

SOME INNOVATIONS IN ASSESSMENT IN LEGAL EDUCATION



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Introduction

Assessment has been described as ‘the process of defining, selecting, designing, collecting, analysing, interpreting and using information to increase students’ learning and development.’¹

While students learn a specialist body of knowledge at university they also gain other graduate attributes and skills useful in the workforce and for society: critical thinking; communication; interpersonal skills; ethics; lifelong learning; global perspective; futures orientation; adaptability to change; understanding of social justice and Indigenous issues.

So, tertiary assessment can and must encompass more than the traditional exams and essays. In law, it must be about more than evaluating knowledge of content and capacity to analyse and respond to legal issues.

As we expect other things to be learned, some assessment must be linked to those expected outcomes. It should reinforce future learning skills: students should develop the capacity to make complex judgments about their own performance ‘puzzling over what counts as good work and how they will be able to discern whether they are producing it’.²

The work of the DBI was guided by goals endorsed by CALD, several directly aimed at enhancing the teaching and learning experience. These included:

- exploration of law graduate attributes frameworks
- documenting approaches to teaching the values of professionalism, ethics and service.

Regional consultative round tables were held in various capital cities and by video/teleconferences. Thirty law schools participated. These consultations demonstrated significant interest among law academics seeking an opportunity to work collaboratively on innovative forms of assessment designed to progress learning aligned to graduate attributes and furthering the above ideals. Ideas and insights would be shared and developed, with outcomes to be disseminated widely to the broader legal education community.

In response, the DBI organised ‘Let’s Do Assessment’, a full-day, practically-oriented assessment workshop held at Bond University in November 2008. Within a climate underscored by the values of Criterion-Referenced Assessment as explained in plenary session, legal academics from 15 law schools covering five states and territories worked together to explore assessment.

The ‘Let’s Do Assessment workshop’ provided opportunities within four assessment settings:

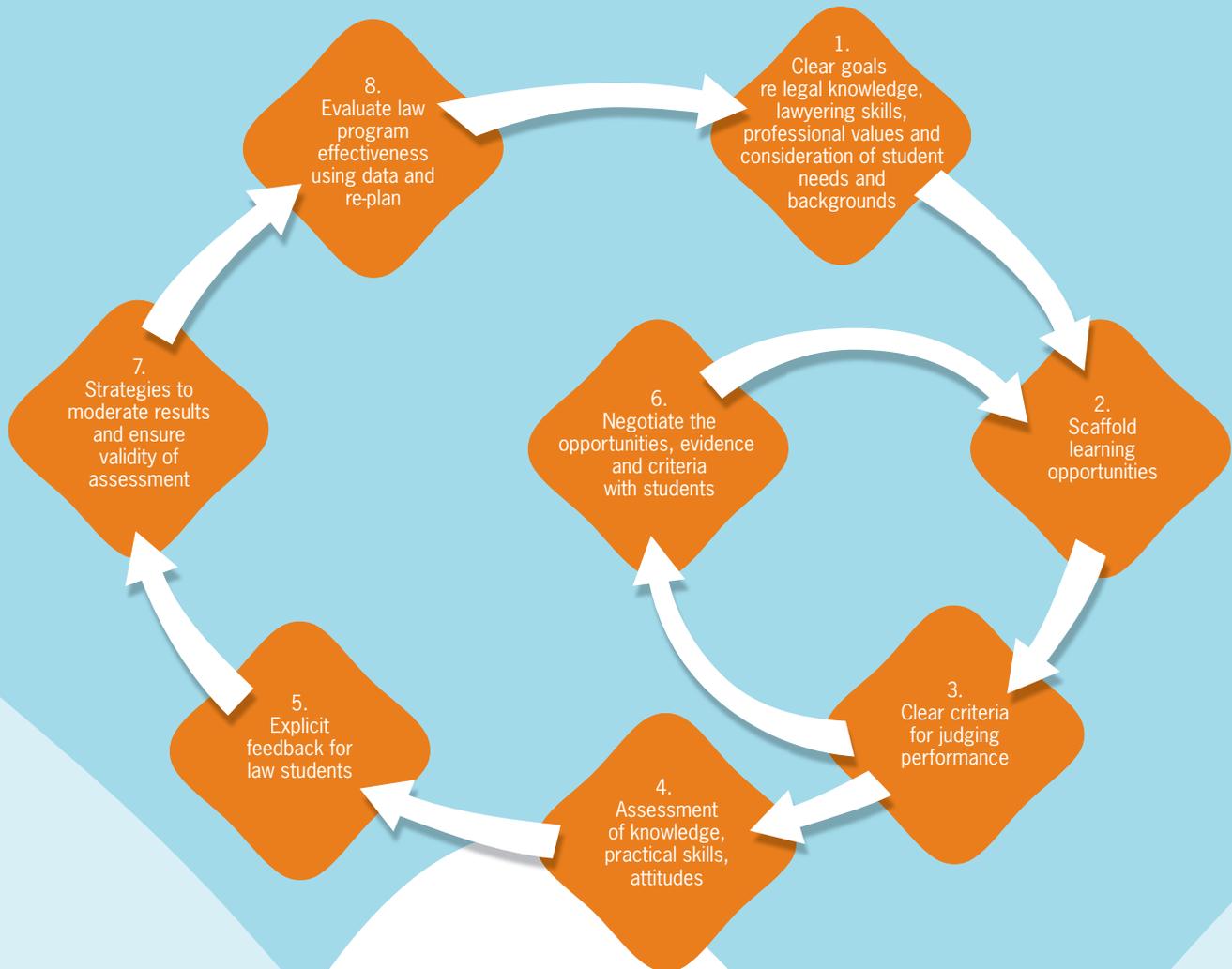
- students taking on a role
- learning about professionalism and ethics
- learning and working in groups
- taking a reflective attitude to learning.

The Workshop asked participants to think about assessment that can create opportunities for self- and peer-evaluation, make success criteria transparent, reflect intended graduate attributes and learning outcomes, and respond to more than content and legal analysis. Participants worked to produce comprehensively planned assessment tasks that reflected clear outcomes to be achieved and stated explicit criteria for success.

