, locally and remotely, and in the disciplines of law and criminology. These characteristics necessarily affected the design of the program which had to be flexible, accessible, and relevant to students in both fields and indeed those engaged in multi-disciplinary projects. The decision was made to provide a series of modules comprising fully online pre-recorded materials, and live (virtual and in-person) workshop sessions. The pre-recorded modules are self-paced with mini-lectures, readings, and self-test exercises, designed to build knowledge and expertise. This mode has the advantage of being accessible from anywhere and in any time zone. The modules can also be revisited multiple times

[24] UWA, Register of Supervisors Procedures: Supervisor Levels <https://static.weboffice.uwa.edu.au/archive/www.postgraduate.uwa.edu.au/staff/supervisors/supervisor-register.html#levels>.
[25] Halbert (n 4) 1614–15.

throughout the students' HDR journey towards thesis submission. The live classes focus on building skills by applying knowledge learnt in the online modules. In addition, these classes bring all students together and sharing challenges and reflecting on draft work with fellow HDR students helps to strengthen the cohort experience. The majority of these live sessions were held in-person with virtual participation an option for distance students.

The central UWA Graduate Research School provides an induction for all HDR students and training sessions focused on various stages of the journey (preparing a research proposal, Confirmation of Candidature and preparing for examination etc). In addition, skill-building seminars are provided on reading, note taking and academic writing, research ethics, research integrity and intellectual property. As noted above, these sessions are designed for student participation across all fields of research and are not intended to be discipline specific. Only one gap was identified in these more generic offerings. Time management has become increasingly important given growing demands for timely completion, and competing commitments, which can add to HDR student stress.[26] Therefore time management was identified as a focus for a generic skills module.

The Law School therefore developed tailored training to include (1) some generic skills not already provided for centrally; (2) specific theoretical and methodological knowledge and expertise; and (3) opportunities to apply and practice research, writing and analysis in a cohort context. The generic and theory/methodology materials were developed as pre-recorded online modules, and application workshops were delivered as live sessions.

To ensure a uniform level of skill-building, the generic modules were designed to be completed by all students engaged in the program. These skill-building modules were designed and recorded by various staff from across the Law School and cover:

- Time management;
- Advanced legal research;
- Designing your research project and research question;
- An introduction to methods and methodologies;
- Preparing research proposals;
- Preparing a literature review;
- Referencing and referencing software;
- Progressing and presenting your HDR research;
- Writing up your work – traditional and by-publication theses;

[26] See Halbert (n 4). High workload and time pressures can lead to well-being issues where work-life balance becomes distorted, see Els van Rooij et al, 'Factors That Influence PhD Candidates' Success: The Importance Of PhD Project Characteristics' (2021) 43(1) *Studies in Continuing Education* 48, 62.

- Reviewing, editing and finalising your thesis;
- Publishing your legal and criminological research;
- Beyond the PhD – further research and study; and
- Beyond the PhD – peer reviewing journal articles.

In addition to these more general skill-building modules, specialist modules on legal and criminological theory and methodologies were developed, again drawing on the expertise of key Law School staff. It was recognised that not all of the modules would be relevant to every HDR project, and so students were encouraged to discuss with their supervisors which of these to focus upon. Nevertheless, all modules remain available to all students throughout their HDR journey, allowing flexibility for students to explore options at early stages of their research design and to learn about areas beyond their immediate project. The theory and methodology modules include:

- Research ethics in law and criminology;
- Traditions of legal theory;
- Feminist legal theory;
- Doctrinal Australian legal research;
- Empirical research methods;
- Socio-legal methods;
- Criminological methods;
- International law research methods; and
- Comparative legal methods.

The live sessions were designed to complement those delivered by the central Graduate Research School. For example, early modules extend the central induction program and whole-of-university policies by covering, for example, School-specific student-supervisor relationship and co-authorship guidelines. Later sessions focus on discussing and reflecting on research design and methodological choices. All of the sessions bring students together as a group and therefore also provide opportunities for candidates to engage with fellow HDR students. The workshops also allow for feedback beyond the student's supervisory team, and for peer learning and support in a safe and collegial environment through sharing and discussing draft work. The sessions later in the year are more heavily focused on substantive writing and engage HDR students in various stages of their research projects. The live session element includes:

- Introduction to HDR;
- Skill building needs and resources;
- Commencing your HDR project;
- Designing a research question and methodology as part of research design;
- What are the necessary ingredients of an HDR research proposal?;
- How do you move from a research proposal to writing?;
- UWA Law School mini-conference;
- Work-in-progress conference;
- 3-day writing workshop; and
- End of year reflection and planning for the next year.

As noted above, a goal was to utilise the full range of knowledge and expertise across the Law School, engaging staff as 'owners' and distributing the workload of developing the training program. The creation of the program therefore involved three key steps: (1) engaging relevant staff to pre-record mini-lectures; (2) curating written readings and resources; and (3) designing an inclusive student interface and scheduling the live element of the program.

By far the most challenging task was the first. Given existing teaching, research and service obligations, many staff were reluctant to assist beyond their allocated workload. However, by demonstrating the need for the training program, explaining how sharing the load was fair and equitable, and recognising the different knowledge and expertise of individual academics, three quarters of the Law School staff agreed to participate. An additional 'carrot' was the benefit to HDR supervisors as the training program sought to reduce the time taken to facilitate skill-building for their own students.

The second task of collating resources was relatively easy. There are many excellent books on legal research and writing,[27] as well as those specifically focused volumes on legal theory[28] and methodologies,[29] and undertaking a PhD including in law.[30] Collating materials that aligned with the pre-recorded materials largely involved scanning the existing resources and providing a range of readings to expose students to different books and resources from which they could choose the style that they preferred. This task fell to the program coordinator in

[27] Legal specific texts include Terri Hutchinson, *Researching and Writing in Law* (Thomson Reuters, 4th ed, 2018). Other relevant books include Barbara Kamler and Pat Thomson, *Helping Doctoral Students Write: Pedagogies for Supervision* (Routledge, 2014); Loraine Blaxter et al, *How to Research* (McGraw-Hill Education, 2010).
[28] Brian Bix, *Jurisprudence: Theory and Context* (Sweet & Maxwell, 8th ed, 2019); Martin P Golding and William A Edmundson, *The Blackwell Guide to the Philosophy of Law and Legal Theory* (Wiley-Blackwell, 2008).
[29] Dawn Watkins (ed), *Research Methods in Law* (Routledge, 2nd ed, 2018).
[30] Caroline Morrise and Cian Murphy, *Getting a PhD in Law* (Bloomsbury, 2011).

combination with academic staff developing various modules – again it was a collaborative exercise.

In terms of delivery, it was important to ensure that students had access to the pre-recorded materials throughout their candidature, so all recordings and readings were uploaded onto the UWA learning management system. The vehicle chosen was the coursework research training unit that SJD students are required to complete, and access to the unit was then made more widely available to all HDR students. In addition to providing a familiar interface and simple access arrangement for students, this approach meant that the materials were centrally located and backed up in university systems and allowing them to be 'rolled over' and made available in subsequent years. The live workshop schedule spread sessions over a year, with the intention of repeating them annually so that students could join whichever workshops suited them at any particular stage in their HDR journey. New students, for example, gain most benefit from the sessions in the first half of the program and those more advanced in their studies are likely to be ready to participate in the writing workshops. Students were encouraged to attend workshops of relevance to them in multiple years.

IV FEEDBACK, RESPONSES AND FUTURE PLANS

Independent feedback is essential evidence of the success or failure of a new program such as this, and it also provides valuable ideas about ways to refine and improve the program. Staff in the Law School were asked to provide informal feedback on the program at the end of the pilot year (ie, 2023). Staff supervising high numbers of research students noted improved academic rigour of their students and in particular the benefit of support the program had given to HDR students to develop as researchers. Similarly, those students who had engaged in the program were asked for their feedback. Comments fell into two categories: (1) the new knowledge and skills that the program had provided; and (2) the confidence and support that it had given to them. Thus, this anecdotal evidence suggested the program had served multiple purposes of building relevant skills and expertise as well as engaging a wide range of staff and students to positive effect. The decision was made to refine the program and deliver it again the next year.

A secondary benefit of engaging staff across the Law School was that several members came forward and suggested new modules and offered to prepare them. This was important as the program moved from a pilot stage to a more permanent offering, and for continual improvement and to ensure a 'living program'. In addition, it helped to broaden the shared ownership of the program. Some additional skill-building modules that were suggested included the use (and abuse) of Artificial Intelligence (AI), advanced database and software use, and how to peer review journal articles. The first two of these relate to research and writing tools, whilst the last considers a skill that students might wish to build for future use as an academic but which also improves understanding of how their own work will be treated when submitted for publication. All of these ideas are being taken forward.

No systematic feedback was sought at the end of the pilot year, and this is another matter for consideration. When informal feedback is sought, negative comments are not often provided, and not all staff were involved and engaged in the pilot program. A whole of Law School call out for contributions – whether ideas or offers to develop and deliver modules – was suggested. In addition, it was proposed that a survey should be delivered to gather formal feedback that could be systematically analysed. Again, this suggestion is being advanced.

An issue that remains unresolved is whether the program should be compulsory. Law School administered SJD students are required to enrol in and complete a training unit. Some HDR students enrolled centrally are also admitted conditionally with a requirement to complete research training. For both of these groups, the UWA Law School training program is compulsory. For PhD students, however, the program is optional, and these students are not required to complete any formal training beyond that offered by the central Graduate Research School. No consensus has yet been reached on whether these students should be required to complete the program. Adding to student workload is not to be considered lightly, however, given the anecdotal evidence from staff and students involved, it would seem that the benefits outweigh the time and effort that engagement in the program involves. The results of a more formal survey are to be analysed before a decision is made on whether to make the program compulsory for all Law School HDR students.

Finally, there is the issue of further revisions to the program. It is evident that the focus is on supporting the student in their HDR journey and facilitating successful and timely completion of a thesis. The more generic skill-building sessions will need to constantly be revised as HDR requirements, systems and tools evolve. In addition, the list of theoretical and methodological modules is by no means complete and could be expanded much further. Yet the program does not fully equip students beyond the HDR journey, particularly as many graduates wish to become academics. Whilst some modules were suggested after the first pilot year – including how to peer review journal articles – consideration could be given to other topics that build, for example, teaching skills and awareness of university administrative processes. This additional skill-building could be completed, where relevant, towards the end of candidature.

V CONCLUSION

The literature relating to HDR programs and student perceptions highlights the importance of training programs that build skills and also support student well-being. The UWA Law School responded to the need for tailored research training for HDR students in law and criminology. A comprehensive program was developed that built on matters raised by existing staff and students in addition to scholarship on HDR research training. The result is an accessible, multi-modal, and comprehensive training program that draws on the wealth of expertise in the UWA Law School.

The UWA Law School HDR training program was introduced in 2023. Students at early stages in their candidature, and commencing students, enrolled in the inaugural program. As those students are now still progressing through their degrees, it remains to be seen how they have benefited (or not) from the program. In the meantime, it was decided to continue the training program going forward, with refinements made in 2024. Further work – including empirical research and systematic analysis of student and staff experiences – is needed to explore the benefits of the program developed by the UWA Law School and how it can continue to be refined and improved. Yet even at this early stage, given the dearth of literature on legal research training for law-related HDR students, this case study may be of value to other universities seeking to design similar programs.

ENHANCING LEGAL EDUCATION THROUGH A SHORT-TERM OVERSEAS STUDY TOUR

A CASE STUDY OF UWA LAW SCHOOL'S SINGAPORE STUDY TOUR

MEREDITH BLAKE & KENNY YANG *

In an increasingly globalised legal profession, international exposure is essential for developing adaptable and culturally aware lawyers. This article examines the University of Western Australia's short-term law study tour to Singapore, a program designed to integrate theoretical knowledge with practical legal experiences in a cross-cultural context. Conducted over five days, the tour provided Juris Doctor students with an immersive educational opportunity, combining seminars by academic and professional experts with site visits to key legal institutions. The curriculum covered diverse topics, from Singapore's legal history to international arbitration and employment law, fostering a comprehensive understanding of the Singaporean legal system. Assessments emphasised reflective learning and active participation, enhancing critical thinking and professional skills. Student feedback highlighted the program's effectiveness in deepening legal knowledge and boosting cultural adaptability. This case study demonstrates the transformative potential of short-term international study tours, offering valuable insights for other institutions seeking to enrich legal education through global engagement.

I INTRODUCTION

In the context of an increasingly globalised legal field, understanding diverse legal systems and practices is crucial for new lawyers. Recognising this need, the University of Western Australia's ('UWA') Law School introduced a short-term study tour to Singapore in 2023, aiming to provide its Juris Doctor students with critical international exposure and practical experiences. Designed to integrate theoretical knowledge with practical legal experiences across cultures, the tour aimed to expand students' perspectives on global legal practices and enhance their employability skills.

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The short-term study tour to Singapore first took place across five days from 4 December to 7 December 2023, 9am to 5pm and was structured as an intensive summer law elective, offering students the opportunity to complete an optional unit (worth 6 credit points, which is the usual number of credit points for a unit at UWA) towards their law degree. The tour's timing and duration were chosen to maximise learning while minimising disruption to the regular academic schedule, making it an attractive elective for law students seeking to broaden their understanding and exposure to international legal environments.

The tour featured a series of seminars focusing on selected topics in Singaporean law. These sessions were delivered by a mix of local experts, including academics from various universities and practicing legal professionals, aiming to provide students with a comprehensive understanding from both theoretical and practical perspectives. Throughout the tour, students were accompanied by two UWA academic staff members who provided guidance and support, promoting it as a UWA law school cohort experience.

II IMPORTANCE OF INTERNATIONAL EXPOSURE

There is a growing body of scholarship which attests to the value of study abroad experiences. The notion of global citizenship has been a significant factor in driving the popularity of such experiences,[1] with this being associated with increased employment opportunities.[2] Moreover, research shows that even brief periods spent abroad significantly enhance students' cultural adaptability compared to their peers who do not study abroad – this adaptability is increasingly valued in today's globalised work settings where understanding and navigating multicultural environments are key professional skills.[3] There is objective evidence that:

> Graduates who have studied abroad, even for a short period of time, in a culture significantly different to one's own, are more culturally adaptable, aware and able to work more effectively in multicultural work environments than students without this experience. [4]

A number of scholars at tertiary institutions from various countries have evaluated their own short-term study abroad programmes. These have largely focused on the students' own reported experience of the programmes. These studies support this objective evidence in that students themselves identify their increased appreciation of cultural diversity, and connect

[1] Nicole Gullekson et al, 'Examining Intercultural Growth for Business Students in Short-Term Study Abroad Programs: Too Good to Be True?' (2011) 22(2) *Journal of Teaching in International Business* 91.
[2] Giorgio Di Pietro, 'Do Study Abroad Programs Enhance the Employability of Graduates?' (2015) 10(2) *Education Finance and Policy* 223. See also Davina Potts, *Outcomes of Learning Abroad Programs* (2014, Universities Australia) 14 for the benefits of a study abroad stint.
[3] Larry Braskamp, David Braskamp and Kelly Merrill, 'Assessing Progress in Global Learning and Development of Students with Education Abroad Experiences' (2009) 18 *Frontiers: The Interdisciplinary Journal of Study Abroad* 101.
[4] Lisa Scharoun, 'Short-term Study Tours as a Driver for Increasing Domestic Student Mobility in Order to Generate Global Work-Ready Students and Cultural Exchange in Asia Pacific' (2015) 20(2-3) *Perspectives: Policy and Practice in Higher Education* 83; *The Guardian*, 'Students Struggle to Find Jobs After Graduation' (16 October 2008) <https://www.theguardian.com/education/2008/oct/16/students-highereducation>.

this with the development of transferable skills, and an increased interest in social justice.[5] One study particularly noted the increased student group cohesion and motivation to learn which characterised the short study abroad experience.[6] Students have identified the benefits associated with increased confidence from 'pushing the boundaries', 'enhanced cultural understanding, improved interpersonal skills and the perception that career goals, particularly in relation to working overseas, had been clarified.'[7]

While semester-long study abroad exchanges are a common offering in tertiary institutions (including at UWA),[8] the evidence indicates that Australian students appear to favour short-term tours over semester-long exchanges, particularly in Asia.[9] These short-term engagements, though concise, are packed with intensive learning experiences that often match or exceed the cultural immersion and professional benefits gleaned from longer stays.[10] There is evidence that these general benefits also benefit the law student as a future lawyer.[11] Modern legal practice is intricately linked with international laws and global issues, necessitating a broad, adaptable legal education. Exposure to foreign legal systems enriches students' legal understanding and prepares them for cross-border legal challenges. Short-term study tours are particularly effective in this context, offering immersive experiences that traditional classroom settings cannot replicate.

Recognising the critical role of international educational experiences in enhancing regional relationships and competencies, the Australian government introduced the New Colombo Plan ('NCP') Mobility Grants in 2014 with up to AUD$40 million in funding for the 2023–24 financial year.[12] The strategic objective of the NCP is to strengthen Australia's regional standing by building a diverse cohort of Australian alumni with deeper Indo-Pacific knowledge, capability and connections.[13] It aims to 'lift knowledge in Australia of the Indo-Pacific' through structured short-term study tours and internships ranging from two weeks to two semesters.[14] The NCP has regional and access limitations (it is currently only available to undergraduate students) but it has proven a significant incentive for the introduction of tertiary study tours and since its inception in 2014 to 2024, the program has supported more

[5] Karen Bell and A W Anscombe, 'International Field Experience in Social Work: Outcomes of a Short-Term Study Abroad Programme to India' (2013) 32(8) *Social Work Education: The International Journal* 1032.
[6] Ibid.
[7] Tracey Bretag, '"Pushing the Boundaries": Participant Motivation and Self-Reported Benefits of Short-Term International Study Tours' (2015) 54(3) *Innovations in Education and Teaching International* 1.
[8] Semester-long exchange is a relatively popular option at UWA with approximately 300-350 undergraduate and postgraduate coursework degree students undertaking this in 2024 – about 75% of pre-COVID levels (information provided by Global Engagement Office, UWA).
[9] 'Australian Outbound Student Mobility Snapshot' (2015) *SPRE: Strategy, Policy and Research in Higher Education* https://www.spre.com.au/download/MobilitySnapshot1308.pdf; Australian Universities International Directors' Forum (AUIDF) Report (2024) which indicated that in 2023 38% of Australian students participated in faculty-led study tours, compared to 19% participating in semester long exchange programmes.
[10] Alexis Geyer, Jenni Putz and Kaustav Misra, 'The Effect of Short-Term Study Abroad Experience on American Students' Leadership Skills and Career Aspirations', (2017) 31(7) *International Journal of Educational Management* 1042.
[11] Theresa Kaiser-Jarvis, 'Preparing Students for Global Practice: Developing Competencies and Providing Guidance' (2018) 67(4) *Journal of Legal Education* 949.
[12] Department of Foreign Affairs and Trade, *Mobility Program – 2024 Round Guidelines* <https://www.dfat.gov.au/people-people/mobility-program-2024-round-guidelines#amount>.
[13] Ibid.
[14] Ibid.

than 50,000 students to participate in overseas study, work placements, or research experiences in the Indo-Pacific region.[15]

A number of considerations informed the development of this article. One of these was the limited amount of scholarship examining Australian study tours. Our search of the literature revealed a handful of articles, and, while these were of assistance in identifying the general benefits of study tours, none of these involved law students. We are aware of a number of study tours which are run by Australian law schools (detailed below) but it appears there are no existing published written accounts of these. This is worth noting given the point made in one paper:

> Studying abroad is often represented in the literature as delivering a transformative impact for all students, regardless of their specific academic programme. While this may be true, it frames the benefits of studying abroad as being generic and supplementary to any discipline-specific curriculum. [16]

It is therefore, we believe, a valuable addition to the literature to have a detailed description of a discipline-specific offering, particularly where that particular discipline has not featured in the narrative.