The broader context for using more innovative assessment approaches occurs within the 2000 ALRC *Managing Justice* report. This highlights the importance of education going beyond content focus towards skills and values: ‘what lawyers need to be able to do [rather than] anchored around outmoded notions of what lawyers need to know’.³

To similar effect, the 2007 *Carnegie Foundation Report into Legal Education* states: ‘Professional education is preparation for accomplished and responsible practice in the service of others. ... Thus the pedagogies of the professions must attempt to bridge and resolve tensions between the competing imperatives to which future professionals must respond. The students must learn abundant amounts of theory and vast bodies of knowledge, but the “bottom line” of their efforts will not be what they know but what they can do’.⁴

Curriculum Planning Framework for Quality Learning and Assessment in Law - November workshop tool.⁵



1. **Clear goals:** Knowledge, skills and dispositions that students must develop to achieve outcomes, including any prerequisites and recognition of current skills.
2. **Scaffolded Learning Activities:** Planning and scaffolding learning opportunities, with content supporting student achievement of outcomes.
3. **Clear Criteria:** Linked to assessment tasks and outcomes.
4. **Assessment Task:** Evidence of learning within assessment.
5. **Explicit feedback:** Clarity about strengths; explicit information about areas for improvement.
6. **Negotiation:** Students negotiating their own goals and assessment criteria, also identifying continuing professional development areas.
7. **Strategies to moderate results:** Ensuring consistency and validating assessment.
8. **Evaluate law program effectiveness:** Identify student achievement and re-plan for future learning and program development.⁵

ASSESSMENT: KEY IDEAS

- Assessment shapes student behaviour
- Gives signals re activities valued
- Provides structures for learning activity
- Helps develop good learning patterns
- Constructively aligned and identified in learning outcomes
- Variety of assessment purposes, including student motivation and engagement, consolidation and giving feedback to students about level of achievement and areas for improvement.

Focus for Criterion-Referenced Assessment (CRA): How well an individual student has performed as measured against specific criteria and performance standards communicated to them in advance of the assessment.

- Outlines assessment requirements and provides students upfront with clear and attainable standards
- Compels students to focus on the learning objectives of a unit
- Raises the quality of marking through greater consistency and reliability
- Provides worthwhile feedback to students
- Helps markers to identify strengths and weaknesses in an item of assessment and this informs the future teaching approaches.

Law school graduate attributes provide the lynchpin to effective assessment. Criterion-Referenced Assessment supports learning and aligns assessment to explicit learning outcomes.²

Process of using Criterion-Referenced Assessment for first year law students:

- Design assessment tasks with broad criteria and links to unit objectives and allocate marks to broad criteria.
- Develop sub-criteria and use these to provide detailed feedback to students.

Release drafts of CRA for discussion in lectures and tutorials and seek feedback. Release final version of CRA a week before assessment is due, allowing time to respond to student questions.

Implementation of CRA in first year subjects:

- Spend 10 minutes in lectures on CRA: what it is, purpose, exemplars, how to use in a particular unit.
- Tutorial exercise—formative assessment such as legal citation exercise, then peer marked against a basic CRA sheet for the exercise, with students applying CRA.
- Tutorial exercise—use CRA to assess an example of the previous year's assessment task or other generic examples - eg client letter and memo of advice.

Introduction to other assessment materials

The following pages reflect in more detail the discussions and outcomes of the four collaborative working sessions that took place at the 'Let's Do Assessment' Workshop.

The presentation is deliberately non-linear, in order to be widely accessible as *guidance* to various ideas and insights, not a formal report. But each group did produce at least one assessment task. This is produced in 4 block format:

- The first block ('Objectives/outcomes') sets out the intended learning outcomes to be achieved in the particular area concerned, linking them to possible graduate attributes that law schools have identified.
- The second block ('Scaffolded learning') identifies how teachers might go about helping the students learn in incremental fashion what we want them to learn in the area.
- The third block ('Assessment task') is the model that the participants produced.
- The fourth block ('Assessment criteria') identifies, using a criterion-referenced assessment approach, how the student work might be evaluated.

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ETHICS

Ethics is an essential component of a law program. Five core areas of ethics learning need emphasis:¹

- purpose and limit of lawyer's role
- justification of lawyer's work
- law on lawyering
- moral responsibility and autonomy of legal process
- ethical decision-making in legal practice.

Ethics teaching beyond legal rules in Australian law programs and overseas was not widely occurring prior to the 1990s. The *Pearce Report* (1987) showed there was little attention to legal ethics, legal theory or generic skills and there was a need for theoretical and critical perspectives.²

The applicable Priestley 11 requirements focus primarily on professional conduct rules and lawyerly duties, but many argue that 'professional responsibility' has broader and deeper connotations to which law students should be exposed. The ALRC's 2000 *Managing Justice* report highlighted the need for professional skills and deep appreciation of ethical standards and professional responsibility.³ The 2007 *Carnegie Report* identifies the elements of legal professionalism as 'conceptual knowledge, skills and moral discernment'⁴ and concludes that in legal education 'professionalism, social responsibility, or ethics draws to the foreground the purposes of the profession and the formation of the identity of lawyers guided by those purposes'.⁴

CALD's *Standards for Australian Law Schools* (2008) [St 2.3.3] expects curricula to seek to develop 'the principles of ethical conduct and the role and responsibility of lawyers, including, for example, their pro bono obligations' and 'internalisation of the values that underpin the principles of ethical conduct and professional responsibility'.⁵

Johnstone and Vignaendra (2003) identified various approaches to ethics teaching:

- single subject
- part of single subject
- woven through several subjects
- mostly compulsory but sometimes an elective subject.

There were 'no formal arrangements to ensure a coordinated approach to the teaching of legal ethics and its infusion through the curriculum' (p. 122).⁶ The DBI's explorations reveal that changes are occurring.⁷

Quality activities in ethics are:

- designed to engage students
- aligned with quality teaching and learning
- focused on ethical decision making
- led by teachers, students, peers
- inclusive of reading, hypothesis-making, essays, debates, negotiation, role plays, reflection
- inclusive of assessment and feedback
- evaluated through surveys, reflection, feedback
- highly effective in clinical situations.