A second consideration was the fact that the law degree at UWA is studied at a postgraduate level. The law school has adopted the Northern American model – the Juris Doctor – as its' qualifying law degree. Consequently, there is a strong vocational focus for most of these students, with the majority of them seeking a career in the legal profession.[17] In this context, students' perceptions of how a unit adds value to their career aspirations are significant. Very recent research found that 89% of participants in an overseas stint under the NCP indicated that the experience was useful for their CV.[18] The need to derive value from the degree is all the more significant for UWA Juris Doctor students – both because of the fact this is a second degree, and because, as postgraduate students, the NCP is not available as a funding source.

The authors surveyed the short study tour landscape of Australian law schools in an attempt to identify the type of offerings which are available to students. These are set out in Annexure A at the end of this article.[19] Our research indicated that most of these are targeted at undergraduates (which presumably is incentivised by the NCP). Some of the offerings are also towards a specific field or legal topic rather than a study tour encompassing a general immersion of various aspects of the host country's laws and legal system. The remaining law schools which do appear to offer a more general study tour are set out in Table 1 below.

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[15] Ly Tran, Huyen Bui and Diep Nguyen, *Australian Student Mobility to the Indo-Pacific Region through the New Colombo Plan: Summary of Key Findings* (2024) <https://ncpproject.org/publications/>.
[16] Steve Nerlich, *Towards an Evaluative Framework for Studying Abroad* (PhD Thesis, Australian National University, 2020) 166.
[17] Evident from yearly surveys undertaken of graduating Juris Doctor students. This is not aligned with the view emerging in recent years conceptualising law degrees as the 'new arts degree' – see Financial Review, Feb 14, 2014 and comments by the then president of the Law Institute of Victoria Geoff Bowyer in 2014.
[18] Tran, Bui and Nguyen (n 15).
[19] Information has been obtained from university websites as of 9 December 2024. A course will only be included if there is indication that it is still on offer and there are details on the location of the overseas study tour.

Table 1. Australian Law School General Study Tours

University	Program	Topic/ Course	Destination
Curtin University	Ghent Summer Program[20]	The program is aimed at students keen on acquiring knowledge and credits in international and European law, and generally at participants eager to gain expertise about the increasingly international world of law and business.	Belgium
Swinburne University of Technology	Law, Governance and Culture Study Tour[21]	An immersive introduction into Vietnam's legal culture and its laws.	Vietnam
	Law, Governance and Culture Study Tour[22]	An immersive introduction into Indonesia's legal culture and its laws.	Indonesia
Murdoch University	India Immersion Program[23]	An introduction to India's diverse regulatory, business and social impact landscape.	India
Sydney University	Shanghai Winter School	An intensive three-week introduction to Chinese laws and legal systems, while experiencing life in Shanghai.	China
	Indian Immersion Program	Seminars, lectures, presentations and field visits with leading scholars, legal practitioners and law students in India.	India
	Southeast Asia Field School	An intensive two-week course, taught in English, students visit Malaysia and Indonesia for one week each.	Malaysia Indonesia
	Kyoto and Tokyo Seminars	The Kyoto and Tokyo seminars offer a unique opportunity to study Japanese Law on an intensive basis in global and socio-economic context.	Japan
	Sydney Law School in Europe	A selected range of elective units of study in prestigious locations in Europe.	Europe
University of New South Wales	US Legal Systems[24]	The course will focus principally on the study of the federal and state legal systems within the United States of America.	USA
	Chinese Legal System[25]	This is a two-week intensive course held in Shanghai each year. It provides an introduction into the legal system of the People's Republic of China with particular reference to modern developments in commercial law and other important legal areas.	China

[20] Curtin University, *Ghent Summer Program* <https://www.curtin.edu.au/students/experience/global/study-tours/ghent-summer-program/>.
[21] Swinburne University of Technology, *Vietnam Law, Governance and Culture Tour* <https://www.swinburne.edu.au/life-at-swinburne/study-abroad-exchange/study-tours/law-governance-and-culture-tour/>.
[22] Swinburne University of Technology, *Law, Governance and Culture study tour in Indonesia* <https://www.swinburne.edu.au/life-at-swinburne/study-abroad-exchange/study-tours/indonesia-law-governance-culture/>.
[23] Murdoch University, *India Immersion Program* <https://www.murdoch.edu.au/schools/law-and-criminology/study/international-programs/india-immersion-program>.
[24] University of New South Wales, *Handbook 2024, US Legal Systems (Berkeley)* <https://www.unsw.edu.au/law-justice/student-life/international-opportunities/overseas-electives>.
[25] University of New South Wales, *Handbook 2024, Chinese Legal System* <https://handbook.unsw.edu.au/undergraduate/courses/2025/LAWS3123>.

	China International Business and Economic Law[26]	This course provides an introduction to the legal system of the People's Republic of China. Emphasis is placed on modern developments in China's commercial law, international business and economic law, and other important legal areas.	China
	Pacific Islands Laws in Vanuatu [27]	An introduction to the merging legal systems of the Pacific Islands states, including issues of constitutional development, the recognition and application of customary law, modern and traditional legal institutions, land tenure regimes, personal law, and the legal recognition of economic activity, such as international trade, foreign investments and national resources projects.	Vanuatu
Australian National University	Bhutan Summer School[28]	Special exposure to unique aspects of Bhutanese society and its legal system through field trips to Thimphu, the capital city, and Punakha, the previous seat of government	Bhutan
University of Wollongong	Legal Study Tour in Thailand[29]	Comparative Law: The program will include lectures on a variety of topics such as Thai Business Law, Thai Public Law, and International Law and the Thai Legal System, alongside firm and court visits, engagement with local students, and sightseeing excursions.	Thailand
Royal Melbourne Institute of Technology	Business and Law Beyond Borders[30]	Focus on business and legal global issues	Vietnam

It should be noted that it is sometimes difficult to discern whether these are true study tours in the sense of a collective student cohort experience of an intensive course, or an overseas study experience which is open to individual students from these institutions to apply to. It is the former experience which the UWA Law School study tour sought to embody. Despite the plethora of options available, there appears to be an absence of literature on how to organise such a program and the pedagogical considerations in doing so. This article therefore hopes to provide one for the benefit of future course coordinators.

[26] University of New South Wales, *Handbook 2024, China International Business and Economic Law* <https://handbook.unsw.edu.au/undergraduate/courses/2025/LAWS3345>.
[27] University of New South Wales, *Handbook 2024, Pacific Islands Laws* <https://handbook.unsw.edu.au/undergraduate/courses/2025/LAWS3541>.
[28] Australian National University, *Bhutan Summer School - Jigme Singye Wangchuck (JSW) School of Law* <https://law.anu.edu.au/bhutan-summer-school-jigme-singye-wangchuck-jsw-school-law>.
[29] University of Wollongong, *Legal Study Tour in Thailand* <https://www.uow.edu.au/business-law/current-students/study-exchange-and-overseas-opportunities/faculty-led-studytours/#:~:text=Legal%20Study%20Tour%20in%20Thailand&text=The%20program%20will%20include%20lectures,local%20students%2C%20and%20sightseeing%20excursions>.
[30] Royal Melbourne Institute of Technology, *Study Tours* <https://www.rmit.edu.au/about/schools-colleges/college-of-business-and-law/international/global-opportunities/study-tours>.

III SELECTION: LOCATION, INSTITUTION & SPEAKERS

The decision to select Singapore for this study tour was based on a number of practical reasons. Firstly, UWA Law School has a number of alumni in Singapore, and we also as academics, enjoy professional relationships with colleagues from two Singapore law schools. A recent UWA alumni also held adjunct academic positions in Singapore and was familiar with the academic legal community there. As such there was an institutional connection to this country which we felt would be of assistance in organising speakers and events. Secondly, Singapore is a key international trading and legal hub, with many global companies establishing their regional headquarters in the city. It is also a leading centre for arbitration, with a high volume of international disputes being resolved through its renowned arbitration institutions.[31] A unique opportunity therefore existed to expose students to this global perspective. Thirdly, with this being the first study tour to be offered to our students for many years, we were conscious that this represented a destination which made financial sense, and which would not involve the serious body clock adjustments which travelling from Western Australia often presents. Put simply, the geographical proximity and the institutional connections presented this as an obvious option. The organisers were also reassured by the reputation of Singapore as a very safe place of travel as well as the familiarity which this destination represents for many Western Australians.

We deliberately included a diverse mix of university academics and legal practitioners as speakers for the course with the aim of combining the provision of theoretical knowledge with practical skills training. In doing this we were particularly conscious of the insights that could be provided by Singaporean legal practitioners from international law firms with a presence in Australia and Australian practitioners based in their Singapore offices, crucial for understanding the real-world application of legal concepts.

The selection of Singapore Management University (SMU) as the preferred host university for the study tour was informed by its advantageous location within the city's central district. This distinguishes it from its counterparts – National University of Singapore, Nanyang Technological University, and Singapore University of Social Sciences – whose campuses are situated relatively farther from the city centre. The benefits of proximity to the teaching venue and to the commercial and professional infrastructure of Singapore was an important consideration, particularly having regard to this being the first offering of this study tour. Essentially, the organisers were aiming to maximise convenience given the inevitable unknowns which would arise.

[31] Elizabeth MacArthur, 'Regulatory Competition and the Growth of International Arbitration in Singapore' (2018) 23 *Appeal* 165; Matthew Erie, 'The New Legal Hubs: The Emergent Landscape of International Commercial Dispute Resolution' (2019) 59(3) *Virginia Journal of International Law* 225, 261.

IV CURRICULUM DESIGN

The curriculum for the short-term study tour is set out in Table 2 below. It was designed to provide Australian law students with a foundational understanding of the Singaporean legal system and its historical underpinnings, particularly its roots in common law.

Table 2. Singapore Study Tour Curriculum

Day	Topic	Duration
1	Singapore Legal History	3 hours
	The Singapore Legal System	3 hours
2	The Civil Justice System	2 hours
	Cross-Jurisdictional Issues in Banking & Finance	1.5 hours
	Cross-Jurisdictional Arbitration Work	1.5 hours
3	Arbitration in Singapore	2 hours
	Mediation in Singapore	2 hours
	Employment Law in Singapore	3 hours
4	Criminal Law & Procedure	4 hours
	Criminology: Perspectives from Singapore	3 hours
5	Tour of the State Courts	2 hours
	Group Presentations	3 hours
Total Contact Hours		**30**

V DESIGN CHALLENGES

From the perspective of a local academic or legal practitioner in Singapore tasked with delivering a substantive, specialised lecture on complex topics typically taught over a semester to second or third-year postgraduate law students from Western Australia, condensing the curriculum into a two to three-hour session presented significant challenges. Some of these challenges are familiar to those who have been involved in the co-ordinating and teaching of intensive units. These include the depth versus breadth of material trade-off in relation to achieving a coherent narrative in a compressed timeframe. That compression also has implications for the capacity to enhance and assess students' comprehension of the material.

An overseas learning experience raises particular challenges outside of those typically experienced in standard domestically based intensive units. For example, this study tour raised the issue of lecturers needing to ensure that the material taught was accessible to students who do not have a background in the specific area of Singaporean law being taught, without oversimplifying complex legal concepts. The organisers addressed this by encouraging presenters to use clear, jargon-free language and progressively build up from basic concepts, as well as relating complex ideas to familiar concepts in the students' primary law curriculum to aid understanding.

Perhaps even more challenging was the need for cultural and jurisdictional contextualisation. Law is deeply intertwined with the local culture and specific legal framework of a country. Students from another jurisdiction may not have the contextual background that local students possess, which can be a barrier to understanding specific legal principles and practices. The organisers took steps to address this through the incorporation of an overview of Singapore's legal system, culture, and the political and social context affecting its law (Day One). We hoped that this setting would provide students with a framework to understand how and why certain legal principles operate differently in Singapore compared to the Australian context.

While teaching in intensive mode is neither new nor uncommon in Australian law schools,[32] a significant challenge lies in balancing a sufficient number of contact hours to ensure comprehensive coverage of material, against the risk of student fatigue inherent in such a condensed delivery model. One key consideration was to ensure sufficient time for preparation and reflection before and in-between classes.[33] Preparation included perusal of the reading materials for each topic. Reflection is an important part of the learning process,[34] and students were expected to spend time after class completing the 'Reflective Journal Entries and Group Presentation' assessment weighted at 30%. A total of 30 hours of contact time was scheduled with an expectation of an additional 2 hours of self-study before or after class, making a total of 40 hours of study across the week. This aligned with the contact hours for intensive units offered at other universities.[35]

VI TOPIC SELECTION

The selection of topics for the initial days, specifically 'Singapore Legal History' and 'The Singapore Legal System' on Day 1, strategically set the stage for more complex discussions. By establishing this foundational knowledge early in the program, it was anticipated that students would be better equipped to grasp the nuances of subsequent topics, leveraging their initial learning as a contextual base for exploring specific legal practices and principles unique to Singapore. The following additional subjects chosen for exploration reflect more unique aspects of Singapore's legal landscape and also issues which we considered would be of interest to law students in Australia:

[32] Patricia A Scott, 'Attributes of High Quality Intensive Course' (2003) 97 *New Directions for Adult and Continuing Education* 29, 29–38; Raymond Wlodkowski, 'Accelerated Learning in Colleges and Universities' (2003) 97 *New Directions for Adult and Continuing Education* 5; Martin Davis, 'Intensive Teaching Formats: A Review' (2006) 16(1) *Issues in Educational Research* 1.
[33] Sally Male et al, *Intensive Mode Teaching Guide* (University of Western Australia, 2016) 17.
[34] Chloe Sheppick, 'Unveiling the Benefits of Reflective Learning in Professional Legal Practice' (2024) 31(2) *International Journal of the Legal Profession* 207, 208.
[35] For example, the University of Melbourne's minimum class contact time for each subject (whether intensive or semester-long) falls between 24 and 36 hours – see *University of Melbourne, Subject Delivery* <https://law.unimelb.edu.au/students/masters/studies/subject-delivery>, whereas the University of Sydney indicates 26 hours of lectures – see University of Sydney, *Study Options* < https://www.sydney.edu.au/law/study-law/continuing-professional-development/study-options.html>.

A Singapore Criminal Law & Procedure

Singapore is globally noted for its rigorous legal framework, which includes distinct practices such as the absence of jury trials, the implementation of mandatory death penalties for certain offences, and significant restrictions on immediate access to counsel. This topic aimed to highlight the critical legal and procedural approaches which distinguish Singaporean criminal law from Australian practices. Another interesting point of comparison, and one that offers a bridge between the two legal systems despite their differences, is the use of a Criminal Code in both Singapore and several states within Australia.[36] In this respect both legal systems represent the codification of criminal offences and penalties in a comprehensive legislative document — Singapore's Penal Code and the various Criminal Codes operative in Australian states, particularly the Codes in Queensland and Western Australia which are the dominant sources of criminal law in those jurisdictions.[37]

B International Arbitration/Mediation

Singapore's status as a preeminent hub for arbitration and mediation made these topics ideal for providing students with practical insights into the mechanics and strategic advantages of resolving disputes through these alternative dispute resolution methods. Singapore has meticulously cultivated its reputation as a leading centre for international arbitration, characterised by its strategic geographical location, political stability, robust legal framework, and the presence of the Singapore International Arbitration Centre.[38] The seminar on arbitration envisaged offering students insights into arbitration in Singapore as well as recent investor-state arbitration disputes.

Singapore's ascension as a centre for mediation was solidified with the adoption of the Singapore Convention on Mediation, formally known as the United Nations Convention on International Settlement Agreements Resulting from Mediation. This convention, the negotiation and signing of which were significantly influenced by Singapore, marked a pivotal development in international commercial dispute resolution.[39] By providing a uniform and efficient framework for the enforcement of mediated settlements, the Convention enhances the viability of mediation as an alternative to litigation and arbitration. This topic had the promise of offering important insights into the international legal frameworks informing and enforcing mediation settlements.

[36] Western Australia's Criminal Code (*Criminal Code Act Compilation Act 1913* (WA)) is based on the Queensland Griffith Criminal Code (*Criminal Code Act 1899* (Qld))
[37] Criminal Code (WA) (Schedule to *Criminal Code Act Compilation Act 1913* (WA) and Criminal Code (Qld) (schedule 1 to *Criminal Code Act 1899* (Qld))
[38] Matthew Erie, 'The New Legal Hubs: The Emergent Landscape of International Commercial Dispute Resolution' (2019) 59(3) *Virginia Journal of International Law* 225, 261.
[39] Joséphine Hage Chahine et al, 'The Acceleration of the Development of International Business Mediation after the Singapore Convention' (2021) 32(4) *European Business Law Review* 769.

C Cross-Jurisdictional Issues in Banking & Finance Law

Singapore's standing as a global commercial hub underscored the importance of including a topic on Cross-Jurisdictional Issues in Banking & Finance Law in the study tour curriculum. This focus not only reflects the city-state's pivotal role in international finance but also addresses the complex legal challenges that arise in multi-jurisdictional financial operations. The diverse finance subsets, including ship finance, trade finance, project finance, and acquisition finance, all necessitate a thorough understanding of cross-border legal matters. These include the complexities of taking security, obtaining and evaluating legal opinions, verifying corporate authorities, and the strategic engagement with local counsel.[40] The organisers of the tour were of the view that the opportunity for students to address these issues would prepare them for future interactions with Singapore's sophisticated financial services sector and equip them with the insights needed to navigate the legal challenges inherent in transnational financial transactions.

D Employment Law

A focus on this area of law within the study tour was regarded as offering students insights into how employment relationships are regulated and adjudicated in Singapore as a comparator to other jurisdictions. The topic was developed to cover: (a) restraint of trade clauses, (b) the tests used to determine whether an individual is classified as an employee or independent contractor, and (c) the legal framework surrounding wrongful dismissal, with an emphasis on how Singapore's approach to these aspects of employment law diverges from Australian practices. This topic aimed to give students important insights into the reality of working life in Singapore and offered important points of comparing the law regulating employee conditions between the jurisdictions.

E Civil Justice Systems

This session aimed to explore recent judicial decisions which resonate within the common law jurisdiction, fostering a comparative understanding of legal evolutions in response to global and technological changes. The topic sought to cover significant cases such as *I-Admin (Singapore) Pte Ltd v Hong Ying Ting* [2020] 1 SLR 1130, which revisits established doctrines of breach of confidence previously set out in *Coco v AN Clark (Engineers) Ltd* [1969] RPC 41. The exploration of *Quoine Pte Ltd v B2C2 Ltd* [2020] 2 SLR 20 was identified as important to introduce students to the impacts of technology on traditional legal concepts such as unilateral mistakes, while the discussion of *CLM v CLN* [2022] 5 SLR 273 is significant in addressing the emerging domain of cryptocurrency within the legal designation of property capable of being subjected to a freezing order. While these are decisions of the Singaporean courts, they offer an insightful approach to how Australian courts might address similar

[40] Nadja Alexander and Shouyu Chong, 'Leading the Way for the Recognition and Enforcement of International Mediated Settlement Agreements: The Singapore Convention on Mediation Act 2020' (2022) 34(1) *Singapore Academy of Law Journal* 1.

issues, and ultimately demonstrate the value which an international study tour can offer for postgraduate law students who are looking to practice in a global environment.

VII ASSESSMENT

Assessment has been described as 'a process for employing systematically collected information to improve the learning experience of the students.'[41] One of the main criticisms directed at law school assessments is that they do not prepare students for legal practice.[42] In particular, it has been claimed that law schools do not foster the development of practical skills.[43] Having said this, there has been push back against the use of the term 'skills' as being 'less helpful in denoting competencies in required courses.'[44] A preference for the term 'tasks' has been advocated on the basis that it is more 'likely to be behaviourally anchored in instruction and curriculum standards.'[45]

Noting these general points, the organisers were particularly keen to focus on setting tasks which connected with the global aspect of legal practice, while still conforming with requirements of academic rigour. In developing assessment for this study tour unit, the organisers were of the view that assessment of participation would be an important aspect of this experience, given that this can be a key indicator of active learning and engagement, contributing to the development of critical thinking. The fact that all students would be in the same learning space and in person suggested that this would provide an optimal environment for this form of assessment. Participation was accorded a 20% weighting of the overall mark, with the aim of assessing students based on their active involvement during the classes held from December 4th to 7 December 2023.[46] Criteria included punctuality, readiness with assigned readings, proactive participation in discussions (both speaking and listening), and the quality of contributions during class activities.

The second aspect of the assessment was described as 'Reflective Journal Entries and Group Presentation', weighted at 30%. Reflective practices have been attributed to bringing benefits to learning including 'promoting critical thinking, deepening understanding, enhancing problem solving skills and facilitating personal growth by building resilience and creativity'.[47] Sheppick argues that while reflective practice has historically been peripherally regarded in legal education, it does have 'transformative potential' in this context,

[41] Ibid 88 citing Ethan Bronner, 'A Call for Drastic Changes in Educating Lawyers', *New York Times* (New York, 10 February 2013).
[42] Ruth Jones, 'Assessment and Legal Education: What is Assessment and What the # Does it Have to Do with the Challenges Facing Legal Education.' (2013) 45 *McGeorge Law Review* 85.
[43] Ibid 99.
[44] G Camilli et al, 'Faculty Perception of Tasks Relevant to Academic Success in the First Year of Law School: A Longitudinal Analysis' (2022) 32(1) *Legal Education Review* 183.
[45] Ibid 185.
[46] Kathleen Czekanski and Zane Robinson Wolf, 'Encouraging and Evaluating Class Participation' (2013) 10 (1) *Journal of University Teaching & Practice* 1; Jay Howard and Amanda Henney, 'Student Participation and Instructor Gender in the Mixed-Age College Classroom' (1998) 69(4) *Journal of Higher Education* 384; John Bean and Dean Peterson, 'Grading classroom Participation (1998) 74 *New Directions for Teaching* 33; Antonina Balas, 'Using Participation to Assess Students' Knowledge' (2000) 48(4) *College Teaching* 122.
[47] Sheppick (n 34) 208.

particularly in connection with the fostering of critical thinking. She notes in particular how reflective thinking can contribute towards the development of resilience, a characteristic of significant worth in legal practice. Sheppick's article focuses on a vocational postgraduate law course in which she identifies, relevantly for the purposes of this article, the importance of reflection in relation to the students' future careers in legal practice. As she states, the introduction of reflection into that course was largely due to its 'alignment with the ever-evolving demands of the legal profession'.[48] Reflection seemed particularly important for an international study tour given the evidence that in order to 'become aware of diversity and power issues, learners require a form of discourse, reflective dialogue, that enables them to breach the "settled" paradigms of their world'.[49]

Students were required to submit two written journal entries that captured their reflections and learning points from the sessions attended. These entries were due on specific dates following the sessions they covered. Subsequently, these reflections contributed to a group presentation, with the aim of students collectively discussing and presenting their learning outcomes from the entire tour, assessing their ability to synthesise individual reflections into a cohesive group perspective. The potential benefits of group presentations have been identified as fostering greater class interaction and participation, sparking increased interest in learning, introducing perspectives that might not otherwise be addressed, and enhancing communication and presentation skills.[50] Students can acquire knowledge from their own research and that of their peers, while also learning from observing the strengths and weaknesses of other presenters to refine their own communication and presentation abilities.[51]

The final piece of assessment was a 'Research Essay' (weighted at 50%). A number of specific topics were released at the end of the tour, with the aim of allowing students to delve deeper into particular areas of interest highlighted during their study in Singapore. The research paper was originally designed to help students refine their research skills and practice incorporating sources into a thorough, often argument-based, paper.[52] This involves finding academic sources from various mediums, conducting cross-jurisdictional research, and critically comparing and assessing different perspectives and legal frameworks.

[48] Ibid 213.
[49] Judith McNamara and Rachael Field, 'Designing for Reflective Practice in Legal Education' (2007) 2(1) *Journal of Learning Design* 66, 67, citing Anne Brockbank and Ian McGill, *Facilitating Reflective Learning in Higher Education* (Open University Press, 1998).
[50] Tulay Girard et al, 'An Exploratory Study of Class Presentations and Peer Evaluations: Do Students Perceive the Benefits?' (2011) 15(1) *Academy of Educational Leadership Journal* 77.
[51] Ibid.
[52] Rebecca Moore Howard and Sandra Jamieson, 'Researched Writing' in Gary Tate et al (eds), A *Guide to Composition Pedagogies* (Oxford University Press, 2nd ed, 2014); Tom Cate and Linda Dynan, 'A Guide to Composition Pedagogies' (2010) 29 *Journal of Applied Economics and Policy* 47.

VIII STUDENT FEEDBACK

From the outset the feedback received from students was overwhelmingly positive. For example, after the first session (historical aspects), many students expressed their interest in learning how Singapore's colonial history has informed the development of its legal system. This enthusiasm for the curriculum continued with the sessions on international commercial negotiation and arbitration being particularly popular, although all sessions were characterised by excellent participation and cohesion. Some unsolicited comments on the tour noted the quality of the speakers and the content:

> The speakers were world class. Day one opened with Dr Tan's lecture on Singapore's founding's, as well as connection to David Marshall, one of the most prolific lawyers in Singapore history. The other speakers provided a diverse range of lectures from criminal and corporate law, to modern and technology related law, to social issues and related engaging discussions. I was very impressed with both the depth and breadth we covered in a one-week period without feeling overwhelmed. [53]

Another student found the exclusively hosted visit to the Supreme Court on the final day of the tour a highlight:

> Getting to visit the Supreme Court of Singapore and subsequently getting to sit in the judge's chair was an absolute highlight for me. Not just of the trip, but my entire time in the JD. [54]

IX CONCLUSION

In conclusion, the University of Western Australia's short-term study tour to Singapore exemplifies the value of an immersive exposure to another legal system in preparing future lawyers for a globalised legal environment. By integrating theoretical learning with practical experiences, the program not only enhanced students' understanding of the Singaporean legal system but also fostered critical skills such as cultural adaptability, legal analysis, and cross-jurisdictional competence. The overwhelmingly positive student feedback underscores the tour's success in offering transformative educational experiences and professional insights. This case study highlights the potential for other institutions to replicate and adapt similar programs, contributing to the broader goal of equipping law graduates with the knowledge and skills necessary to navigate complex global legal landscapes.

[53] Written student comment to tour organisers.
[54] Written student comment to tour organisers.

Annexure A: List of Australian Law Schools with Overseas Study Tours

University	Program	Topic/ Course	Destination	Specialised or General[55]
Curtin University	Ghent Summer Program[56]	The program is aimed at students keen on acquiring knowledge and credits in international and European law, and generally at participants eager to gain expertise about the increasingly international world of law and business.	Belgium	General
Swinburne University of Technology	Law, Governance and Culture Study Tour[57]	An immersive introduction into Vietnam's legal culture and its laws.	Vietnam	General
	Law, Governance and Culture Study Tour[58]	An immersive introduction into Indonesia's legal culture and its laws.	Indonesia	General
Murdoch University	International Human Rights Program [59]	Three units – (1) Refugee Law, (2) Legal Protection of International Human Rights, (3) International Human Rights Organisations.	Switzerland	Specialised
	European Summer Law Program[60]	Three units – (1) International Trade Law, (2) Comparative Law, (3) European Union Law.	Italy	Specialised
	Foreign Trade & Customs Law [61]	Three units – (1) International Taxation and/or Export Control & Customs Law, (2) International Trade, (3) International work placement.	Germany Italy	Specialised
	India Immersion Program[62]	An introduction to India's diverse regulatory, business and social impact landscape.	India	General

[55] Denoting focus on a specialised legal field or a general law study tour.
[56] Curtin University, *Ghent Summer Program* <https://www.curtin.edu.au/students/experience/global/study-tours/ghent-summer-program/>.
[57] Swinburne University of Technology, *Vietnam Law, Governance and Culture Tour* <https://www.swinburne.edu.au/life-at-swinburne/study-abroad-exchange/study-tours/law-governance-and-culture-tour/>.
[58] Swinburne University of Technology, *Law, Governance and Culture study tour in Indonesia* <https://www.swinburne.edu.au/life-at-swinburne/study-abroad-exchange/study-tours/indonesia-law-governance-culture/>.
[59] Murdoch University, *International Human Rights Program* <https://www.murdoch.edu.au/schools/law-and-criminology/study/international-programs/international-human-rights-program>.
[60] Murdoch University, *European Summer Law Program* < https://www.murdoch.edu.au/schools/law-and-criminology/study/international-programs/european-summer-law-program>.
[61] Murdoch University, *Foreign Trade & Customs Law* <https://www.murdoch.edu.au/schools/law-and-criminology/study/international-programs/german-foreign-trade-customs-law-program>.
[62] Murdoch University, *India Immersion Program* <https://www.murdoch.edu.au/schools/law-and-criminology/study/international-programs/india-immersion-program>.

Sydney University[63]	Shanghai Winter School	An intensive three-week introduction to Chinese laws and legal systems, while experiencing life in Shanghai.	China	General
	Indian Immersion Program	Seminars, lectures, presentations and field visits with leading scholars, legal practitioners and law students in India.	India	General
	Southeast Asia Field School	An intensive two-week course, taught in English, students visit Malaysia and Indonesia for one week each.	Malaysia Indonesia	General
	Himalayan Field School	Conducted over two weeks in Nepal, this unit explores the fascinating and difficult problems of development and human rights confronting a developing country.	Nepal	Specialised
	Kyoto and Tokyo Seminars	The Kyoto and Tokyo seminars offer a unique opportunity to study Japanese Law on an intensive basis in global and socio-economic context.	Japan	General
	Sydney Law School in Europe	A selected range of elective units of study in prestigious locations in Europe.	Europe	General
	Climate and Environmental Law in the Pacific	This program focusses on land, resources, climate and environmental law issues in the Pacific.	Vanuatu	Specialised
	Philosophy of Law	A Jurisprudence unit of study offered by Sydney Law School, taught at the historic Humboldt University Law School.	Germany	Specialised
	Principles of Oil and Gas Law	Examining the distinctive legal issues presented by oil and gas exploration and production and examining the legal and regulatory responses of oil producing states.	Norway	Specialised
	Media Law: Comparative Perspectives	The course features guest lectures by leading British and European academics and practitioners specialising in media law.	United Kingdom	Specialised

[63] Sydney University, *Offshore Study Opportunities* < https://www.sydney.edu.au/law/study-law/international-opportunities/offshore-study-opportunities.html#:~:text=Shanghai%20Winter%20School,while%20experiencing%20life%20in%20Shanghai>.

	Advanced Obligations and Remedies	The aim of this unit is to explore contentious issues arising in the law of civil obligations and remedies in a broad legal context. It will build on the fundamentals in the areas of torts, contracts and equity, from a comparative perspective.	United Kingdom	Specialised
University of New South Wales	US Legal Systems[64]	The course will focus principally on the study of the federal and state legal systems within the United States of America.	USA	General
	Chinese Legal System[65]	This is a two-week intensive course held in Shanghai each year. It provides an introduction into the legal system of the People's Republic of China with particular reference to modern developments in commercial law and other important legal areas.	China	General
	China International Business and Economic Law[66]	This course provides an introduction to the legal system of the People's Republic of China. Emphasis is placed on modern developments in China's commercial law, international business and economic law, and other important legal areas.		General
	Law and Technology: Comparative Perspectives in Zurich[67]	This course will explore the interaction between law and modern technology. It will introduce students to the potentially problematic relationship between legal rules and technological change, and then begin to explore real substantive problems at the interface between them.	Switzerland	Specialised
	Women and Gender Law in Pune, India[68]	This course considers the role of the law in creating and perpetuating gender inequalities	India	Specialised

[64] University of New South Wales, *Handbook 2024, US Legal Systems (Berkeley)* <https://www.unsw.edu.au/law-justice/student-life/international-opportunities/overseas-electives>.
[65] University of New South Wales, *Handbook 2024, Chinese Legal System* <https://handbook.unsw.edu.au/undergraduate/courses/2025/LAWS3123>.
[66] University of New South Wales, *Handbook 2024, China International Business and Economic Law* <https://handbook.unsw.edu.au/undergraduate/courses/2025/LAWS3345>.
[67] University of New South Wales, *Handbook, Law and Technology: Comparative Perspectives* <https://handbook.unsw.edu.au/undergraduate/courses/2025/LAWS3346>.
[68] University of New South Wales, *Handbook, Women and Gender Law* <https://handbook.unsw.edu.au/undergraduate/courses/2025/LAWS3445>.

	Child Rights Comparative Clinical Program in Goa, India[69]	The purpose of the program will be to expose students from both institutions to new legal, political and cultural paradigms through the prism of international and comparative perspectives on children's rights and family law.		Specialised
	Pacific Islands Laws in Vanuatu [70]	An introduction to the merging legal systems of the Pacific Islands states, including issues of constitutional development, the recognition and application of customary law, modern and traditional legal institutions, land tenure regimes, personal law, and the legal recognition of economic activity, such as international trade, foreign investments and national resources projects.	Vanuatu	General
Australian National University	Bhutan Summer School[71]	Special exposure to unique aspects of Bhutanese society and its legal system through field trips to Thimphu, the capital city, and Punakha, the previous seat of government	Bhutan	General
Australian Catholic University	Endeavour EU study tour[72]	Two units: (1) Law, Religion and Society, (2) Human Rights Advocacy	Rome	Specialised
University of Wollongong	Legal Study Tour in Thailand[73]	Comparative Law: The program will include lectures on a variety of topics such as Thai Business Law, Thai Public Law, and International Law and the Thai Legal System, alongside firm and court visits, engagement with local students, and sightseeing excursions.	Thailand	General

[69] University of New South Wales, *Child Rights Comparative Clinical Program* <https://handbook.unsw.edu.au/undergraduate/courses/2025/LAWS3549>.
[70] https://handbook.unsw.edu.au/undergraduate/courses/2025/LAWS3541
[71] Australian National University, *Bhutan Summer School - Jigme Singye Wangchuck (JSW) School of Law* <https://law.anu.edu.au/bhutan-summer-school-jigme-singye-wangchuck-jsw-school-law>.
[72] Australian Catholic University, *Study Law Overseas* <https://www.acu.edu.au/study-at-acu/study-overseas/study-tours-and-short-programs/study-law-overseas>.
[73] University of Wollongong, *Legal Study Tour in Thailand* <https://www.uow.edu.au/business-law/current-students/study-exchange-and-overseas-opportunities/faculty-led-studytours/#:~:text=Legal%20Study%20Tour%20in%20Thailand&text=The%20program%20will%20include%20lectures,local%20students%2C%20and%20sightseeing%20excursions>.