Law curriculum renewal and a deeper learning and understanding of values and ethics are future directions:

*...a shift from content knowledge and transmission roles to a responsibility for ensuring the achievement of broad and transparent outcomes consistent with graduate attributes....By engaging students in critical thinking, guided group work processes, building reflection skills and journal writing, using role plays and experiencing ethical decision-making dilemmas, not only will the law curriculum be re-energized but deeper learning in the areas of knowledge, skills and values will be promoted.*⁸

Some law schools have introduced Ethics integrated across various law topics. Therefore, workshop participants devised a broad template for ethics assessment. Tasks can vary depending upon substantive subject matter being studied:

Objectives/outcomes

- Students will engage critically in morally significant issues related to the law of... .
- Students will understand key principles of the law of... and subject these to critical thinking.
- Students will make ethically informed decisions and/or provide ethically informed perspectives.
- Contribute to development of personal ethical practice.

Possible Graduate Attributes:

- body of knowledge
- ethics.

Scaffolded learning

Through:

- lectures
- tutorials/critical discussion/feedback
- reading and critical perspectives
- discussion boards
- site visits/website visits
- practitioner inputs
- construction of relevant media portfolio.

Provide opportunities for students to consider key principles of laws of evidence, engage critically in orally significant questions in legal practice, understand some principles of professional responsibility and duty to court, learn about ethical decision making and providing ethically informed perspectives, develop own learning about ethical responsibility, engage in ethics learning over time in client work.

Assessment task

Possible task:

- Consider a situation regarding client confidentiality where child abuse is suspected and the mother as client has informed you she has decided to return to the suspected abuser and wants no further action.
- Write a reflective response outlining the relevant legal issues in terms of confidentiality and child abuse. Discuss your decision making process and the various alternatives considered and your eventual actions.

Assessment criteria

Demonstrate:

- sound knowledge of relevant professional conduct rules legal principles.
- sound knowledge of professional responsibility.
- legal writing criteria (description of main points, identification of issues, coherency of argument, overall construction, conclusion).
- critical, reflective engagement (substantive law, ethical issues including recognition of conflicting interests, conflicting values).
- evidence of commitment to development of ethical style of practice.
- ability to make ethical choices/offer ethical perspectives.

Ethical dilemma assessment task⁹

Objectives/outcomes

Develop confidence and processes for working through an ethical dilemma.

Possible Graduate Attributes:

- body of knowledge
- ethics.

Assessment task

Choose one of the hypothetical dilemmas provided by the lecturer from a list. Write or develop an oral presentation regarding the ethical dilemma using the framework.

Scaffolded learning

Discuss a lecturer-provided framework for considering ethical questions:

- central issue?
- nature of the problem, 'ethical', 'moral' or something else?
- values, norms or standards to consider?
- competing considerations and their weight or priority?
- nature of decision-making process in reaching a decision?

Consider specific hypothetical situation in class and practise applying framework within small group situation.

Outline key points to class and engage in whole group discussion with feedback from lecturer.

Assessment criteria

Demonstrate:

- sound knowledge of relevant professional conduct rules
- analytical skills in making ethical choices/ offering ethical perspectives
- a clear indication of nature and source of values, norms or standards applying in resolution of the dilemma
- a clear justification for the conclusion reached
- overall coherence, structure and succinctness, effective language use and expression.

Possible detailed assessment criteria and sub criteria for oral presentation.¹⁰

Marks linked to Graduated Descriptors. Suitable for providing criteria for Ethical Dilemma Assessment task.

	10 marks	9-8 marks	7-5 marks	4-3 marks	2-1 marks
CONTENT ANALYSIS	<ul style="list-style-type: none"> Professional conduct rules Ethical choices analysis Source of values in resolving dilemma Justifying conclusion <p>Your choice of content was highly relevant and you demonstrated a comprehensive understanding of the topic. All or most of the essential concepts were analysed and explained in a highly effective manner.</p>	<p>Content relevant, good understanding of topic.</p> <p>Most concepts effectively analysed and explained.</p>	<p>Content choice mostly relevant, fair understanding of topic.</p> <p>Some essential concepts analysed and explained, but not always effectively.</p>	<p>Choices of content often lacked relevance. Limited understanding of topic. Few concepts analysed or not always essential to topic, lacking effective explanation.</p>	<p>Choice of content lacked relevance and little understanding of topic. Difficulties in analysing and explaining essential concepts.</p>
STRUCTURE	<p>Your presentation had a very clear and effective structure. The material was delivered within a suitable time frame. Highly appropriate pacing of presentation.</p>	<p>Presentation with clear appropriate structure. Delivered within time frame. Pacing appropriate.</p>	<p>Fair structure. Delivered in suitable time frame. Pacing sometimes appropriate.</p>	<p>Some structure was unclear. Lack of suitable time frame and pacing.</p>	<p>Presentation unstructured, not delivered in time frame, pacing frequently inappropriate.</p>
NON VERBAL	<p>Your body language and movement were highly appropriate, with gestures used confidently and naturally. You maintained consistent eye contact throughout. There was a very high level of audience interest and attention.</p>	<p>Body language, movement, gesture appropriate, reasonable eye contact, high level of audience interest and attention.</p>	<p>Some movements/gestures appropriate and mostly held audience interest.</p>	<p>Few gestures used, rare eye contact, attempted to get audience interest but some difficulties.</p>	<p>Presentation read with little use of gestures, audience inattentive, displayed little interest.</p>
VERBAL	<p>Words were pronounced correctly and confidently. Language was highly appropriate to audience and topic. Your tone, pace and vocal variation were used highly effectively.</p>	<p>Words pronounced correctly. Language appropriate to audience/topic. Tone, pace, vocal variation used effectively.</p>	<p>Familiar words pronounced correctly. Language used appropriate in most places. Tone, pace, vocal variation often correct but could be more effective in some places.</p>	<p>Familiar words pronounced correctly. Language used appropriate in most places. Tone, pace, vocal variation often correct but could be more effective in some places.</p>	<p>Pronunciation problems make presentation difficult to understand, tone, pace often inappropriate.</p>