Royal Melbourne Institute of Technology	Centre for Innovative Justice Study Tour[74]	Exposes students to Courts, programs and the people who run them	New Zealand	Specialised
	Business and Law Beyond Borders[75]	Focus on business and legal global issues	Vietnam	General
Monash University	Monash Law International Study Programs – Prato[76]	A range of potential units: (1) Global issues in criminal law and justice, (2) lobal issues in international trade and finance, (3) Global issues in human rights and public law, (4) lobal issues in private and commercial law, (5) International Trade Law	Italy	Specialised
	Monash Law International Study Programs - Malaysia[77]	Two units: (1) Public International Law, (2) Environmental issues in economics	Malaysia	Specialised
Melbourne University	Indigenous Law in Aotearoa and Australia[78]	The subject aims to equip students with expert knowledge on current Indigenous legal issues in Aotearoa and Australia, including contemporary treaty debates and the influence of Indigenous law in settler legal systems.	New Zealand	Specialised
	Law and Legal Practice in Asia[79]	The aim of this subject is to provide students with an enhanced understanding of law and legal practice in an Asian jurisdiction through intensive seminars, supervision of a research project on an Asian jurisdiction, and legal experience in an approved role in an Asia-based workplace setting.	Indonesia	Not specified

[74] Royal Melbourne Institute of Technology, *Centre for Innovative Justice Study Tour* <https://cij.org.au/students/study-tour/>.
[75] Royal Melbourne Institute of Technology, *Study Tours* <https://www.rmit.edu.au/about/schools-colleges/college-of-business-and-law/international/global-opportunities/study-tours>.
[76] Monash University, *Monash Global Campus Intensive in Italy* <https://www.monash.edu/study-abroad/outbound/monash-led-programs/monash-global-campus-intensives/mgcis-in-italy>.
[77] Monash University, *Monash Global Campus Intensive in Malaysia* < https://www.monash.edu/study-abroad/outbound/monash-led-programs/monash-global-campus-intensives/mgcis-in-malaysia>.
[78] Melbourne University, *Global and Interstate Subjects* <https://law.unimelb.edu.au/students/jd/enrichment/global-learning-opportunities/global-subjects#LAWS90214>.
[79] Melbourne University, *Global and Interstate Subjects* <Melbourne University, Global and Interstate Subjects <https://law.unimelb.edu.au/students/jd/enrichment/global-learning-opportunities/global-subjects#LAWS90214>.

PERFORMING COMMUNITY IN AN INTERNATIONAL LAW CLASSROOM

MOSTAFA HAIDER *

This article explores the challenges of teaching community in an international law classroom. It does this in the context of a core assessment component of a Public International Law unit, namely reflective participation in classroom discussion, that the author teaches at Curtin Law School. The article highlights the importance of students' engagement in class discussion and introduces a performance analysis to the structure of in-class discussion. It locates community as an open, malleable and contested theme in international legal scholarship. While the article engages with selected readings on community from a Public International Law unit, it argues that students and teachers experience community anew every time they perform it in a classroom. It reformulates community as a political sublime by recourse to a performative lens to class participation and reflects on the hope that this reformulation generates for international law students of today and global policymakers of tomorrow.

I INTRODUCTION

In keeping with the theme of the 2024 *Western Australian Teachers of Law* ('WATOL') conference, this article explores the thinking about and practice of community in my own teaching. This article asks: How does the idea of community fare in my Public International Law class that I have been teaching now for some years? It considers the many facets of community in international law and in the teaching of it. It particularly looks at the remaking of community through the mundane discussion of it in a Public International Law (hereafter 'international law') classroom.

Community is, like most ideas and themes in international law, open to diverse interpretations.[1] This openness is often due to international law's entanglement with global politics.[2] Much of what students and teachers of international law do, by way of teaching and research, is at once legal and political and often the distinction is not clear.[3] It is hard to engage in international law topics including community without encountering those that are considered political.

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[1] See Parts III and IV for discussions on this.
[2] See Fleur Johns, *Unruly Law: Non-legality in International Law* (Cambridge University Press, 2013) 1.
[3] For analysis of how international law draws distinctions, see David Kennedy, *Of War and Law* (Princeton University Press, 2006).

The article does not, however, attempt to disentangle law from politics to make sense of community. Instead, the article approaches community as a performative sublime in the context of my international law classroom discussion. It argues that classroom discussion often renders community a political sublime which is experienced anew every time students and I perform it. It does this by drawing inspiration from contemporary critique of expertise that combines performance analysis with aesthetic theory. The article suggests that as students and teachers perform community in the classroom, they are more likely to embrace a more context-specific, progressive and egalitarian posture of community than an abstract textual interpretation of and attachment to it.

The article has four substantive parts. First, Part II lays out the settings of an international law class that inculcates an open and reflective debate of international law topics among students. Part III briefly looks at the concept of international community and the inherently contested nature of this concept. Part IV looks at what is at stake in the discussion of community in my international law class, which I frame as community in struggle drawing on Fleur Johns' work. Part V reconstructs community as a performative sublime in the face of the enormous challenges of grasping the struggles and intricacies associated with community. Finally, by way of conclusion, the article reflects further on the hopes of remaking community in an international law classroom and beyond. But before all else, we must understand the basics of the unit and assessment, which will set the scene for the later discussion.

II THE STRUCTURE OF CLASS DISCUSSION IN PUBLIC INTERNATIONAL LAW

I teach Public International Law as a five-week intensive trimester unit at Curtin Law School. This means that all lectures and tutorials are conducted within the first five weeks of teaching. The unit is part of the elective offerings and student numbers typically range between 10 and 20. As a relatively small unit, I have been entrusted with unit coordination as well as all lectures and tutorials of this unit for the past seven years. Currently it has three assessments: reflective participation (assessment 1), presentation on a selected theme of international law (assessment 2) and a research paper on an international law topic (assessment 3).

Assessment 1 has two interrelated parts. Part 1 of assessment 1 comprises individual participation by students in class discussion. Part 2 of assessment 1 comprises a very short written paper based on students' reflections on participation and discussion in tutorial class. The basics of part 1 are that students are required to read a few prescribed readings and then discuss them in class. The readings are predominantly scholarly articles

and book chapters. The discussion of the prescribed reading in the classroom is centred around three general questions, which are as follows:[4]

1. What have you made of the article/book chapter? Explain, in your own words, the key takeaway from each of the readings.

2. Are there any ideas/reasoning/arguments/examples from each of the readings that strike you as particularly interesting? Explain, by reference to the reading, why, in your view, the idea/reasoning/example is interesting.

3. Do you think that the paper is well written and well substantiated? Explain whether or not the author has provided strong evidence to support their assertions and/or argument(s).

Students are expected to structure their reading of the prescribed article/book chapter by recourse to the three questions above which are evidently open and wide. Reading an article/book chapter means having a conversation with the author of the piece. This exercise requires students to continue that conversation with their peers and tutor in class. The three questions, in short, serve as a basis for opening up the conversations with each other in class. The idea is that an open and inquisitive reading and engagement will help to sharpen students' independent thinking and analysis, which will be helpful for both assessments 2 and 3, that is, the presentation and research paper.

Recent scholarship has characterised class participation as among the 'enablers of student academic performance'.[5] That is, that student-centred approaches to learning are key to participation, although there is some critique of centring students too much in the process of learning.[6] This article is not, however, about the pedagogical value of class participation. Suffice to say, class participation as a mode of knowledge production has increasingly been in vogue in recent years.

I have a different pedagogical intuition for the assessment 1 part 1 class discussion. Inspired by an innovative study on law, expertise and performativity,[7] I imagine the classroom more as a theatre and the class discussion as a drama.[8] I am both an actor and spectator in the classroom drama even though formally I play the role of a moderator and marker. Class performances reenact some basic ideas and structures in international law. Thus, a dramatic performance lens better serves the purpose of the assessment 1 class discussion.[9]

It is within this creative and dramatic setting that students and I broach the idea of community. International lawyers use community in both singular and plural sense. In its

[4] The questions are reproduced verbatim from the assessment 1 instructions for students.
[5] Javier Márquez et al, 'Class Participation and Feedback as Enablers of Student Academic Performance' (2023) 13(2) *Sage Open.*
[6] Michael F Mascolo, 'Beyond Student-Centered and Teacher-Centered Pedagogy: Teaching and Learning as Guided Participation' (2009) 1(1) *Pedagogy and the Human Sciences* 3
[7] See Deval Desai, *Expert Ignorance: The Law and Politics of Rule of Law Reform* (Cambridge University Press, 2023) and the discussion in Part V.
[8] There seems to be an increasing appetite in the higher education system to see classroom as a theatre. See, eg, Patrick Sexton, 'Bringing Theatre into the Classroom' (News, 16 March 2021) <https://www.gse.upenn.edu/news/educators-playbook/bringing-theater-classroom>.
[9] Although not about classroom, for an interesting take on this dramatic performance lens, see Danish Sheikh, *Love and Reparation: A Theatrical Response to the Section 377 Litigation in India* (Seagull Books, July 2021).

singular manifestation, international lawyers often refer to the 'international community' and in its plural manifestation, communities of various modes and interpretations are at play in international law. Despite being a ubiquitous concept in international law, the unit does not have a separate topic entitled 'community'. Instead, community remains an overarching theme in international law. The next two parts look at what thinking of community is at work in international law in general and in my teaching of it in particular.

III 'INTERNATIONAL COMMUNITY'

International law textbooks frequently use the term 'international community' without specifying what exactly they mean by it.[10] The same is the case with commentators, including my international law class students, as they often use the term without necessarily clarifying what they mean by 'international community'. Beyond textbooks, international lawyers have written a lot on the topic of 'international community' and debate community in a variety of contexts.[11] I will, however, limit my discussion here mainly to the prescribed tutorial readings for the unit.

As with many ideas in international law, the idea of 'international community' is a contested and controversial one. International lawyer Martti Koskenniemi states that the concept of 'international community' is not without controversy as international lawyers with opposing agenda invoke 'international community' to advance their legal arguments.[12] These opposing postulations of 'international community' are often manifested in the selective invocation of human rights violations and protection by states and other actors with differing agendas.

Some arguments identify 'international community' with the United Nations ('UN') system of an international community of states, where most states are a member and are formally assumed to be equal.[13] The UN is tasked to serve the common interests of all nations.[14] But neither the UN nor statehood necessarily guarantee the kind of protection that one would assume by virtue of being a member state of the UN. The UN can do very little when people become stateless or are denied statehood.[15] In short, the UN, itself a political settlement after

[10] See, eg, Emily Crawford, Alison Pert and Ben Saul (eds), *Public International Law* (Cambridge University Press, 2023); Donald Rothwell et al (eds), *International Law: Cases and Materials with Australian Perspectives* (Cambridge University Press, 3rd ed, 2018). My research about textbooks is not exhaustive. But generally speaking, 'international community' remains more a ubiquitous rather than a well-defined concept in textbooks.
[11] These writings on 'international community' mostly appear in the form of scholarly journal articles. For some representative works, see Georges Abi-Saab, 'Whither the International Community?' (1998) 9(2) *European Journal of International Law* 248; Dino Kritsiotis, 'Imagining the International Community' (2002) 13(4) *European Journal of International Law* 961.
[12] Martti Koskenniemi, 'International Law in the World of Ideas' in James Crawford and Martti Koskeineimi (eds), *The Cambridge Companion to International Law* (Cambridge University Press, 2015) 47, 57–8.
[13] For the limits of the UN on rethinking community, see Pemmaraju Sreenivasa Rao, 'The Concept of "International Community" in International Law and the Developing Countries' in Ulrich Fastenrath et al (eds), *From Bilateralism to Community Interest: Essays in Honour of Bruno Simma* (Oxford University Press, online ed, 2011) 326.
[14] See the preamble to the UN Charter: <https://www.un.org/en/about-us/un-charter/full-text>.
[15] See, eg, David Kennedy, *The Dark Side of Virtues, Reassessing International Humanitarianism* (Princeton University Press, 2004).

the Second World War, and its affiliate judicial and other organs, often operates more as a moral rather than a legal authority.

The reading list in the Public International Law unit is dynamic and gets restructured roughly every three years. Nonetheless, weekly readings I have included in the unit are somewhat critical of the idea of an international community. The invocation of a moral authority via international community often serves to embolden the claims of international civil society, itself a contested theme in social science and humanities.[16] But there are other ways to envision community in international law, to which we turn now.

IV COMMUNITY IN INTERNATIONAL LAW

While 'international community' remains a contested theme in international law, it is often invoked in situations of conflicts and crises. Most recently, Fleur Johns, in the 9th TMC Asser Lecture, offered a rethinking of community in international law based on some recent International Court of Justice decisions ('ICJ'), most notably *The Gambia v Myanmar* and *South Africa v Israel*.[17] At the heart of Johns' inquiry into community is a shift from the universalising conceptions of common interest to a more specific meaning of connection and common interest that are particular to a given dispute. Johns suggests that community frequently comes to be a focal point when there is a struggle involved.[18] As in Johns' paper, the history of anti-colonial struggles was the main connecting thread for The Gambia and South Africa to institute cases on behalf of the Rohingyas and Palestinians. In other words, the struggling communities of Rohingyas in Myanmar or Palestinians in Gaza were connected with physically and culturally disconnected communities of The Gambia and South Africa by these recent ICJ cases. Johns sees an experimental reconfiguration of 'international community' by the ICJ arising out of these particular claims across struggling communities in the past and present.[19]

While Johns reinterprets ICJ's remaking of 'international community' via a specific set of disputes tied with a specific set of struggles, I put greater emphasis on the struggles of diverse communities seeking redress in international law. Put differently, it is this sense of communities in struggle that is at stake in both my teaching and scholarship in international law. This focus on community in struggle is demonstrated in my choices of readings assigned to students. The prescribed tutorial readings focus on, among other, feminists, Indigenous people and the third world people – all of whom have had their own sets of struggles, often manifested in the shadow of international law and politics.

[16] Gayatri Chakravorti Spivak, 'Scattered Speculations on the Subaltern and the Popular' (2005) 8(4) *Postcolonial Studies* 475, 481–2.
[17] Fleur Johns, *Connection in a Divided World: Rethinking Community in International Law* (9th Annual TMC Asser Lecture, Asser Press, 2024).
[18] Ibid 38. For an example of international legal arguments as a terrain for struggle, see David Kennedy, *A World of Struggle* (Princeton University Press, 2016).
[19] Johns (n 17) 44.

As alluded to in the previous part, I sidestep the intellectual quandary of the best ways to reinterpret 'international community'. It is perhaps less fraught to imagine community in the temporal and contextual settings of a particular struggle. For example, as we annually gather around WATOL, we too struggle to put together the past, present and future of legal education in Western Australia. Even the local jurisdictions evoke community in this precise sense of struggle and vulnerability.[20]

However important or exciting it might seem to explore communities in struggle, it is also impossible to really grasp the overwhelmingly diverse aspirations of these communities, alleged legal violations of which sometimes feature in the form of international legal disputes before international courts such as the ICJ. To tackle this fear and fragility of our grasps, I suggest that we approach the idea of community as a performative sublime. The next part explains what I mean by community as a performative sublime.

V COMMUNITY AS A PERFORMATIVE SUBLIME

Let me briefly explain what I mean by community as a performative sublime.[21] The idea of community, as the foregoing discussion suggests, is often heavily contested. What counts as an 'international community' or an Australian community is easy to tackle if we consider them from a legal positivist perspective. An 'international community' from a legal positivist standpoint can be seen as the community of nation states serving common interests of global peace and security. Similarly, an Australian community can be seen as a community of citizens defined by their common allegiance to Australia.

As easy as it might seem, that is not how communities in struggle view their membership in the legal architecture of things. People without a membership of a legally recognised state, such as Palestinians and Rohingyas or people who have been denied their right to live in their ways of living despite having formal membership within a given community, such as First Nations Peoples in Australia, may not to feel like they belong to their assigned national and 'international community'. In short, formal granting of membership to a community does not necessarily end the struggles of a group of members of a given community.

Under conditions of these struggles, I suggest that we pay attention to the interplay between knowledge (or lack of it) and action. Students not only prepare for the readings but also perform in the classroom and hence they do both thinking while preparing and performing while participating in the class discussion. This interplay of knowledge and action gets particularly interesting when my students and I imagine and act upon a sense of community in struggle in the classroom. As students of international law debate international law topics

[20] See, eg, Department of Communities, Government of Western Australia (Web page, 29 January 2025) <https://www.wa.gov.au/organisation/department-of-communities>.

[21] I develop this idea of community as a performative sublime drawing on Deval Desai, *Expert Ignorance: The Law and Politics of Rule of Law Reform* (Cambridge University Press, 2023). Connecting the Kantian concept of sublime with that of performance analysis, Desai constructs the rule of law expertise as a performative sublime. Although Desai suggests greater utility of performative sublime for expert projects of institution building, I found his innovative framework equally useful in imagining community in struggle.

in the classroom, they often find it almost impossible to imagine a neatly defined international or national community in the face of the deconstruction of community by differently situated groups of that community. Hence, students begin to engage with these struggles of a real and imagined community and almost always enact a provisional community by both accommodating and rejecting this or that claim of the communities in struggle. An 'international community' or for that matter any other community, in other words, is a community that is enacted anew every time students and teachers try to imagine it, shifting the conception from one domain to another as the topic under discussion demands.

This dynamic of knowledge and action are what make and unmake a community. Based on our sense of connections and commonalities, participants in the classroom imagine the experiences of Palestinians or the Rohingyas or the First Nations Peoples. It is these dynamics that enable us to claim or reject a part of us in the neighbouring community, professional community, national community, regional community and so on. But there is also an element of incomprehensibility for us to imagine the rights and freedoms of a community that we may not belong to and yet a community is made not only by its own members but also by outsiders. It is this sheer incomprehensibility of our imagination and action or 'the fragilities of our grasp of experience'[22] or the sublimity of enacting communities in struggle that I get to experience in the classroom discussion.

At the core of this methodological gesture is to take student performance as seriously as their thinking.[23] The most important aspect of the performativity of the community is that it merges audience with actor. As students think and act in the classroom as a listener and speaker, they continuously shift their roles. They also importantly bring up their own sets of convictions and emotions, often a fusion of the personal and political. In reflecting on the idea of community, students and myself are thus cast as both knowledgeable actors and ignorant audience/spectators.

Recognising that class participants, including myself, do not really know how to comprehend a community in struggle that is not our own does not actually shut the door for rethinking the struggles of that community. Rather it opens up possibilities to redirect our attention to better connect with communities in struggle and with their calls for basic freedoms and equality. In short, a constant search for grasping the set of interests of communities in struggle despite our limitations is what makes community a political sublime. When we approach this political sublime via class participation, community comes to be a performative sublime.