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REFLECTIONS AND LEARNING CHRONICLES

Lifelong learning is an important competency within university graduate attributes and in preparation for the legal profession. University law studies have traditionally involved lectures, tutorials and examinations and passive student formats. This is contrasted with learner-centred and social and situational approaches used for transformative learning, challenging student ideas and futures-oriented approaches.¹ (Easteal, 2008)

The learning in law is not simply the transmission of content or the facilitation of learning ... If we wish to help students become skilled lifelong learners who seek a transformative approach to their learning, then we must model a transformative approach in our teaching. We must set up a learning context in which students may challenge our conceptions and their own: one in which they construct their own knowledge frameworks.²

Reflection is:

A mental process with a purpose and/or anticipated outcome that is applied to relatively complex or unstructured ideas for which there is no obvious solution.³

Reflection writing is about:⁴

- descriptive processes (routine, description and explanation and dialogue exploring various courses of action). Includes communication, reasoning skills, knowledge areas and professional practice development
- deeper reflective levels and application for future practice requiring scaffolding
- deeper critical reflection: considering broader contexts, examining theoretical positions, asking fundamental questions and preparing for change.

Critical reflection is taken to mean a deliberate process when the candidate takes time within the course of their work, to focus on their performance and think carefully about the thinking that led to particular actions, what happened and what they are learning from the experience, in order to inform what they might do in the future.⁵

Reflection process for formal learning:⁶

1. Select event for reflection process
2. Describe events and feelings: eg
 - a) a statement of observations
 - b) comment on personal behaviour
 - c) comment on reaction/feelings
 - d) comment on context
3. Explanatory and extra information eg
 - a) further observations
 - b) relevant other knowledge, experience, feelings, intuitions
 - c) suggestions from others
 - d) new information
 - e) formal theory
 - f) other factors such as ethical, moral, socio-political context
4. Reflective thinking occurs – processes of relating, experimenting, exploring, reinterpreting from different points of view, or within different contextual factors, theorising, linking theory and practice
5. Other processing may occur: testing of new ideas in practice or in a first written draft, poem, drawing
6. Product results – something is learned or there is a sense of moving on – eg identification of an area for further reflection or a new question is framed
 - there is more reflection
 - there is resolution/completion.

Experimental learning and reflection

Moon's work is aligned with Kolb's (1984) experiential learning process regarding new experiences, followed by feedback from self and others and development of new theories and further experimentation within formal and informal contexts.⁷

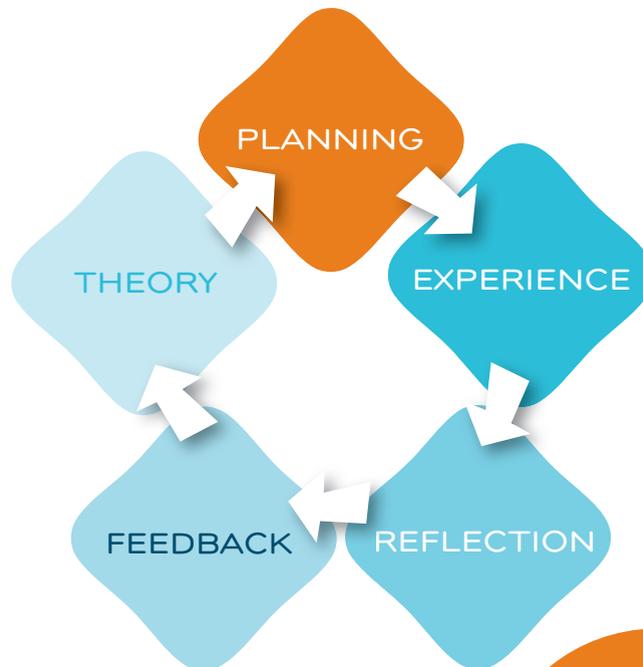
Vygotsky (1978)⁸ emphasises acceleration through planning and scaffolding within formal education situations to maximise the learning potential. These perspectives are shown in the following diagram using Easteal's (2008)¹ action learning in law education.⁹

Planning for scaffolded experiences:

Action planning, setting objectives, learning contracts, designing criteria for judging outcomes.

Scaffolded experiences for feedback:

Follow-up emails, peer appraisal, self-assessment, structured de-briefing.



Scaffolded experiences for experience/reflection:

Small group discussion or buzzes and answering questions; formal instruction using visual aids; listening exercises, reflective journals/learning chronicles; role play and developing client interview questions; developing lawyer-client scripts; writing short stories and pamphlets.

First year Law weekly reflective writing.

Reflective writing to build critical thinking and improve written communication skills for first year law students has been used as a focus for weekly writing tasks.¹⁰

This example is a summary of an article which shows scaffolding and involves students attending the lectures and tutorials on a weekly basis and submitting a 250 word written reflective narrative, also collecting their detailed feedback from the tutor regarding the previous exercise as a key mechanism of support.

Clear assessment criteria are discussed within tutorials.

Objectives/outcomes

Students develop library research skills; have a deep appreciation and understanding of case law, precedent, legislation and statutory interpretation; develop legal problem solving skills, ability to communicate effectively in writing within 1st year subject *Legal Research, Writing & Analysis*.

Possible Graduate Attributes:

- body of knowledge
- reflection on learning
- self reliance
- interpersonal understanding
- personal & professional ethics
- literacy/written communication
- critical thinking.

Scaffolded learning

Two hour lecture weekly Including discussion of content material, interactive class activities, note taking.

One hour tutorial weekly:

- research activities
- short theoretical questions and problem solving activities
- role play participation
- practice using prompting 'why' questions
- brainstorming of suitable topics for narrative
- explanation about reflective narrative with structured assessment criteria and provision of manual of examples.

Within tutorial, weekly hand in and collection of tutor-provided written feedback regarding 250 word narrative submitted by students regarding area of interest from material covered in tutorial/lecture that week.

Assessment task

Complete 250 word weekly reflective narrative writing tasks related to lecture/tutorial materials such as:

- law in context, or
- specific skills displayed in performance of a task such as writing/group work/study skills, or
- practical legal knowledge (substantive law and procedures) and write answer to tutorial problem.

Assessment criteria

Weekly narratives worth 15% of total subject mark:

- demonstrated knowledge of topic (concepts explained, extended, question raised and addressed)
- reflection on chosen topic (identify problematic issues, evaluate and justify topic, consideration of change and imaginative suggestions)
- clarity of expression and overall structure (fluent and appropriate language, grammar/spelling accurate, clear structure)
- referencing (one source per reflection, accurately used)
- conformity with instructions (work submitted on time and within word limit).

'Buzz' groups and active learning reflective work

This active learning and reflection approach highlights engagement and active learning to build understanding of issues for the range of students, also supporting academic rigour.

Easteal (2008)¹ indicates scaffolding and supporting learning through:

- formal instruction using visual aids, interspersed with small group discussions
- 'buzzes' based on reflection and answering a series of questions in groups
- follow up emails to students acknowledging their insights
- using international student perspectives and backgrounds in relation to legal discussions.

'Buzzes' in *Gender and the Australian Legal System*, *Family Law and Employment Discrimination and the Law* may involve pairs and creating a role play. This involves generating five to ten questions for client interviews re seeking a parenting order in a suspect domestic violence situation. Reflective journals or learning chronicles, short stories and scripts (rather than exams) illuminate law content understanding and wider student perspectives

Assessment task examples are:

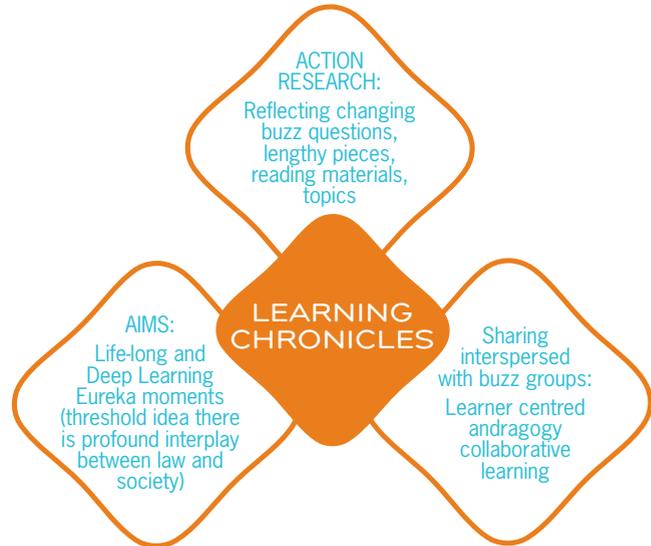
- Write a script between a lawyer and client that identifies issues of gender in offending and/or sentencing.
- Write a creative piece (for example a short story with academic footnotes) that overviews issues for women in prison and then focuses on one issue for the last half of the piece.

Transparent criteria for written work may involve:

- writing (correct grammar, spelling, effective expression; effective introduction, structure and conclusion, quotations; reader interest)
- substance (demonstrating understanding of relevant law and theory; clear and convincing holistic presentation; correlated facts and outcomes in

judgements and client advice; covering topic appropriately with examples; original arguments, making own values and assumptions clear, being explicit about theoretical underpinning of arguments).

- research (use materials provided, additional sources, consistent footnoting, showing initiative in research).



Other assessment examples

Buzz on Sexual Discrimination: You are a mum with two kids and you work part-time. Write a diary entry or two (not to exceed one page) in which you describe your life and discuss at least four experiences of indirect discrimination you have had or will experience.

Buzz on Women at Law School: As a consultant hired by a law school, critique the gender equity status of the school (both staff and student issues). Give a rating, explain and generate ten suggestions for improving the score.

Buzz on Gender in Family Law: It is the year 2020 – you are old, but gender and society are the same as in 2007. You are a lawyer advising your male client that he can expect a 30:70 property division. There are two children aged two and six who 'live with' Mum. The client becomes upset and threatens you. You go back in your memory to week three of Family Law and explain to him holistically the cultural variables that contribute to his partner needing 70% of the property.

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GROUP WORK

Working in groups within university programs provides opportunities to develop teamwork skills.

Teamwork is essential for employment, for personal development and all aspects of society. Specific aspects involved in teamwork are:¹

- working as an individual and a team member
- applying teamwork to a range of situations
- working with people of different ages, genders, races, religions or political persuasions
- coaching, mentoring and giving feedback
- knowing how to define a role as part of a team
- identifying the strengths of team members.

Floyd (1997) asked how law schools would be different if they were serious about preparing students to be good lawyers. One way would be that:

Law Study Would Not Be So Individualistic: It Would Prepare Students for the Cooperative and Relational

Dimensions of Law Practice. Lawyers seldom work in isolation from other people. In any legal matter they always have a client. In addition, the vast majority of law school graduates will work together with others in a law firm or other organisation. In representing clients, lawyers often work together with lawyers representing other parties.

Legal education, however, tends to be very individualistic. Students rarely are required to work in groups toward common goals. Moreover, students tend to be highly competitive with each other over grades, class rank, and other rewards ... Law schools need to encourage more cooperation, collegiality, and interpersonal work. Projects in which students collaborate toward a common goal are essential to foster the ability to work together. Students also need to be reminded that grades and class rank do not necessarily have much to do with how successful they will be as lawyers.²

Law student research identifies the value of collaborative work as follows:^{3,4,5}

- students pooling individual experiences and expertise⁶
- creating a dynamic, engaging and participatory learning environment
- harnessing capacity of students to be a resource and support for each other's learning
- opportunities for increased student independence in learning
- awareness and capacities to manage group dynamics effectively
- developing conflict resolution skills
- developing higher level understanding
- developing more positive view towards subject matter.