In a theatrical performance of classroom, I get glimpses of some opinions and expressions, approval and disapproval, worries and reflections. Students thinking with the authors of weekly readings and arguing for and against the author joins the imagined communities in

[22] Michael Shapiro, *The Political Sublime* (The Duke University Press, 2018) 4.
[23] This methodological gesture is different to 'active learning' designed to enhance student learning outcome: Paul Baepler et al (eds), *A Guide to Teaching in the Active Learning Classroom: History, Research, and Practice* (Routledge, 1st ed, 2016). For methodologies of law as performance in legal research, see Sean Mulcahy, 'Methodologies of Law as Performance' (2022) 16(2) *Law and Humanities* 165.

struggle, but they also begin to imagine a community that is not quite what the weekly readings and their authors construct. Looking at community through the spectacle of class participation and performance opens all kinds of interpretive possibilities.[24] It becomes possible not only to create and recreate but also cancel out communities in struggle. Interestingly, as much as speaking in the classroom enacts some versions of communities, so do silences, approval, stare and so forth. By recourse to a performance analysis, it is possible to make more than one meaning out of many small bits of performances. In short, a performance lens helps make us more attentive and open to, rather than dismissive of, diverse ways of looking at a community and its struggles.

Encountering classroom discussion of community in the mode of performative sublime has taught me two particularly important lessons.

First, class performance in the above mode creates a scope of 'rethinking' representation and perhaps fostering democracy in the classroom.[25] Even though students get to engage with particular struggles of communities via their performances in classroom, it is not going to be an overstatement that some of these students are going to be making choices in their professional lives that will have an impact on the continuing struggles of various communities. These students' thoughts and actions will not only be influenced by their own personal and political positions but also by their surroundings and importantly, by the discussions that they have had early on in their lives.

Second, by performing community in classroom, everyone gets to revisit their own sense of hierarchy that often informs our own place and position in a given society. I am glad that many students quickly recognise their own privileges in their local, national, regional and international settings. They also gradually recognise that rights are not automatically conferred upon a struggling community. These have to be fought for, and often the voices that are at the forefront of these fights may present to some as too provocative and perhaps controversial to work to achieve their goals.

VI CONCLUSION

A performative lens to my classroom discussion gives me hope that my students will help make a better community than the one that they currently live in. After all, my own professional community, that is, the community of teachers, is also a community of hope.[26] While the spirit of community is the coming together of people of disparate interests, the task becomes challenging when the small community of the classroom tries to imagine and enact a community not their own. But there is an interesting side to this discussion as well. It

[24] This is a more mundane interpretive take of communities in international law than the textual interpretation of it. See, eg, Michael Waibel, 'Interpretive Communities in International Law' in Andrea Bianchi, Daniel Peat, and Matthew Windsor (eds), *Interpretation in International Law* (Oxford University Press, 2015) 147.
[25] The sense of democracy that I have in mind comes from a close reading of Jacques Rancière, *On the Shores of Politics,* tr Liz Heron (Verso Books, 2021).
[26] bell hooks, *Teaching Community: A Pedagogy of Hope* (Routledge, 2004).

teaches us the power of ideas and imagination and of how openness to ideas can generate a sense of hope, even if momentarily, in the classroom.

As discussed in Part IV, Johns sees egalitarian possibilities of community-making out of the ICJ's recent engagements. I too seek such possibilities by introducing students to communities and perspectives that they might have not otherwise explored before. Weekly readings in which students are required to participate are an attempt to connect with voices that are otherwise marginal or poorly understood in the mainstream legal and political scene. We cannot foster a sense of community – local, national or international – unless and until we are actively listening to and engaging with communities that are often sidestepped as being political and/or marginal.

WHY DO WE NEED LEGAL ACADEMICS?

THE PPSA TEST

HARRISON CLARKE & SAGI PEARI *

Legal academics serve an important and crucial function in the role of teaching and engaging in research within the legal field. Despite this it has been argued that this role is redundant and simply unnecessary – legal academics are a dinosaur that refuse to become extinct. This article presents and criticises this assertion of academics as useless, with reference to the Personal Property Securities Act 2009 (Cth) ('PPSA') as a litmus test to determine if there is some truth to the unimportance of legal academics. This article references the fundamental role of key academics in leading the process of reform regarding personal property securities in Australia. It provides a comparison between PPSA publications of academics against legal practitioners demonstrating the narrow scope of practitioners in comparison. Finally, discussing the centrality of academics in the teaching of the PPSA in higher education institutions. The article rejects the 'useless theory' of academics and reasserts the importance of legal academics as both irreplaceable agents of change and educators.

I INTRODUCTION

This article examines a provocative thesis about the possible redundancy of legal academics. First, it introduces the thesis which challenges the role of legal academics as those best equipped with the required skills and knowledge to teach and research law. Secondly, the article focuses on the *Personal Property Securities Act 2009* (Cth) ('PPSA') as an excellent candidate to serve as a litmus test to the 'uselessness' thesis. After introducing the PPSA and explaining its critical role in Australia, the article argues that the assessment of the PPSA's practice after the introduction of the Act in 2009 opposes the 'uselessness' thesis – legal academics are not yet replaceable.

II THE APPARENT APPEAL OF THE 'USELESSNESS' THESIS

It has been provocatively argued that nothing negative would occur in an imaginary world which has no legal academics.[1] The 'uselessness' thesis has historical, practical and

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[1] Mathias M Siems, 'A World Without Law Professors' in Mark Van Hoecke (ed), *Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline* (Hart Publishing, 2013) 71.

conceptual dimensions. Thus, the undeniable *historical* fact is that once upon a time, there were legal practitioners who led the academic discipline of law.[2] At the time the first university was founded in Bologna in the 11th century, legal practitioners dominated the legal academia by teaching and researching law.[3] The role of practitioners remains central today as they continue leading clinical/practical aspects of legal education and are significantly involved in teaching the content across universities.[4] Emancipating the field from the hands of academics and giving it to lawyers would mean returning the field to its historical origins.

Next, *practically*, legal practitioners appear to be the best equipped with the skills and knowledge to tackle the complex content intricacies and the multifaced twisting of legal doctrine. If one indeed takes seriously the argument that the doctrinal inquiry sits at the very heart of law as a discipline,[5] lawyers have a clear advantage over academics to lead this discipline. They are the ones who spend their days in courts, arbitration tribunals and dispute resolution negotiations. By facing the current legal reality, practitioners experience the law in practice, acquiring first-hand understanding of it. They are positioned on the front lines – using and applying the law. Put simply, lawyers are the best contingent to teach and research law in a way that would not detach the field from social reality. Their first-hand experience empowers them to communicate reliable, accurate and comprehensive legal knowledge and skills to their students.

Academics often point to the advantage of scholarly inquiry when it comes to researching and teaching theory.[6] So, *conceptually*, the counterargument says that academics are superior to practitioners in tracing the underlying rationale of the legal doctrine, and explaining the normative underpinnings of apparently unrelated legal concepts, principles and rules. The significance of theoretical inquiry should not be underestimated. Theory informs practice.[7] By revealing the underlying nature of legal rules, the theory shapes future legal settings. It provides an invaluable basis for qualification and adaptation of the traditional legal doctrine in light of such acute contemporary challenges as globalisation, technological progress, cross-border commerce and sustainability.[8] This indeed explains why – in contrast to a popular call to increase the 'practical' aspects of teaching law[9] – some academics have made a diametrically opposite suggestion, characterising legal education as requiring 'further theorising'.[10] In other words, we need legal academics because of theory.

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[2] Ibid 73.
[3] Ibid 74.
[4] Ibid 74–5.
[5] See, eg, Richard Posner, *Divergent Paths: The Academy and the Judiciary* (Harvard University Press, 2016) 3–4; Andrew Burrows, 'Judges and Academics, and the Endless Road to Unattainable Perfection' (2021) *The Lionel Cohen Lecture* 1, 5.
[6] Siems (n 1) 81. See also Geoffrey Samuel, 'What is the Role of a Legal Academic? A Response to Lord Burrows (2022) 3(2) *Amicus Curiae* 305, 305.
[7] See, eg, Ernest Weinrib, *The Idea of Private Law* (Harvard University Press 1995) 8.
[8] See, eg, Sagi Peari, *The Foundation of Choice of Law: Choice & Equality* (Oxford University Press) ch 6.
[9] Harry T Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession* (1992) 91(1) *Michigan Law Review* 34.
[10] Ernest J Weinrib, 'Can Law Survive Legal Education' (2007) 60(2) *Vanderbilt Law Review* 401, 405. See also, Oliver Wendell Holmes, 'The Path of the Law' (1987) 10 *Harvard Law Review* 457 in David Kennedy and William

However, even the 'theory' counterargument can easily be rebutted by the 'uselessness' thesis. The supporters of this thesis do not challenge the irreplaceability of the theory. They do argue, however, that a close look at the theoretical teaching and scholarly writings of law frequently involve references to various 'law & x' fields, challenging the conceptual distinctiveness of law as an independent discipline.[11] By analysing legal doctrine through the conceptual lens of such fields as history, sociology, anthropology, economics and political science, legal theory inherently collapses into foreign disciplines. This suggests that the theoretical inquiry of law could be taken from the hands of legal academics, delegating the task to academics of other fields. Tackling the interdisciplinary angles of legal doctrine could be shifted to 'other schools or faculties of the university',[12] who could perform the task of researching and teaching 'law & x' areas better compared to *legal* academics.[13] In other words, even the conceptual counterargument apparently leaves the 'uselessness' thesis intact.

III PPSA: THE NATURE, SIGNIFICANCE AND CENTRALITY OF LEGAL PRACTITIONERS

Coming into force in 2012, the PPSA represents one of the cornerstones of commercial practice in Australia. The familiar example of a 'mortgage' would perhaps be the easiest way to explain nature of the PPSA in a single sentence. A 'mortgage' under the PPSA applies to all types of tangible and intangible property which is not immovable property (eg, land, houses, and apartments are examples of immovable property). Indeed, there is a limited number of times that an individual can 'mortgage' their immovable property as a security for loan repayment. Financial institutions are often reluctant to take 'second in line' mortgages due to the associated risks. So, the PPSA allows us to extend the 'mortgage' rationale to all other types of present and future proprietary assets, called 'personal property'. These include such items as goods (eg, equipment, livestock and business inventory), bank accounts, intellectual property (such as patents and trademarks), licenses, financial property (such as stock, bonds and other types of securities) and even future income.[14]

A simple loan agreement involving a debtor and a creditor epitomises the operational force of the PPSA. A creditor, usually a financial institution, requires a debtor to provide some type of asset such as inventory, office equipment or future income to serve as a 'security' of their obligation towards the creditor – the loan repayment. That security is the 'peace of mind' of the creditor which serves as an important precondition to the loan being approved. The advances of technology with respect to a wide variety of proprietary assets that a business

W Fisher (eds), *The Canon of American Legal Thought* (Princeton University Press, 2018) 19; Mary Keyes and Graeme Orr, 'Giving Theory "a Life": First Year Student Conceptions of Legal Theory' (1996) 7(1) *Legal Education Review* 31.

[11] See eg Brian H Bix, 'Law as an Autonomous Discipline' in Mark Tushnet and Peter Cane (eds), *The Oxford Handbook of Legal Studies* (Oxford University Press, 2005) 975.

[12] Siems (n 1) 77.

[13] Ibid 83.

[14] *Personal Property Securities Act 2009* (Cth) s 10 ('PPSA').

could potentially use as a security facilitates commercial activity. By supporting a business's ability to raise capital, the PPSA constitutes an important aspect of the modern economy.

Furthermore, the PPSA extends far beyond the paradigmatic example of loans and debts. The most central provision of the PPSA – section 12 – says that the PPSA applies to any transaction and commercial dealing which in 'substance' follows the underlying 'mortgage' structure for personal property. The idea is to assess the very nature of each commercial dealing and consider whether it in 'substance' or effectively represents a situation when a debtor provides a creditor with a piece (or pieces) of personal property to secure their obligation towards a creditor.[15] While the commercial actors can title a given transaction in different ways, section 12 denies formal labeling by requiring a careful 'substantive' assessment of the underlying agreement between the parties and their interaction.

The broad scope of the 'substance' test set out in section 12 explains why the PPSA applies to a wide range of commercial and consumer transactions which go beyond the classical example of a loan agreement. These include:[16]

- Loans;
- A purchase of goods when the agreement between parties says that the buyer will keep ownership of the goods until the full repayment of the purchase price – these are 'reservation of title' agreements;
- Many leases of personal property, especially leases that last for more than 2 years;
- Consignments – such as the typical contractual arrangement between a retail store and a distributor/importer according to which the former operates as an agent of the latter;
- Hire purchase arrangements – such as a typical agreements under which a person has the option to purchase a vehicle at the end of a lease period; and
- Even ordinary consumer transactions made outside of retail stores (such as transactions made through the 'Gumtree' online platform) that involve a value of more than $5,000.

The wide range of relevant transactions explains the central role of the PPSA's online federal registration platform – the Personal Property Securities Register ('PPSR').[17] If a piece of personal property in 'substance' serves as a security of an obligation, the transaction must be properly registered on the PPSR website. The buyers and renters must check the status of the personal property items they are considering purchasing or hiring. Failure to follow the PPSA's provisions may lead to significant losses of property and money.[18] Not surprisingly, the PPSA has received much attention in commercial practice. The statistics indicates that millions of Australian businesses used the PPSA in the first quarter of 2024,[19] demonstrating its paradigmatic centrality for the Australian legal and economic landscapes.

[15] Ibid s 12.
[16] Ibid ss 10, 12(2) and 47. For further discussion of these issues, see Richard Winter and Sagi Peari, 'PPSA and You: A Short Guide to the Personal Property Securities Act 2009 for the Perplexed' (2022) 49(2) *Brief* 28.
[17] See <https://www.ppsr.gov.au/>.
[18] See, eg, *Gold Valley Iron v Ops Screening and Crushing Equipment* [2002] WASCA 134; *Power Rental v Forge Group Power* [2017] NSWCA 8.
[19] See <https://www.afsa.gov.au/about-us/statistics/ppsr-quarterly-statistics>.

At first glance, a review of the practice of the PPSA supports the 'uselessness' thesis. The Act contains 400 pages of more than 300 provisions, representing a highly sophisticated and technical piece of legislation. The provisions cover such issues as registration requirements on the PPSR database for various types of personal property,[20] a complex enforcement mechanism[21] and provisions concerning the interaction between the PPSA and insolvency/bankruptcy situations.[22] This high level of technicality and detail has provided fertile ground for doctrinal publications authored by legal practitioners, elaborating on the operation of the legal doctrine and commenting on the case law developments.[23] Lawyers write textbooks on the PPSA, publish articles and teach it in law schools.

Furthermore, practitioners also seem to be instrumental to the PPSA reform. In 2015, after a 5-year statutory review of the PPSA, Bruce Whittaker released the 'Whittaker Report' offering more than 100 suggested amendments to the existing legislative framework.[24] Whittaker is one of Australia's leading experts in finance law, working as a partner in the banking and finance departments at the law firm Ashurst.[25] The dramatic significance of the PPSA in daily commercial practice and its technicalities explains the inherent interest of practicing lawyers in the exploration of the PPSA's doctrine.

Yet, the ensuing section challenges the application of the 'uselessness' thesis to the PPSA context. It considers the following three main points: (1) the dramatic role that legal academics played in the successful reformistic efforts leading to the introduction of the PPSA in Australia in 2009; (2) an examination of the PPSA's theory, demonstrating that it does not necessarily trigger an interdisciplinary inquiry, and (3) consideration of the post-2009 PPSA experience, suggesting that legal academics play a dominant role in the PPSA's teaching, writing and reformistic efforts to improve the law.

IV CHALLENGING THE USELESSNESS THESIS

A Academics Stood Behind the 2009 PPSA Reform

Intriguingly, the Australian version of the PPSA was modelled on the related legislative acts in the following Canadian provinces: Saskatchewan, Alberta and British Columbia.[26] Often referred to as one of the principal figures in leading PPSA legislative projects in Canada,

[20] PPSA (n 14) ch 5.
[21] Ibid ch 4.
[22] Ibid ch 8.
[23] See, eg, Linda Widdup, 'Function, Form, Fixed, Floating and Forge: Filtering Out Pre-PPSA Concepts in a Post-PPSA World (2019) 47(6) *Australian Business Law Review* 405; Matthew Broderick, 'PPSA and Construction Law' (2013) 29(4) *Building and Construction Law Journal* 298.
[24] Bruce Whittaker, *Review of the Personal Property Securities Act 2009* (Final Report, February 2015). See also Law Council of Australia, *Review of the Personal Property Securities Act 2009* (Report, December 2023).
[25] University of Melbourne Law School, *Bruce Whittaker* (Web Page) <https://law.unimelb.edu.au/about/staff/bruce-whittaker>.
[26] Anthony Duggan, 'The Australian PPSA from a Canadian Perspective: Some Comparative Reflections' (2014) 40(1) *Monash University Law Review* 59.

Professor Ron Cuming of the University of Saskatchewan had played the key role in drafting the legislative acts in those Canadian provinces.[27]

While the process of law reform in Australia leading to the introduction of the PPSA in 2009 was a gradual one,[28] it was Professor Cuming's model of the PPSA which ultimately prevailed and was adopted in Australia. Led by Professor David Allan of Bond University, the reformistic efforts led to the creation of a PPSA draft bill, known as the *Bond Bill 2002* (Cth).[29] Professor Allan was further instrumental in promoting the PPSA reform, his efforts are attributed to have inspired the release of an options paper in 2006 by the Standing Committee of Attorney's-General to review the law on personal property securities in Australia.[30] This was followed by the eventual formation of the *Personal Property Securities Bill 2008* (Cth), and the PPSA in 2009.[31] Inspired by Professor Cuming's vision and Professor Allan's instrumental efforts, the Australian PPSA in many ways epitomises a product of academic creation.

The dramatic role played by academics in the origination and facilitation of the PPSA in Australia aligns with the broader notion about the role of legal academics as agents of social change in society. Indeed, legal academics do not just produce scholarly outputs and teach students, but also lead societal change by standing at the very forefront of the reformistic efforts across jurisdictions. The academics perceive their role as the best equipped to flesh out the conceptual underpinnings of the legal doctrine, facilitate an internal coherency in law and address the above-mentioned acute challenges of globalisation, technological innovation, sustainability, and cross-border commerce. Indeed, the lessons of the recent decades demonstrate the profound impact of legal scholars on the development of such areas as criminal law,[32] administrative law,[33] and the law of unjust enrichment.[34] Academics lead reforms in both common law and civil law jurisdictions.[35] From this perspective, the academically led reforms of the PPSA is not an exception, but rather follows the broader vision about the critical public role of legal academia in improving the law to meet the ever-evolving needs of society.

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[27] Roderick J Wood and Ron C C Cuming, *Handbook on the Saskatchewan Personal Property Security Act* (Law of Commission of Saskatchewan, August 1987); University of Saskatchewan, *Ron C C Cuming* (Web Page) <https://law.usask.ca/people/emeriti/ron-cc-cuming.php>.
[28] See, eg, Law Council of Australia, *Report on Fair Consumer Credit Laws* (1972).
[29] David E Allan, 'Uniform Personal Property Security Legislation for Australia - Introduction to the Workshop on Personal Property Security Law Reform' (2002) 14(1) *Bond Law Review* 25. For background of Bond Bill, see *Bond Law Review's* special issue on 'Proceedings of a Workshop on Personal Property Security' (2002) 14(1).
[30] Craig Wappett et al, *Review of the Law on Personal Property Securities: An International Comparison of Personal Property Securities Legislation* (July 2006).
[31] See, eg, Anthony J Duggan and Jacob S Ziegal, *Secured Transactions in Personal Property: Cases, Text and Materials* (Emond Publishing, 5th ed, 2018).
[32] William Twining et al, 'The Role of Academics in the Legal System' in Mark Tushnet and Peter Cane (eds), *The Oxford Handbook of Legal Studies* (Oxford University Press, 2005) 927.
[33] Warren Swain, 'Unjust Enrichment and the Role of Legal History in England and Australia' (2013) 36 *University of New South Wales Law Journal* 1030, 1039.
[34] See, eg, Sagi Peari, 'Academics and Legal Change: Birks, Savigny, and the Law of Unjust Enrichment' in Warren Swain and Sagi Peari (eds), *Rethinking Unjust Enrichment: History, Sociology, Doctrine and Theory* (Oxford University Press, 2023).
[35] Thus, for example, Twining et al (n 32) 936 commented on the role of legal academics in civil countries as exerting 'enormous influence on the law-making process, be it statutory or judicial'.

B The PPSA Theory is Still a Legal Theory

Lawyers and academics both have an interest in the law; however, their approaches differ immensely. On the one hand, lawyers are concerned with practice and using the law as it stands, whereas legal academics are more concerned with understanding the law, why it is the way it is and how can it be modified or improved considering the underlying normative underpinnings. It is their position as academics which gives them valuable insight and deep understanding as to the theory behind the law. Academics look at society as a whole, twisting and analysing the multifaced dimensions of the legal doctrine,[36] which strongly supports the point about their irreplaceable nature in researching and teaching law.

As we have seen, the supporters of the 'uselessness' thesis have referred to the centrality of the interdisciplinary perspectives as something that undermines the internal intelligibility of the law as an autonomous discipline. Legal theory does not need to be 'legal'. However, a close look at the PPSA's conceptual writings reveal the centrality of legal perspective. Without trying to discard the significance of an interdisciplinary outlook, the dominant theoretical framework of the PPSA (and related personal property security legislative provisions across jurisdictions) remains *legal*.[37]

Thus, fundamentally, the structure and operational mechanics of the PPSA are based on an agreement between a creditor and a debtor. It is, for example, a loan agreement which sets out the parties' rights and duties according to which the parties contractually agree that in the case of a debtor's failure to repay the loan, a certain piece of the debtor's personal property can be repossessed through a legal procedure initiated by the creditor. Similarly, the contractual analysis dominates other types of the above-mentioned PPSA arrangements: hire-purchase, consignments and reservation of title agreements.

The contractual structure of the theory of the PPSA informs the nature of the legal analysis in light of the specific context of the PPSA doctrine. This context raises difficult questions about the limits (if any) of the creditor-debtor autonomy to determine the scope of their contractual obligations. The PPSA's contractual theoretical framework remains mindful to the policy-based considerations underpinning consumer transactions, inequality of powers within the bilateral nexus of the parties, a fair risk allocation and – more generally – legal considerations concerning legal certainty and internal coherency of the legal doctrine.

The proprietary dimensions of the PPSA theory are important as well. One of the central aspects of this theory is the possible impact that a given creditor-debtor contract may have on third parties, such as other creditors of the debtor or insolvency/bankruptcy proceedings. The analysis closely follows the observations of classical property law scholars about the inherent difficulty that a separation between ownership and possession may create for third

[36] Bryan Horrigan, 'Australian Legal Principles in Practice: Taking Reasoning and Research Seriously' (1993) 9 *Queensland University of Technology Law Journal* 159.

[37] The ensuing three paragraphs are based on the following sources: Grant Gilmore, *Security Interests in Personal Property* (Little Brown, 1965); Clayton Bangsund, 'PPSL Values' (2015) 57(2) *Canadian Business Law Journal* 184; Ron Cuming et al, *The Ontario Personal Property Security Act: Commentary and Analysis* (3rd ed, LexisNexis Canada, 2020); Alan Schwartz, 'Security Interests and Bankruptcy Priorities: A Review of Current Theories' (1981) 10(1) *Journal of Legal Studies* 1.

parties.[38] The fact that a person has possession of a given piece of property may communicate an unclear message to the external world indicating that a person also has ownership of that piece of property. However, possession does not always mean ownership. This indeed explains the PPSA's operational dynamics insisting on the registration of the creditor-debtor contract and the personal property item serving as a security. The very act of registration underscores a central insight of property law theory about the significance of the external manifestation of rights towards the external world. Stated in these terms, the conceptual analysis of the PPSA does not inherently embrace an interdisciplinary outlook but remains faithful to the normative underpinnings of classical contract and property law doctrine – with proper modifications. This suggests that *legal* academics are also indispensable as a matter of the PPSA's theory.

C The Post-2009 PPSA Experience

The 'uselessness' thesis could be further challenged through an examination of the reality of the PPSA in Australia after the introduction of the Act in 2009. As we will see below, a close assessment of the post-2009 PPSA experience demonstrates the critical role of *legal* academics in the PPSA's scholarly writings, reform considerations and teaching.

1 PPSA Publications

Indeed, as we have seen, legal practitioners publish widely on the PPSA and related topics. That said, the leading PPSA textbook in Australia was authored by two legal academics.[39] A comparison between this textbook and an alternative PPSA textbook authored by practicing lawyers,[40] reveals a significant difference between two approaches to scholarly publishing. Thus, the textbook authored by the practitioners provides a comprehensive guide and commentary to the PPSA's specific provisions. It constitutes a handy practitioner's manual and guide, often adopting a problem-solving approach to a wide range of issues expected to be confronted by a practicing lawyer in daily legal practice.[41]

In contrast, the academically led textbook frequently examines the PPSA's provisions in light of the underlying goals, principles and policy considerations and provides an illuminative comparative outlook of the related legislative personal security acts in other jurisdictions.[42] This comparative approach is not surprising in light of the abovementioned modelling of the Australian PPSA on the PPSAs of several Canadian provinces. The academics are far more concerned with the conceptual analysis of the underlying values of the PPSA and the internal coherency of the Act. The academic rigour of the textbook often sheds light on the

[38] Friedrich Carl von Savigny, *Von Savigny's Treatise on Possession* (1848) (E Perry trans, 2017).
[39] Anthony Duggan and David Brown, *Australian Personal Property Securities Law* (LexisNexis Butterworths, 2nd ed, 2016).
[40] Nicholas Mirzai and Christopher Anthanassios, *PPS in Practice A Practitioner's Guide to the Personal Property Securities Act 2009 (Cth)* (Thomson Reuters, 2018).
[41] Ibid xi–xii.
[42] See generally Duggan and Brown (n 39).

deficiencies of the existing law, twisting and sophisticating the legal doctrine through a consideration of a wide range of hypothetical scenarios.[43]

A similar trajectory could be witnessed through an examination of the contemporary heated debate about the nature and scope of the abovementioned 'substance' test set out in section 12 of the PPSA. Due to the fact that section 12 serves as a 'gateway' for the application of the PPSA, the debate bears tremendous practical significance.[44] A review of the publications on this point suggests that the debate largely follows the contours of classical contract and property law ideas. This 'section 12' debate tackles such themes as the limits of the parties' contractual autonomy, legal certainty, manifestation of proprietary rights, internal coherency of legislative acts, their relation to other pieces of legislation and consumer protection considerations.[45] The publications on this point demonstrate a plausible cooperation and partnership between academics and practitioners as several of the pieces with respect to the nature and scope of section 12 have been jointly co-authored by academics and practitioners. [46]

The last point is important. Teaching and researching law necessitate the writings of legal academics. While a partnership between academics and lawyers could benefit both worlds, a sole reliance on practitioners is clearly undesirable – what is indeed evidenced in the examination of the post-2009 PPSA record of publications.

2 The Current PPSA Reform Consideration

The centrality of legal academics is also evidenced through an examination of the current PPSA Law Reform Consultation process initiated by the Australian Government.[47] The above-mentioned Whittaker Report has not been implemented, what led to the current call for submissions to make concrete proposals on the way to improve the current 2009 PPSA legislative framework.[48] Both academics and lawyers alike made submissions expressing their opinions and perspectives with respect to that call for submissions.

A review of the submissions once again illustrates a significant gap between the two approaches. Submissions made by practicing lawyers tend to focus on technical details, aiming to clarify the language of the existing law.[49] Based on the post-2009 case law, these submissions generally follow a client-based perspective,[50] aiming to provide clear-cut

[43] See, eg, ibid 1–3 [1.2]–[1.6].
[44] See, eg, Craig Wappett and Anthony Duggan, 'Rights in Collateral Under the PPSA: Rebutting the Minimalist Approach (2019) 30(3) *Journal of Banking & Finance Law & Practice* 169; Diccon Loxton, Sheelagh McCracken and Andrew Boxall, 'PPSA Models: a Minimalist Approach' (2018) 32(1) *Commercial Law Quarterly* 3.
[45] See, eg, Wappett and Duggan (n 44).
[46] See, eg, Loxton, McCracken and Boxall (n 44).
[47] Attorney-General's Department, *Public Consultation on the Government's Response to the Statutory Review of the Personal Property Securities Act 2009* (Web Page, 2023) <https://consultations.ag.gov.au/legal-system/government-response-to-pps-review/consultation/published_select_respondent>.
[48] Ibid.
[49] See, eg, Nicholas Mirzai, Submission to the Attorney-General's Department, *Public Consultation on the Government's Response to the Statutory Review of the Personal Property Securities Act 2009* (16 November 2023) [16].
[50] Ibid [2], [9].

solutions to the pressing issues and problems that have emerged in practice since the 2009 legislation.[51]

In contrast, the submissions made by academics provide a broader outlook of the suggested amendments in light of the underlying rationales of the Act, considerations of legal coherency and public policy.[52] Frequently, academics have expressed concerns related to the shortcomings of the existing PPSA legislation in light of the comparative lessons and scholarly debates in other jurisdictions.[53] The significant difference between the two types of law reform submissions underscores once again the critical role of legal academics as agents of social change. While practitioners without a doubt bring an important practical perspective to law reform considerations, the post-2009 lessons show that legal academia continues to lead the reformistic efforts.

3 PPSA in Law Schools

Finally, there is a question of a fact about the identity of the individuals who have been teaching PPSA in Australian Law Schools. If the 'uselessness' thesis is correct, one would expect witnessing a prevailing role of legal practitioners in teaching this highly complex, technical and yet practically important subject. However, an examination of the PPSA lessons in the leading the Group of Eight (Go8) Australian universities below indicates otherwise.

PPSA is taught by an *Academic* at the following institutions:

- University of Sydney, *Jason Harris;*[54]
- University of Melbourne, *Anthony Duggan;*[55]
- University of Queensland, *Dr Darryn Jensen;*[56]
- University of Western Australia, *Dr Sagi Peari;*[57]
- University of Adelaide, *David Brown.*[58]

[51] See, eg, John Bennett, Submission to the Attorney-General's Department, *Public Consultation on the Government's Response to the Statutory Review of the Personal Property Securities Act 2009* (2023) [8].
[52] See, eg, Sheelagh McCracken, Submission to the Attorney-General's Department, *Public Consultation on the Government's Response to the Statutory Review of the Personal Property Securities Act 2009* (8 December 2023) 7–9.
[53] See, eg, Anthony Duggan, Submission to the Attorney-General's Department, *Public Consultation on the Government's Response to the Statutory Review of the Personal Property Securities Act 2009* (2023) [10].
[54] The University of Sydney, *LAWS6956: Personal Property Securities* (Web Page, 17 Feb 2024) <https://www.sydney.edu.au/units/LAWS6956/2024-S1CRB-BM-CC>.
[55] The University of Melbourne, *Personal Property Securities Law (LAWS90101)* (Web Page) <https://handbook.unimelb.edu.au/2017/subjects/laws90101>.
[56] The University of Queensland, *Foundations of Property Law (LAWS2706)* (Web Page) <https://course-profiles.uq.edu.au/course-profiles/LAWS2706-20234-7520#course-overview>.
[57] The University of Western Australia, *Commercial Law [LAWS2207]* (Web Page) <https://handbooks.uwa.edu.au/unitdetails?code=LAWS2207>.
[58] The University of Adelaide, *LAW7153 – Personal Property Security Law* (Web Page) <https://www.adelaide.edu.au/course-outlines/106018/1/winter/2019/>.

PPSA is taught by a *Practicing Lawyer* at the following institutions:

- Monash University, *David Turner*[59]
- Australian National University, *Darren FitzGerald*[60]
- UNSW Sydney, *Ram Pandley*[61]

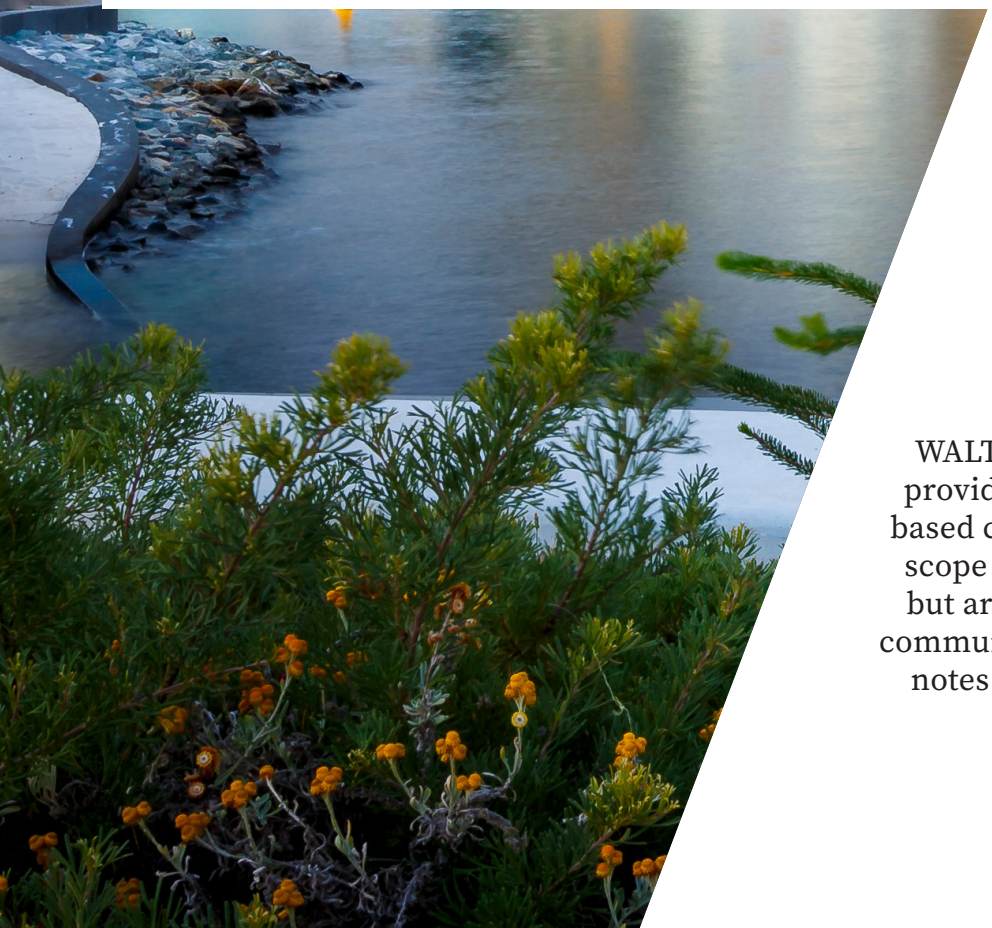
The findings reveal the centrality of academics in teaching the PPSA. Indeed, lawyers are ordinarily more concerned with their practice and clients, which may explain some shortsightedness towards the considerations of policy and theory in teaching the PPSA. In contrast, legal academics are versed in theory, comparative outlook and the broad vision about the critical role of law in our societal fabric. Alongside the practical aspects of the legal doctrine, as future leaders of the legal community law students must gain a deep appreciation of the law, understand why it is shaped the way it is and distil its problematic aspects within the broader public context. This suggests that legal academics could not be easily discarded from the teaching of the PPSA in Australia.

V CONCLUSION

The PPSA is a fascinating subject. Intellectually intricating, impossibly and practically complex, it bears tremendous significance for the daily lives of Australians. It has also served as an excellent litmus test for the provocative 'uselessness' thesis. Despite the initial appeal of this thesis, the findings of this article say otherwise. As it has been argued, these were legal academics who initiated and carried through the 2009 reform, embracing their role in society as agents of change. Furthermore, as we have seen, the conceptual nature of the PPSA seems to be grounded in legal underpinnings which rebut a central claim of the 'uselessness' thesis supporters. Finally, it has been argued that the post-2009 reform PPSA experience further evidences the centrality of legal academics in this area law – they dominate the PPSA teachings, lead reformistic efforts and enrich the community with PPSA writings. As far as the examination of the PPSA goes, legal academics are irreplaceable and should stay around. The 'uselessness' thesis should seek its support elsewhere.