University Graduate Attributes usually include teamwork. For example, one university identifies Self and Cooperative Work Management skills in law as including cooperative work and being able to:

...collaborate effectively with others in order to achieve goals, including participation and contribution to group discussion, sharing information, dividing up work tasks, building consensus and generating effective team outputs. This includes, for example, the ability to work effectively as part of a legal team preparing a case for trial or settlement negotiations.⁷

Given that teamwork may involve sophisticated interpersonal skills, three stages at basic, intermediate and advanced levels may be outlined, with students approaching graduation expected to operate at advanced levels. Some university graduate attribute statements acknowledge various levels:⁷

Basic

- understands the meaning of emotional intelligence; engages in basic goal setting
- understands factors that may impact on personal performance (such as motivation, stress, anxiety, depression)
- able to meet assignment deadlines
- understands what teamwork involves*
- displays a cooperative attitude towards other group members.

Intermediate (Basic, plus:)

- able to reflect upon and learn from errors in dealing with others
- makes efforts to establish goals in personal and professional life and timeframes and strategies to achieve them
- undertakes regular assessment of priorities
- able to act independently in undertaking aspects of a group's work and devise an appropriate means by which to liaise with other group members about their part of the work.

Advanced (Intermediate, plus:)

- maintains composure and self control when dealing with difficult people
- has clear goals and a system to implement strategies to achieve them
- undertakes regular review of personal and professional goals
- able to manage time over a complex range of tasks with various and overlapping deadlines
- able to identify and communicate with the team any issues that affect team performance and reach agreement on a workable solution.

*Teamwork includes setting of agreed guidelines, ability to communicate clearly, listening attentively, respecting each others' contributions, a willingness to share for the greater good of the team, giving and receiving constructive feedback, organisation of meeting times and manner.⁸

What is a good group process?⁹

Good group process is where all group members play as close to an equal role as possible. Other hallmarks of a good group process are:

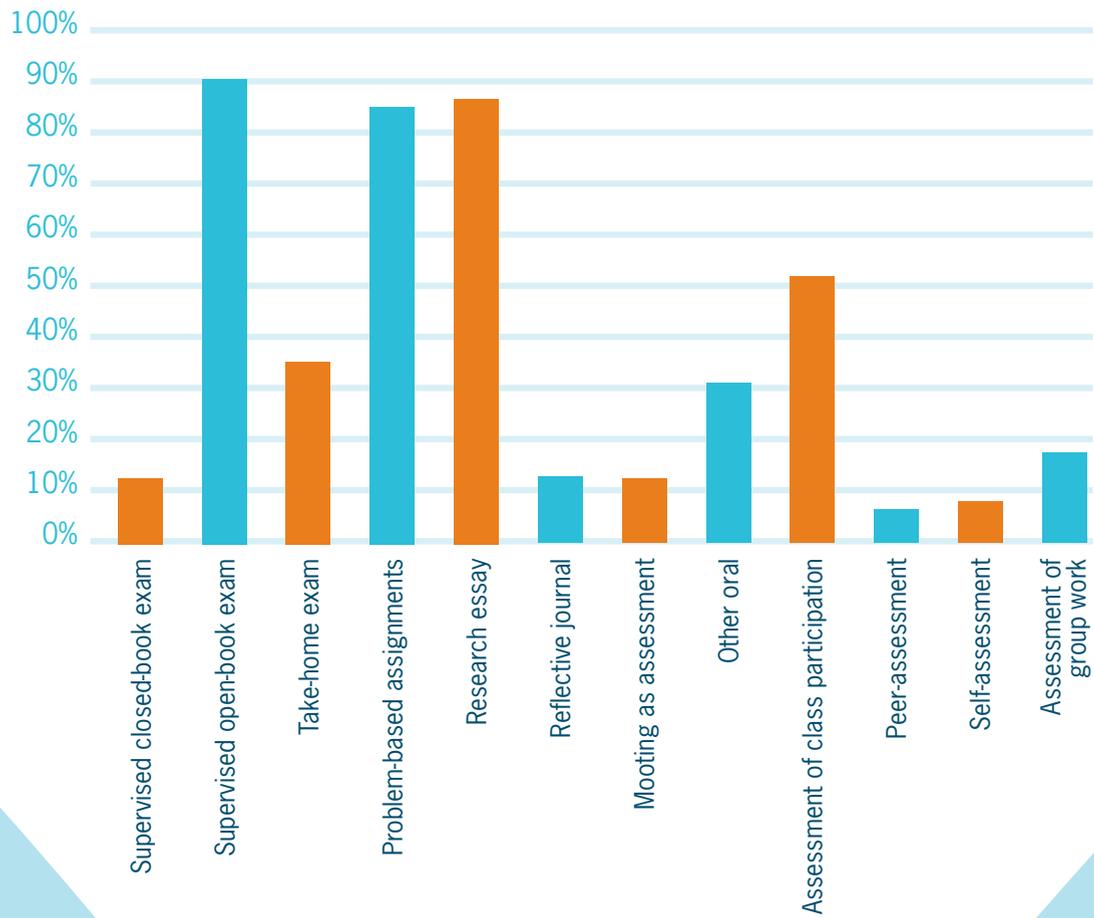
- Members know their own, and each other's, strengths and weaknesses and tasks are divided.
- Group members put their heads together to reach a better result.
- Group members listen to each other discuss, negotiate and synthesise ideas.
- The group doesn't allow one person to dominate, or carry them; nor does it allow any person a free ride.
- All contributions are valued and everybody has a place that suits his or her needs and talents.
- Significant inequalities of contribution are identified and addressed.
- Personality clashes are also addressed and worked out.
- Confident people are considerate, shy people are encouraged.
- Effective use is made of the group's facilitator, to help them in all of this.