[59] Monash University, *LAW5399 - Personal Property Securities* (Web Page, 2020) <https://handbook.monash.edu/2020/units/LAW5399>.
[60] Australian National University, *Commercial Law* (Web Page, 2024) https://programsandcourses.anu.edu.au/2024/course/LAWS8140.
[61] UNSW Sydney, *LAWS3018 Commercial Law – 2024* (Web Page, 11 September 2024) <https://www.unsw.edu.au/course-outlines/course-outline#year=2024&term=Term%203&deliveryMode=In%20Person&deliveryFormat=Standard&teachingPeriod=T3&deliveryLocation=Kensington&courseCode=LAWS3018&activityGroupId=1>.

TEACHING NOTES



WALTR publishes **teaching notes** to provide space for reflective, practice-based contributions that sit outside the scope of traditional scholarly articles but are nonetheless of interest to the community of legal educators. Teaching notes are subject to editorial review.

TRANSFERABLE SKILLS FROM TEACHING PRIMARY LITERACY AND NUMERACY

USING SILENCE AS A TEACHING TOOL

NATALIE BROWN *

*This piece is published as a **'teaching note'** rather than a scholarly article.*

WALTR publishes teaching notes to provide space for reflective, practice-based contributions that sit outside the scope of traditional peer-reviewed articles but are nonetheless of value to the community of legal educators. They may include reflections on teaching and assessment, contextualised lesson plans (including for secondary legal studies), or opinion and commentary on broader issues in legal education.

I INTRODUCTION

This teaching note is about how my experience teaching literacy and numeracy to primary and middle school students transferred into my tertiary teaching. My teaching pedagogy developed organically, more bluntly, by trial and error – if it works keep it, if it does not, discard. It is only later, such as when I decide to write a teaching note, that go to the research to discover why what I am doing works. In this teaching note I discuss creating verbal 'white space' – or, if you prefer a more technical description, incorporating silence as part of information delivery to allow for optimal cognitive processing.

Culturally I identify as European, and as such I am not naturally comfortable with silence in conversation or discussion. My natural tendency is to fill the space with words. I may perceive silence as boredom or disinterest. So, I follow up with a question or more interesting information to elicit a response from my listener. However, it may equally be the case that my listener needs time to think before responding. Just as we become comfortable with silence in a close friendship, we can also develop our teaching relationship and become comfortable with silence when we teach.

In many other cultures, silence is an important part of discussion and conversation.[1] It demonstrates that the receiver respects the speaker because they are taking time to consider

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[1] See generally Diana Eades, 'Telling and Retelling Your Story in Court: Questions, Assumptions and Intercultural Implications' (2008) 20(2) *Current Issues in Criminal Justice* 209.

their response. Speakers who try to elicit a response by following-up or prompting commit a social faux-pas. Often it results in the listener providing the answer they think the speaker wants (such as agreement), rather than processing the information to develop their own conclusion or opinion.

When teaching literacy and numeracy in primary education it was difficult to resist the temptation (and my cultural tendency to fill silence with words) to 'help' the student by prompting. When I resisted assisting, I allowed the student to process in their own time. It was a valuable insight to learn that filling the space with prompts, questions, further explanation, examples, or paraphrasing all interfered with the student's cognitive process because I was not providing enough 'thinking time'.

II USING SILENCE FOR COGNITIVE PROCESSING WHEN TEACHING LITERACY

In primary education, creating a comfortable silent teaching space was key to students' literacy success. When teaching literacy, the silent processing time can be quite long – minutes, not seconds. When you break down the complexity of reading you have a better understanding of why long silent spaces assist cognitive processing.

For example, teachers of literacy use flash cards to teach the vowel sounds. Imagine a card with an image of dog for the vowel sound 'oh' represented by the letter 'o'. The flash card will have the image and the word with the vowel underlined 'd o g'. The prompt question may be 'what is the middle (or underlined) sound in this word?'. A simple task for a literate person but let us consider the process from the point of view of a non-reader. The student knows the word is dog because of the image. But the question 'what is the middle sound?' requires deep processing. They can see there are three symbols, therefore there are three sounds. The next step is to break down the word into three sounds 'Der', 'oh', and 'ger'. Then the three sounds need to be matched with the three symbols, 'Der' = 'd', 'oh' = 'o' and 'ger' = 'g'. Therefore, the middle symbol 'o' must make the sound 'oh'. That process takes time and the more complex the word the more complex the process becomes.

So, not allowing silence for thinking or deep processing will create confusion (from the interference with the thought process) and anxiety (because the student may feel they are not completing the task quickly enough). In my experience, student results improved when they were not prompted, did not feel rushed and had been provided with lots of time to think.

The reading experience is an individual cognitive process, no two students learn in the same way. A teacher can help, but cracking the code and developing the associations between sounds and symbols is their own journey. Whether learning to read or learning law, you can help with clear instruction, building confidence, patience, and giving students some silent time to process the information in their own way.

III USING SILENCE IN TERTIARY TEACHING: UM, AH AND OTHER INVADERS

When compared to primary teaching, tertiary teaching is a completely different ballgame: because the student body typically has a well-developed skillset, minutes of silence are not necessary. However, a few or more seconds of silence play an important role in my lecture and tutorial delivery.

As a student I found fast delivery with lots of 'ums' or 'ahs' affected my understanding. In retrospect, it was because this style delivers the information in one long continuous sentence with no segmentation (or processing time). When I became a lecturer, I tried to cut out the 'ums' and 'ahs'. It was not easy, because I was using um and ah to collect my thoughts and formulate the next sentence. No sooner did extract um and ah than I noticed I had replaced them with 'so', which subsequently got replaced with 'now' or 'like' or 'really' – all filler words to avoid silence. Heaven forbid that students should notice I needed to think! The filler words – um, ah, now, and so – were all just tools to allow me to formulate my next thought. Why not look at my notes, take a sip of water or a deep breath, or just silently think for a few seconds? And importantly, give my students a few seconds to think as well.

Essentially what my fear of silence was doing was removing all the full stops from my carefully prepared lecture notes. Just as we do not enjoy reading an essay or article that has long convoluted sentences because it is confusing and tiring for our brains, it is not easy to listen to either.

Once I became more comfortable with silence, I found I now had time for other things. I could connect with my audience by making eye contact. I can scan the room and pick up on the body language and facial expressions. Is the information landing or is it confusing, is my audience bored or engaged, or tired? After delivering a difficult or important concept, pause, wait, and watch until your audience it ready. Has the typing died down, are the heads coming up, am I receiving eye-contact, is now the right time to provide an example or follow-up information?

Silence is also a useful tool for correcting mistakes. Immediately and hastily correcting yourself in the same sentence as the incorrect information was delivered is confusing. Instead, pause for a moment and make a statement such as, 'that was incorrect – scratch my last statement'. Give the listeners time to remove the incorrect information from their notes, and importantly from their minds, before you deliver the corrected statement.

Silence is more powerful than speech for controlling large groups, and for drawing attention when you wish to speak. If my lecture or tutorial is being disturbed, I stop speaking and wait. The group listening will join you, and those who are the reason for your silence will soon give you their attention. To take control of a room that is chatting, a gesture such as a raised hand and deliberate eye contact will do the job quicker than a call to order. Do not be afraid to wait. Students will get used to the method and respond to a signal. It is a 'lead by example' technique. If you are calling order (making noise) your audience will also feel they can

continue to make noise, at least finish their sentence or – at worst – their conversation. But if you are silent, the expectation is clear, and nobody wants to be the last one speaking when the rest of the audience has already caught the cue to be silent. Let the silence speak for you.

IV WHAT DOES THE RESEARCH SAY?

When I researched the topic, I discovered many new terms. While I did not discover anything specifically on my idea of 'verbal whitespace' or the incorporation of silence, the concept falls more or less into the topic of clarity. The germane finding being that the clarity of the instruction can affect the students' cognitive function and capacity for deeper processing.[2] Cognitive load theory ('CLT') posits that that instructors should consider that humans have a limited working memory capacity.[3] Therefore, instruction that overloads the student's working memory impedes the student's ability to transfer and retain the information in their long-term memory.[4]

There are three types of cognitive load: germane load that links the information to pre-existing knowledge in the long-term memory (essential to learning); intrinsic load, which relates to how complex the material is; and extraneous load, which relates to the complexity of the delivery.[5] The instructor does not want to reduce germane load because it is useful, cannot reduce intrinsic load because it is fixed, but they *can* control extraneous load by providing good structure and clear delivery.[6] Clear teaching can enable students to take better notes, become more emotionally and cognitively invested in the course, and have better recall and retention of information.[7]

Reducing extraneous load may reduce receiver apprehension and facilitate deeper processing.[8] Overloading a student with information can lead to receiver apprehension.[9] Deeper processing is described as a student's capacity to analyse and reflect on the information during the class.[10] Receiver apprehension can manifest as anxiety about misinterpreting or making sense of the information; or it may be an emotional response to receiving complex information.[11] The receiver's level of apprehension can correlate to a

[2] Nick Serki and San Bolkan, 'The Effect of Clarity on Learning: Impacting Motivation Through Cognitive Load' (2024) 73(1) *Communication Education* 29, 29–30; San Bolkan and Alan K Goodboy, 'Conditional Indirect Effects of Clarity on Students' Information Processing: Disentangling Sources of Cognitive Load' (2024) 73(3) *Communication Education* 247, 248–9, 251.
[3] San Bolkan, 'The Importance of Instructor Clarity and Its Effect on Student Learning: Facilitating Elaboration by Reducing Cognitive Load' (2016) 29(3) *Communication Education* 152, 154.
[4] Serki and Bolkan (n 2) 30–1; Bolkan (n 3) 154.
[5] Serki and Bolkan (n 2) 31.
[6] Bolkan and Goodboy (n 2) 250–1.
[7] Serki and Bolkan (n 2) 31.
[8] Bolkan (n 3) 153–4; Bolkan and Goodboy (n 2) 259.
[9] Joseph L Chesebro, 'Effects of Teacher Clarity and Nonverbal Immediacy on Student Learning, Receiver Apprehension, and Affect' (2003) 52(2) *Communication Education* 135, 138; Bolkan (n 3) 156; Bolkan and Goodboy (n 2) 255.
[10] Bolkan and Goodboy (n 2) 255.
[11] Chesebro (n 9) 138.

backlog of unassimilated information.[12] So the theory is to reduce the extraneous cognitive load to reduce the receiver apprehension.[13]

Reducing extraneous load may also reduce the student's perception of intrinsic load.[14] A recent study indicates that the higher the intrinsic load, the less effectively teacher clarity reduced receiver apprehension.[15] Researchers described this as a tapering process, as the material becomes intrinsically more difficult, clear teaching has less impact because as more working memory is required it is more difficult to influence receiver apprehension.[16] In short, students benefitted more from teacher clarity when receiving easier information than more difficult information.[17] On the other hand, when intrinsic load is high, clarity may preserve what little resources students have left for learning.[18] To my mind, any reduction is valuable, as a receiver of information, when I later review my notes I will more easily process a difficult concept if the instruction was delivered clearly (and I had time to record the information accurately). It would be interesting to see a study on how teacher clarity effects students later, when they are reviewing material for examination and have the time and the need to deeply process the difficult information in their notes or by reviewing the lecture online.

Clarity has five main factors, disfluency, working memory overload, interaction, coherence, and structure.[19] In my opinion, the use of silence as a teaching tool falls into disfluency and working memory overload. Disfluency refers to the capacity to explain in a simple manner or use appropriate examples, and working memory overload relates to when the instruction out-paces the student's capacity to process the information.[20]

So how does the incorporation of silence fit into that framework more specifically? In my opinion, an element of disfluency is segmenting.[21] Basically, recognising a full stop in your speech, which includes removing the ums and other silence fillers.[22] Disfluency could also include pacing,[23] but using silence as a teaching tool is not really pacing – that refers more to the speed of delivery.[24] Silence falls into the working memory overload factor, because its purpose is to let students 'catch-up' with the information and/or process the information. The verbal whitespace concept also fits into a subgroup of clarity research that researchers have termed 'non-verbal immediacy'. That concept includes pausing before or after important points, gestures, and smiling.[25] However, the non-verbal immediacy study cited here did not produce highly significant results in relating immediacy to cognitive function – the authors

[12] Bolkan (n 3) 156.
[13] Ibid 159–60.
[14] Ibid 252.
[15] Ibid 260.
[16] Ibid.
[17] Ibid.
[18] Bolkan and Goodboy (n 2) 261.
[19] Ibid 250–1.
[20] Ibid 250.
[21] Bolkan (n 3) 155.
[22] Chesebro (n 9) 140.
[23] Ibid 137; Bolkan (n 3) 155.
[24] Chesebro (n 9) 136.
[25] Ibid 140.

of that study noted the efficacy of the study may have been limited by the delivery via video rather than live lectures.[26]

I suggest alleviating both intrinsic and extraneous load by utilising silence a few times in your delivery, so as to allow the student's deeper processing or germane cognitive load. Practice the pause – short pauses and long pauses, pause for emphasis, pause because the information just delivered was complex, pause for a full stop, pause to engage your audience.

V CONCLUSION

I am by no means perfect in my performance. The ums and ahs slip in every now again, but a lot less often since I started consciously working to include a pause for a full stop. I avoid 'um', I try to keep 'so' for when I mean therefore, 'like' for when I mean similar, and 'now' for when I mean the present. I am now more comfortable with silence, and I use it confidently. I am not discombobulated if I lose my train of thought, I just take moment to recalibrate. I am comfortable with lengthy pauses, up to 5–10 seconds, after delivering after new complex information to allow the deeper processing. Silence is useful to you, but more importantly it is useful to your audience. A few seconds to gather your thoughts and formulate your next sentence also gives your audience relief and time to process the information. My message is: embrace the pause, enjoy the silence, your students will enjoy it too.

[26] Ibid 145–6.

THE CARROT AND STICK APPROACH

PROMOTING STUDENT LEARNING ENGAGEMENT THROUGH ASSESSMENT

SARAH WITHNALL HOWE *

*This piece is published as a **'teaching note'** rather than a scholarly article.*

WALTR publishes teaching notes to provide space for reflective, practice-based contributions that sit outside the scope of traditional peer-reviewed articles but are nonetheless of value to the community of legal educators. They may include reflections on teaching and assessment, contextualised lesson plans (including for secondary legal studies), or opinion and commentary on broader issues in legal education.

I INTRODUCTION

The following scene is probably all too familiar for law teachers: You are sitting at your desk surrounded by numerous exam scripts. To your right, a small pile of marked scripts; to your left, a daunting pile of unmarked ones (scattered in between are several empty coffee cups and various chocolate bar wrappers). With a sigh of exasperation, you throw your pen down, frustrated by how often you have written the same advice on your students' scripts. And it's too late to tell them that if they had actively engaged in the unit and its learning activities, they could have gained a better understanding of the law, and the skills needed to study and practice it (thereby minimising exam answer 'mistakes', which would have been immensely beneficial when it came time to produce sound exam answers)!

The frustration described above is common, and there is always going to be some level of disengagement among students in each cohort, for a variety of reasons beyond our control. However, for me this recurring frustration was significantly exacerbated during the pandemic, where I observed greater and more troubling levels of student disengagement in two first-year law units I usually teach. I decided to see what I could do to address the issue. This teaching note reflects on the approaches implemented to deepen student engagement in my two first-year law units: one, a 'blackletter' law unit and the other a skills-based unit. In Part II, I outline the types and levels of the disengagement observed in what I will refer to as the 'troubling cohort' and my belief as to what was the likely cause of this. In Part III, I outline the modifications made to subsequent iterations of these units to try and address these trends. In Part IV, I reflect on the success of these modifications.

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II THE TROUBLING ITERATION

It was while teaching during the pandemic, but after Western Australia's strict lockdown period, that I observed both a troubling level and troubling types of disengagement in one particular cohort. The top five most concerning signs of disengagement within the 'troubling cohort' included:

1. *Assignment submission:* Over one-third of the cohort sought an extension for their main assignment – an 800-word legal problem-solving task – or simply submitted it late.

2. *Teacher-student meetings:* Half of the students who scheduled meetings to discuss their marked assignment did not attend without explanation.

3. *Workshop non-attendance:* One tutor reported zero attendance for a particular workshop timeslot on two consecutive weeks.

4. *Late exam preparation:* In this unit the exam factual scenario is released to the cohort around four weeks prior to the exam,[1] and nearly half of the cohort had not viewed the exam's factual scenario one week before the exam.

5. *Virtually no exam preparation:* more than a tenth of the cohort had not accessed the exam scenario one day before the exam.

These were not the only signs of disengagement, but from my experience of teaching this unit, they were the most dispiriting.

Another concern was that the 'troubling cohort' had been run similarly to the previous iteration, which I'll refer to as the 'lockdown cohort', delivered during Western Australia's lockdown period. The lockdown cohort's feedback – both formal and informal – was generally positive, with many reporting good learning experiences and no significant barriers to engagement. However, the troubling cohort showed minimal engagement with feedback opportunities, leaving me to ponder the reasons for the significant decline in engagement and whether this trend would continue.

I posited the troubling cohort's experiences immediately prior to their first-year law studies, during the height of the pandemic, were likely significant factors in their low engagement levels. The troubling cohort included many school leavers who completed their final years of secondary schooling in an unfamiliar and isolated online environment. Additionally, many non-school leavers began their law studies after experiencing significant upheaval in employment, other studies and life in general. Against this background, it is perhaps unsurprising that the bulk of the cohort did not know how to engage in their university studies in a way which would maximise their learning experiences. Furthermore, I posited

[1] This is a closed book restricted exam where students can only bring one A4 page with notes back and front into the exam. The factual scenario is complex with around two dozen possible questions the cohort could be asked, with only four of these ultimately being asked in the exam paper itself.

that the significant and likely long-lasting changes in teaching, learning and living, brought about by the pandemic would have a major impact. These changes included the shift to online learning, reduced face-to-face interactions between teachers and learners as well as between learners and learners, and the increased reliance on digital resources. As a result, students would likely arrive at university with less experience and fewer effective study skills, since these changes disrupted their ability to develop essential skills like time management, critical thinking, and collaborative learning. As such, I felt it imperative to implement strategies in my first-year law units to deepen and embed practices of student learning through engagement in the unit and its learning activities.