What challenges may lead to low usage of group work within assessment?^{11,12}

- Not the norm, therefore student resistance must be overcome.
- Facing complexities of deciding upon group member selection alternatives.
- Considerations of equity in marking, eg group mark? individual mark? hybrid option?
- Deciding what tasks are suitable for group work and assessment.
- Addressing unequal student contributions, actual or perceived.
- Utilising assessment criteria appropriate for group work.
- Role of self- and peer-assessment.
- Student unwillingness to 'police' each other's commitment and performance.
- Lack of confidence in effectiveness of group learning generally, or capacity to differentiate sufficiently for 'gate-keeping' role.
- Student time constraints, particularly in terms of arranging to meet as a group.

These challenges mean group work as an assessment approach has not been commonly used in legal education.

AUTC (2003) Report:
Student views of regularity of specified assessment methods¹²



First year Group Work Assessment task for Law Students

Objectives/outcomes

First year preparatory task demonstrates ability to complete task using appropriate group work processes.

Possible Graduate Attributes:

- body of knowledge
- reflection on learning
- interpersonal understanding and group work
- communication.

Scaffolded learning

Through:

- lecture on roles in groups, theoretical framework communication theory
- video/DVD viewing of group work (eg *A Few Good Men* re lawyers working together)
- assigning reading material appropriate for student cohort and including role differentiation in group work
- practice presentation of oral/written task for tutor/other group feedback using assessment criteria.

Assessment task

Completion and presentation of group assignment (either orally or in writing), including peer-assessment through written reflective record of teamwork evaluation sheet.

Assessment criteria

Demonstrate:

- quality of group work process from understanding of roles to working as team member in solving problems, and participation in discussions and negotiations
- understanding of role differentiation, including leading team in problem solving and demonstrating initiative
- equality of contribution
- ability to listen to others and ask questions appropriately within team
- respect for other points of view and discussion without domination
- ability to reach consensus
- appropriate allocation of roles and timely completion of allotted task within available resources.

Tips to assist in making group work assessment successful:^{10,11}

- take time to prepare and train students for working in groups
- identify potential pitfalls and give students tools to avoid and/or resolve problems
- provide students with some negotiation opportunities without being overwhelming
- ensure mutual expectations are identified, agreed, recorded and enforced
- incorporate formative evaluation processes from students and tutors as well as ensuring sufficient weighting of summative tasks
- record oral tasks so that moderation can occur to support consistency among various markers
- assess process as well as product, using appropriate and effective criteria for each
- ensure teaching staff express enthusiasm and confidence.

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Workshop group members:

Group Leader: Elizabeth Handsley

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ROLE

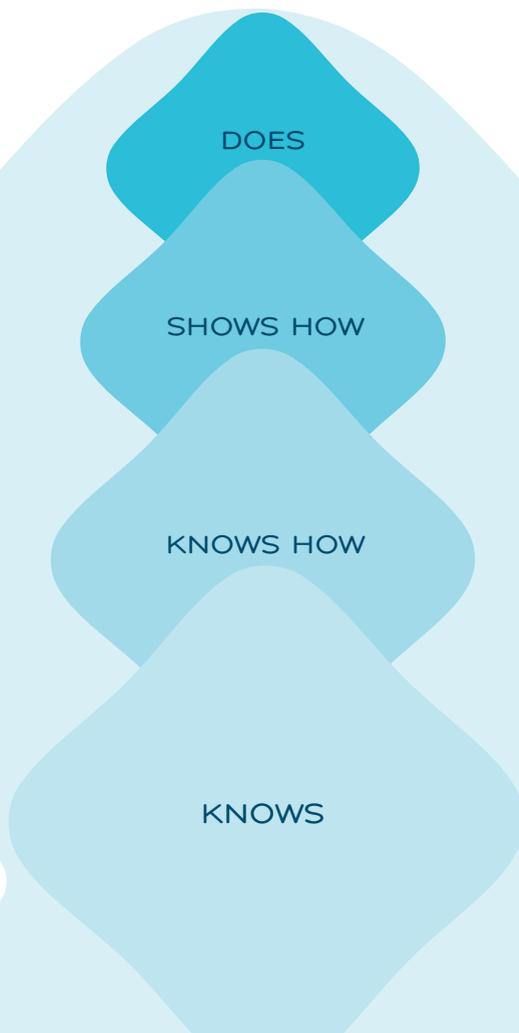
According to the Carnegie Report (2007), analytical thinking and formal knowledge is a priority in preparing lawyers, but ‘priority should not be misconstrued as sufficiency’. Analysis and knowledge of doctrine ‘often comes most fully alive for students when the power of legal analysis is manifest in the experience of legal practice. ... [P]ractical skill is developed through modelling, habituation, experiment, and reflection ... requir[ing] settings and pedagogies different from those used in the teaching of legal analysis. ... [P]rofessional identity joins [legal analysis and practical skill] and is... the catalyst for an integrated legal education.’¹

University law schools will ideally nurture knowledge, skills, and personal attributes of the lawyers of the future, including discipline-specific and broader generic areas. Generic outcomes include lifelong learning, highly skilled and flexible professionals, reflective thinking, intellectual curiosity, effective communication, teamwork, consciousness of social justice, global perspectives, valuing cultural/ intellectual diversity, highly developed ethical practices, problem solving and interpersonal skills.

Experiential learning in workplace or simulated contexts includes various experiences relevant to building legal professional identity and skills such as:

- problem-solving through studying individual legal cases
- developing generic and occupational skills within tertiary studies
- reflective practitioner models involving self-directed and group learning
- Role plays, workplace visits and case studies as simulations.

Experiential placements show the links between knowledge, skills and professional attitudes and opportunities for simulated professional action and actual workplace experiences.²



Miller's (1990) competency assessment framework³ progresses through:

- 'knows' (essays, tests, written)
- 'knows how' (applied knowledge case studies, letter-writing)
- 'shows how' (simulations: interview practice with tutors; letter writing for actual cases)
- 'does' (demonstrate skills, knowledge within experiential learning).

Law Workshop group-devised framework (November 2008):
Assessment of Role in Law Education from Knowledge to Clinical Placement.

Increasing/building student independence, confidence, professional identity

Continuum of verisimilitude from high support/low risk classroom to real and consequential

Post admission
specialisation assessment 5 years

Clinics/placements/pro bono:
letter writing and interviews with clients under supervision

Simulation/virtual world (eg Second life):
write letters/conduct interviews, moots based on real-world situations,
involving judges, law firms, clinics, tutors

Classroom knowledge in practice:
individuals and peers draft letter/ practise interview skills based on
hypothetical problem created by academic

Classroom knowledge:
relevant law aspects, communication theory, discuss letter writing and
client interview processes, see letter examples, discuss interview protocol
and view and critique films/DVDs

Knowledge: letters and interviews

Objectives/outcomes

Understands relevant law knowledge and principles of communication theory, letter writing and interview protocols.

Possible Graduate Attributes:

- body of knowledge
- communication
- interpersonal.

Assessment task

Complete online quiz regarding relevant topics knowledge, communication theory and letter writing and interview protocols.

Assessment criteria

Demonstrate:

- specified topic knowledge
- communication theory aspects
- letter writing, layout
- interview processes protocol.

Scaffolded learning

Read, summarise, note-take, research, regarding relevant law aspects and communication theory.

Discuss formats for legal letter writing and client interview protocols.

View sample letters and discuss.

Discuss client interview protocols and view and critique films/DVDs.

Classroom knowledge in practice: letters and interviews

Objectives/outcomes

Demonstrates understanding of legal letter writing and client interviewing skills in classroom situations.

Possible Graduate Attributes:

- body of knowledge
- communication
- interpersonal.

Assessment task

Write a letter to a client providing advice in response to a query regarding a relevant topic.

Conduct interview with a peer regarding a simple legal matter on a relevant topic, using the protocol provided.

Assessment criteria

Demonstrates understanding of:

- basic format/presentation of a simple legal letter and substance and appropriate written expression and understanding of area of law content
- letter format; firm letter head, references, date, special instructions, name and address, salutation, subject line, complimentary close, signature, typeface,
- beginning stating purpose, middle providing facts/advice, end client action and contact
- written expression; clarity of expression, using plain English, professional tone, proofread, legal citation
- content; knowledge of area of law
- interview process; provides appropriate information, establishes professional relationship, gathers relevant information, assesses/selects information, provides specialist knowledge, tailors communication, offers support and follow up, provides opportunity for questions, summarises.

Scaffolded learning

Review sample letters and work in pairs to write a letter as outlined by lecturer.

Use assessment criteria and jointly rate the letter.

Submit to lecturer for feedback.

Review client interview protocol and use it to conduct practice interview with peer, using a situation provided by lecturer. Have an observer provide feedback using assessment criteria.

Simulation: Virtual World letters and interviews

Objectives/outcomes

Demonstrates understanding of legal letter writing and client interviewing skills in simulated situations of authenticity.

Possible Graduate Attributes:

- body of knowledge
- communication
- interpersonal.

Assessment task

Write a letter on behalf of a particular law firm/agency providing advice in response to a query regarding a specified issue.

Conduct interview with a tutor providing advice regarding a legal matter on a specified topic.

Assessment criteria

Demonstrates understanding of:

- basic format/presentation of a simple legal letter and substance and appropriate written expression and understanding of area of law content
- letter format; firm letter head, references, date, special instructions, name and address, salutation, subject line, complimentary close, signature, typeface
- beginning stating purpose, middle providing facts/advice, end client action and contact
- written expression; clarity of expression, using plain English, professional tone, proofread, legal citation
- content; knowledge of area of law
- interview process; provides appropriate information, establishes professional relationship, gathers relevant information, assesses/selects information, provides specialist knowledge, tailors communication, offers support and follow up, provides opportunity for questions, summarises.

Scaffolded learning

Guest lecture on drafting letters and client interviews from corporate partner/community legal centre in relation to particular problem.

Students prepare for tutorial using package of readings in relation to specific issue.

Students practise writing an initial letter of advice and conduct practice interview in pairs with feedback using protocol and assessment criteria.

Students practise writing second letter and use assessment criteria to self-assess and peer assess
Students practise additional client interview in threes, with observer.

Clinic: Workplace letters and interviews

Objectives/outcomes

Demonstrates understanding of legal letter writing and client interviewing skills in the workplace.

Possible Graduate Attributes:

- body of knowledge
- communication
- interpersonal.

Assessment task

Write a letter to a client providing advice in response to a query within a workplace context.

Conduct interview within a workplace context under supervision.

Assessment criteria

Demonstrates understanding of:

- basic format/presentation of a simple legal letter and substance and appropriate written expression and understanding of area of law content
- letter format; firm letter head, references, date, special instructions, name and address, salutation, subject line, complimentary close, signature, typeface
- beginning stating purpose, middle providing facts/advice, end client action and contact
- written expression; clarity of expression, using plain English, professional tone, proofread, legal citation
- content; knowledge of area of law
- interview process; provides appropriate information, establishes professional relationship, gathers relevant information, assesses/selects information, provides specialist knowledge, tailors communication, offers support and follow up, provides opportunity for questions summarises.

Scaffolded learning

Observes, examines letters and interviews within particular workplace context and discusses expectations with supervisor.

Assists in letter writing and interviews and discusses with supervisor.

Prepares letters conducts interviews within supervised context and gains feedback.

The Law Workshop group identified that there are various dimensions for consideration in assessing Role.

It is suggested that law teachers consider each of these dimensions when designing an assessment process for a role task. Choices are likely to be based on factors such as level within program, student numbers, student previous experience with role practice, desired level of challenge, and particular professional skills to be developed by the task.

Assessment of Role: Dimensions

Written
Prepared/planned
Low weighting
Formative
Lifelike/simulated
Academic Task designer
Academic assessor
Heavily scaffolded
Low cognitive
Closed response
Generic feedback
Private/small/familiar audience



Oral
Unplanned/Spontaneous
High weighting
Summative
Real life
Practitioner task designed
Practitioner assessor
Lightly scaffolded
High cognitive
Open response
Individual feedback
Public/unfamiliar/large audience