III THE CARROT AND STICK APPROACH

To engage my students in the unit's learning activities, I implemented a 'carrot and stick' approach. I used the aspect of the unit that always has the highest levels of engagement – assessments – as the carrot to dangle from my stick. I developed a low-stakes 'Student Learning Engagement Assessment Item' (SLEAI), worth 10–15% of the unit's total marks, requiring engagement in key learning activities to complete the assessment.[2] I considered key learning activities to be those designed to help students learn unit content, develop skills needed for practicing law and establish good study habits.

A General 'Carrot and Stick' Design Considerations

Before outlining the specifics of the SLEAIs I implemented in my first-year units, I'll highlight a few considerations I had to keep in mind during their development.

First, any modifications in, or development of, assessment had to align with my institution's assessment policies and procedures. For example, commonly assessment policies do not allow student attendance to be the sole criterion, or part of the criteria, of an assessment item. As such I could not simply award marks for attendance.[3] Also, any changes to the unit need to take into account the role of the unit and its assessment within the structure of the school's law degree. For example, if a law degree is structured so that the particular skill of client letter writing is taught and assessed in unit X, this must be accounted for when modifying assessments within unit X.

Second, any modification to my units – whether to assessment items or other aspects, like the unit's learning activities – had to be achievable within my allocated teaching workload.

[2] Of course, the alternative analogy is the carrot *or* stick approach. The carrot is the reward of attaining marks through simply engaging in the unit, while the stick is the threat of losing marks for failing to engage in the unit's learning activities. This is a double punishment because, as discussed in Part Three, undertaking the engagement assessment generally gave students a better opportunity to do well in other unit assessments.

[3] While I'm not suggesting that mandatory attendance would result in students undertaking a unit's key learning activities, being aware of the prohibitions and requirements prescribed in institutional assessment policies and procedures is a must at the outset of any assessment redesign.

Therefore, the redesigned aspects of the unit, including the time and complexity of marking this SLEAI, could not be the straw to break the camel's back.

Third, the workload for students undertaking the redesigned aspects of the unit must be appropriate. For example, the time students are expected to study outside of the classroom must align with the relevant institutional policies. Requiring extensive reading, such as hundreds of High Court cases, for a unit with a low course weighting would likely not be appropriate. In my units, since I chose assessment as my approach for deepening and improving engagement, the number, weighting and complexity of the assessments required careful consideration in light of the relevant assessment policies and procedures.

B Specific 'Carrot and Stick' SLEAI Designs

In this section, I'll outline the design of the carrot and stick SLEAIs implemented in my first-year law units. The first, *Workshop SLEAI*, aims to encourage student engagement in the unit's existing workshop activities.[4] The second, *Introductory Recording SLEAI*, focuses on student engagement with unit content helping students keep up and practice applying it.

1 Workshop SLEAIs

Used in both my blackletter law and skills-based unit, this SLEAI required students to submit a brief written response to specific questions arising from each of the unit's scheduled workshops. These are administered via the online Learning Management System ('LMS') as quizzes with short answer questions. Take, for example, a workshop activity requiring discussion of cause of action 'Y' that has four elements, and discussion of any relevant defences. The SLEAI quiz question might be: 'Discuss whether the plaintiff will be able to make out the first element of X in a cause of action of Y against the defendant.'

To ensure manageable student workload, to cater for equity, diversity, and inclusion considerations, to provide maximum flexibility in order to promote engagement and also to mitigate the risk of academic integrity violations, several steps were taken. These included:

- Opening all Workshop SLEAI quizzes at the start of the teaching period (with unlimited attempts allowed) and having each close around three weeks after its associated workshop concluded.[5]

- Informing students of the relative ease of undertaking the Workshop SLEAIs and of the expectations for doing well in the assessment. For example, instructions suggested a small maximum word count for responses and the assessment criteria emphasised only engagement with the workshop material was being evaluated, not the accuracy of responses or quality of the writing.

[4] I was confident, from experience and continuous improvement, the existing workshop activities were effective ways for students to learn the required skills and content.
[5] This very large open period meant there were few valid grounds for extensions.

- Making students aware that the quiz questions arose from issues directly discussed in workshops, incentivising preparation, attendance and active engagement in workshop classes.

- Advising students of the usefulness of properly completing the SLEAI assessment to their understanding of the unit content, and legal skills in general.

- Clearly communicating academic integrity expectations specific to this assessment and discussing these expectations with them. For example, acceptable and non-acceptable use of AI was made clear to student.[6]

These measures collectively created an assessment regime which was manageable for students and facilitated integrity-focused practices as much as possible.

To ensure manageable marking, only a subset of responses to Workshop SLEAI quizzes were assessable. Rather than marking every response for every Workshop SLEAI quiz, the assessment scheme specified only a quarter of the Workshop SLEAI quizzes were assessable. To incentivise completion of all Workshop SLEAI quizzes, and not just the assessable quizzes, the identity of the assessable quizzes was not disclosed to students until the completion date for the quiz had closed. Several examples of assessment schemes are given in Appendix 1 below. Using Scheme A as an example, which was essentially the scheme used in my blackletter law unit, the unit might contain a total for 12 Workshop SLEAI quizzes to be completed throughout the unit, with the SLEAI instructions specifying that:

- The Unit Coordinator will randomly choose the same three Workshop SLEAI quizzes for all students to be assessed on, and the selected quizzes will not be disclosed until marks have been finalised.[7]

- Each of the three selected assessment quizzes will be worth 3% of the unit marks, making the Workshop SLEAI quiz worth a total of 9% for the unit.

This approach ensures fairness and encourages consistent engagement with all Workshop SLEAI quizzes throughout the unit.

Additionally, since the focus was on evaluating engagement rather than the accuracy or quality of the responses, the marking process was much more straightforward than, say, marking responses to a legal problem-solving assignment. That is, the marker would not need to critically assess the quality of the arguments made, the adequacy of the authorities cited, or the quality of the written expression. The marker needed only to be satisfied that the student had attempted to address the quiz question in some way, to award full marks. For example, consider a Workshop SLEAI quiz asking students to 'discuss whether the element of "so as to cause" in the statutory offence contained in s 5 of the *Fictitious Act* is likely to be established by X against Y in the factual scenario from workshop Z'. A response might be:

[6] In fact, in this unit we spent an hour of lecture time experimenting with AI and expressly discussing its advantages and disadvantages and ethical uses.
[7] Again, thereby incentivising ongoing engagement in all workshops.

> Y will establish the element of 'so as to cause' from the statutory offence of whacking from s 5 of the *Fictitious Act* by proving there is a direct link (*Made Up v* Case) between the X's action of throwing a bottle, and the harm suffered to Y of a head wound. In *Made Up v Case* the court held that a direct link will establish a statutory 'so as to cause' element through an unbroken chain of factual events. That is, the 'facts of the occurrence are so closely connected that they can only sensibly be considered all part of the same event'. On the facts of our case, X was standing approximately one metre away from Y and Y was visible to X. X was in control of the glass bottle as X meant to pick the bottle up and meant to intimidate Y through the threats made. In particular, X spoke the words 'cop this' and deliberately swung the bottle in the direction of Y. The bottle was out of X's hand for approximately one second before hitting Y's head. This chain of events were closely connected temporally, by physical proximity and via the apparent intent behind X's actions. As such is it likely a court will find there is a direct link between X's act of letting go of the bottle and Y's head injury, to make out 'so as to cause' in s 5.

Alternatively, a response might be:

- s 5 FA element = 'so as to cause'.
- Relevant case law = *Made Up v Case* where 'so as to cause' described as 'direct link' .
- Evidence of a direct link here through X's close physical proximity to Y, knowledge of presence of Y, words spoken to Y, one second temporal immediacy between X letting go of bottle and contact with Y's head.
- Element likely to be established.

Both of these responses contain evidence of a student's engagement with the unit content. They both identify the relevant issue, some relevant law and some relevant facts. Even a response which incorrectly states the law pertaining to 'so as to cause' or suggests that the day of the week is a fact relevant to the chain of events will still show evidence of student engagement in unit content. All such responses would receive full marks. A response which merely says 'element likely established', or sets out the elements of a contract law in a criminal law unit question on assault will not evidence engagement in the unit content.[8]

2 Introductory Recording SLEAIs

Used only in my blackletter law unit, this SLEAI leveraged existing recorded lecture content. During lockdown teaching in the pandemic, I created 20–30 minute videos for each of the unit's lecture topics, which introduced the topic and discussed basic content. To lighten student cognitive load during synchronous online lectures, the lockdown cohort was encouraged to view these 'Introductory Recording' videos before the synchronous lectures.[9] Given the lockdown cohort's positive feedback on the utility of these Introductory Recordings to their learning, I decided to make them into a SLEAI.

Using the multimedia polling functionality within EchoVideo, I inserted 3–6 multiple-choice questions throughout each of the 9 or 10 (depending on the iteration) Introductory Recordings. These questions were simple and based on video content covered immediately

[8] Therefore, essentially quizzes were marked on a pass/fail basis. Further, as the 'correct answer' had already been discussed in the workshops, and was not being assessed, individualised feedback was not required.
[9] Or reviewing the synchronous lecture's recording.

prior to the question being asked. For example, let's consider an Introductory Recording on the topic of defences. Such a recording might typically start with a discussion covering the following points:

- The specific defences to be discussed in the unit/topic;
- That defences, like the causes of action, have elements that need to be proven and that this will be the focus of our discussions in-class;
- The effect of proving a defence is that a defendant will escape all or some legal liability; and
- That a defendant who wishes to rely on a defence will need to raise and prove it.

Importantly, these points will be *discussed* in the Introductory Recording rather than simply listed. For example, I like to highlight the shift in perspective that occurs when discussing defences. I specifically warn students that, unlike our previous discussions which focused on what a plaintiff must prove, our discussions of defences will focus on what a defendant must prove. I advise students to be cognisant of this shift in language in our discussions and their reading. Additionally, I counsel students of usefulness of identifying whether the appellant and respondent, in an appeal case, had the role of plaintiff/prosecution and defendant/accused in the first instance decision as a way of avoiding conflation that comes with this perspective shift. I might also couch discussion of these points by reference to a case or factual example students are already familiar with.

After some discussion, the Introductory Recording will pause, and a multiple-choice question will appear for students to answer. Students must answer the question before the video will continue playing and immediate feedback is provided as to the correct answer. For example, a question relating to defences, appearing after the initial discussion noted above, could be:

> **Question:** At common law, who bears the onus of proving a defence in this area of law and to what standard?
>
> **A.** The plaintiff, beyond reasonable doubt
> **B.** The plaintiff, on the balance of probabilities
> **C.** The defendant, beyond reasonable doubt
> **D.** The defendant, on the balance of probabilities.

As can be seen, the Introductory Recording's initial discussion covers the answer to this question, but not in a format where a statement like 'the defendant bears the onus of proving the elements of the defence to X standard' is expressly made. Instead, students need to reflect on, or relisten to, the Introductory Recording's discussion to determine the correct answer.

In terms of assessment, similar to the Workshop SLEAI, the Unit Coordinator would select one question from each of the Introductory Recordings for assessment. If the selected question had been attempted, 0.5 marks were awarded and if the answer was correct, another 0.5 marks were awarded.[10] Therefore, by simply answering all questions, students could earn half the available marks, even if their answers were not correct. To earn the remainder,

[10] See Annexure 1, Schemes C and D, for examples of how marks could be broken down.

students needed to demonstrate engagement with the video content through active listening, analysis and application.[11]

C Added Bonuses

Both the Workshop and Introductory Recording SLEAIs provided bonus learning benefits that were not present when these learning activities were not assessed.

First, by progressively marking and releasing SLEAI results throughout the teaching period, both students and teachers received feedback on student progress. Students could gauge their understanding of unit content in addition to practicing typical unit assessment tasks. As a teacher and marker, I had access to writing samples and multiple-choice response statistics, providing insight into an individual's and the cohort's overall understanding. This allowed me to quickly address any problematic trend or offer support to individual students who showed signs of struggling with the content or university life in general. For example, if I noted a student had not completed any SLEAIs at all, or seemed not to have basic typing skills, I could reach out to the student or ask university support services to reach out to the student. If noticed a high percentage of the cohort answered an Introductory Recording SLEAI question incorrectly, I could expressly address this issue in the lecture on that topic.

Second, the SLEAIs required students to keep up with unit content, promoting the benefits of continuous engagement in learning activities. Similarly, the SLEAI schedule modelled effective study habits – that is, it encouraged students to do small bits regularly – but at the same time, still allowed students to undertake larger chunks less frequently if required or desired. This staggered scheduling of SLEAIs enabled students to steadily build their understanding of the unit content as the unit progressed.[12] Additionally, the Workshop SLEAIs demonstrated the value of timely reflection and review of workshop content.

Finally, in my experience, a student's first attempt at legal writing is typically when drafting their assignment and their second attempt is when writing their exam. Instead, the Workshop SLEAIs facilitated writing small parts of a legal problem-solving answer (even though writing in note form was permissible) continuously throughout the unit. This exposed students to the challenges involved in legal writing early, via low-stakes continuous assessment, and facilitated a first attempt at legal writing before the unit's high-stakes assessments.

[11] Like Workshop SLEAIs, and for the same reasons, the Introductory Recording SLEAI: (1) Were open and available for completion from the start of the teaching period (although only one attempt was allowed) until about three weeks after corresponding lecture topic was scheduled for conclusion; (2) Question chosen for assessment was selected and disclosed after the close of each Introductory Recording; and (3) Results were compiled and released progressively throughout the teaching period.

[12] See Part IV for discussion of the observed benefit of this.

IV HAS THERE BEEN MUCH MOVEMENT?

I have implemented my carrot and stick SLEAI approach over several iterations of my first-year units and feel it has achieved my teaching goals. That is, my stubborn mules have moved forward towards more effective engagement in their learning. I now outline my observations from these SLEAI iterations that have led me to conclude that this approach is effective.

Returning to item 3 on my 'top five most concerning signs of disengagement' from Part II, concerning workshop attendance: Had attendance rates for workshops or lectures changed during SLEAI iterations? Maintaining comprehensive and accurate records of in-person attendance has its challenges. It's impractical in a lecture setting, and for workshops while tutors are asked to take attendance, and more recently students have been asked to electronically record their attendance, there is naturally room for inaccuracies. However, during SLEAI iterations, tutors did not report any instances of zero attendance, as was reported twice during the troubling cohort. Nor did I note from the attendance records any unexplained or concerningly low attendance rates. Furthermore, as the lecturer, I did not observe any troublingly low attendance at face-to-face lectures for SLEAI iterations, unlike the troubling iteration where by the end of the teaching period lecture attendance dropped to around 10%. In terms of the completion rates for the skills-based unit's Workshop SLEAI, both SLEAI iterations had weekly completion rates ranging from about 85% to 60%, with the lower completion rates occurring towards the end of the teaching period.

I return to items 1, 4 and 5 of my 'top five' from Part II, which concerned aspects of study related to assessment preparation. I have tracked data relating to assignment and exam preparation in my blackletter law unit, and observed pleasing results. The proportion of the cohort who submitted their main assignment late, or sought an extension, has roughly halved. Meanwhile, the proportion of students viewing the exam scenario at least a week in advance of the exam has roughly doubled, with almost none waiting until the day before to view the scenario for the first time – down from more than a tenth of the cohort in the troubling iteration. Overall, it is clear to me that the SLEAI iterations had better success when it came to helping students keep up with unit content and enabling to them to prepare in advance for assessments more effectively. It seems reasonable to conclude that the SLEAIs, which required students to engage in learning activities directly related to the unit content and assessment skills, encouraged earlier preparation for assignments and exams.

Finally, I also observed encouraging trends in the assignment and exam results in SLEAI cohorts. In my blackletter law unit, unsurprisingly, students who engaged with the Introductory Recording SLEAI were much more likely to 'do well' in their other assessments for that unit (namely the main assignment and exam). Students who achieved a perfect score in the Introductory Reading SLEAI achieved a combined assignment and exam mark in the 'pass' range or better, with around a third in the 'distinction' or above range. Further, very few students who made a diligent attempt at the Introductory Recording SLEAIs[13] had a

[13] I regarded a 'diligent attempt' to be when a student achieved 80% or more for the Introductory Recording SLEAI. This indicated the student likely completed all questions in all Introductory Recordings and got half of the questions chosen for assessment correct.

combined exam and assignment mark in the 'fail' range. Conversely, in each iteration, about half the students who made a non-attempt at the Introductory Recording SLEAI[14] obtained a combined exam and assignment mark falling within the 'fail' range. Therefore, it seems reasonable to conclude that the SLEAIs, which required students to engage in learning activities directly related to unit content and required legal skills, equipped or assisted students to achieve success in the unit's assessments.

V CONCLUSION

The implementation of the carrot and stick SLEAI approach in my first-year units has proven effective in promoting student engagement and improving learning outcomes. By integrating low-stakes assessments that require active participation in key learning activities, students are encouraged to stay engaged with the unit content and progressively develop essential skills. The observed improvements in attendance, assignment submission and exam preparation, along with positive anecdotal and formal feedback from students, support the effectiveness of this approach. Moving forward, this model can be adapted and applied to other law units for other key learning activities to further enhance student engagement and success.

Annexure A: Possible Assessment Schemes

Scheme A		
Assessment Name	Weighting	Assessment Description
Student Learning Engagement, comprised of: • Workshop Quizzes (12 total for the unit).	9%	The following will be randomly selected for assessment: • 3 quizzes worth 3% each
Scheme B		
Assessment Name	Weighting	Assessment Description
Student Learning Engagement, comprised of: • Workshop Quizzes (10 total for the unit).	10%	The following will be randomly selected for assessment: • 2 quizzes worth 5% each
Scheme C		
Assessment Name	Weighting	Assessment Description
Student Learning Engagement, comprised of: • Workshop Quizzes (12 total for the unit); and • Introductory Recording (9 total for the unit).	15% (6%) (9%)	The following will be randomly selected for assessment: • 3 quizzes worth 2% each • 1 question per recording worth 1% each (0.5% for attempting and 0.5% for a correct answer).
Scheme D		
Assessment Name	Weighting	Assessment Description
Student Learning Engagement, comprised of: • Workshop Quizzes (10 total for the unit); and • Introductory Recording (10 total for the unit).	15% (5%) (10%)	The following will be randomly selected for assessment: • 2 quizzes worth 2.5% each • 1 question per recording worth 1% each (0.5% for attempting and 0.5% for a correct answer).

[14] I regarded a score of below 60% for the Introductory Recording SLEAI a 'non-attempt', as this mark indicated that, at best only half the assessment had been attempted.