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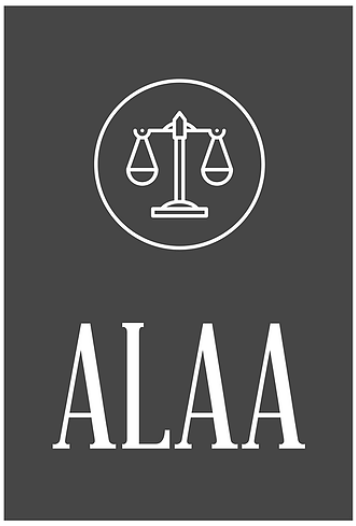

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Contents

FOREWORD

Jonathan Barrett, Editor

The articles in this volume were developed from papers presented at the 2025 ALAA Conference, hosted by the University of Queensland. I wish to acknowledge the Traditional Owners and Custodians of the lands on which the St Lucia campus is located.

Following a recent tradition, we start this edition with a David Barker institutional history. (David's involvement with UTS and AustLII is too well-known to permit a double-blind review.) This time, David outlines the development of AustLII and assesses its considerable contribution to enabling legal scholarship and the teaching and practice of law both in Australia and internationally.

Contracting sessional law teachers not only brings precarity to those teachers but also presents challenges for integration with permanent faculty and institutional strategy. Amanda-Jayne Bull, Amanda Kennedy and Rebecca Wright consider the specific issue of training sessional teachers to engage with diverse learners. The authors consider how a QUT Law School initiative, which included tailored resources and workshops, helped to foster inclusive teaching practices and community among sessional staff.

Stephanie Falconer draws on her PhD research to engage with the 'reflective law student'. The proposition that students, teachers and lawyers should be reflective practitioners can present as a trite expectation. In contrast, Stephanie delves deeply into relevant literature and approaches from different angles to present a deep reflection on reflection itself.

Elizabeth Shi and Lemuel Lopez also engage with reflective practice, specifically explaining and analysing the reflective court observation assessment method and analysing student feedback for this method. They use student observations to demonstrate the benefits of this method.

Alyssa Sigamoney and Briana Chesser report on a multicourse, longitudinal study of delivering a problem-based curriculum across three core courses that aimed to bridge the silos of learning law through the linkage of practical legal skills and authentic assessment. Results included better student engagement, connection and achievement, with students becoming enabled to develop critical problem-solving skills that prepare them for employment.

Marozane Spamers reports on curriculum development of a course for both law and criminal justice students at the University of Canterbury Te Whare Wānanga of Waitaha. Since the legal study of mental health is not common in New Zealand, Marozane had to go back to basics, including commissioning and editing an open access textbook. Respect for Māori *tikanga* (what is the right thing to do in a particular context), *te Ao* Māori (the Māori worldview) and *te reo* Māori (the Māori language) are distinctive features of the curriculum design and teaching practice.

Simone Schwoerer's article is the only piece in this in this edition which is specifically about a substantive area of law, rather than legal resources, curriculum design or teaching. Due to the journal's requirement for succinct articles, it is a challenging task to provide a plausible comparative review of a complex area of law. Simone manages to achieve this in her overview of criminal cartel sanctions.

As Editor of JALAA, my principal aim is to manage a supportive outlet for the early career academics ('ECAs'), who are the future of the ALAA community. Some ECAs chose to work with senior colleagues. These articles tend to face few problems in the review process. But occasionally, writing solo, an ECA may not submit an article which is in the zone of publishability. Some journals would reject such articles outright which helps to boost the journal's claims to exclusivity. At *JALAA* we are fortunate to have a body of reviewers, among the Editorial Board and beyond, whose approach is to consider how an incomplete submission can be made publishable. In that way, reviewers often act more as mentors. I am especially grateful, therfore, to the reviewers for their time, thoughts and constructive feedback at a time when we are all under increasing work pressures and reviewing is commmonly but wrongly overlooked by management as a crucial aspect of research. ALAA is a particular community of scholars and a sense of common purpose is invariably reflected in the review process.

I wish to thank the authors for choosing to submit their work for publication with *JALAA*. Furthermore, as Editor, I have greatly benefited from the support of the Editorial Board, and four ALAA Chairs – Nick James, Natalie Skead, Kate Galloway and Judith Marychurch. Finally, I would like to thank Kaz Seychell for her enthusiastic administrative support.

AUSTLII'S 1,000th DATABASE – A HISTORY OF THE AUSTRALASIAN LEGAL INFORMATION INSTITUTE

*David Barker AM**

ABSTRACT

Since 1995, the Australasian Legal Information Institute ('AustLII') has provided a comprehensive and integrated collection of legal information enabling effective free and anonymous access to all Australian law. As one of the largest free legal information data bases in the world, AustLII is recognised as a global leader in free access to legal information and an international actor in supporting the rule of law.

Recently AustLII celebrated the issue of its 1,000 database which included the Seminal Case Files of the High Court of Australia incorporating 37 cases selected by the current justices of the High Court. This paper will examine the origins of AustLII until the present day, focusing on its continued adaptation to the changing needs of both the legal and general community in the use of its services. This will include a review of the ways in which it has served the ever-expanding needs of legal teaching and research.

I INTRODUCTION

At a ceremony held at the University of Technology Sydney ('UTS') on the 26 March 2024, the Hon Stephen Gageler AC, the Chief Justice of the High Court of Australia, launched the AustLII's 1,000 Database. The ceremony also marked 29 years from the establishment of AustLII in 1995. This landmark occasion signalled AustLII's adding a new database to its collection on average every 10 days since its inception.

Before 1995, lawyers had been dependent on access to an adequately resourced law library, either located on their own premises or at a Court, Law School or Professional Association library. However, accessed, it obviously added to the cost of a legal practice. Indeed, for many sole practitioners or small firms it was practically unaffordable. Furthermore, a basic problem for a newly established law school was the provision of a similar suitable law library. Ralph Simmonds, the former Dean of the University of Murdoch's Law Faculty, has reflected on the difficulties of developing and funding such a resource.[1] Simmonds initiated a fund-raising campaign to develop a law library for the new Murdoch law school. Respecting the special relationship between law libraries and law schools was a major recommendation of the Pearce

* Emeritus Professor, UTS Law Faculty, Sydney and AustLII Senior Researcher.

[1] Ralph Simmonds, 'From Foundation to Ordinary Politics: Staffing, Financing and Promoting the School of Law at Murdoch University' in John Goldring, Charles Samford and Ralph Simmonds (eds), *New Foundations in Legal Education* (Cavendish Publishing Australia, 1998) 161, 169.

Report.[2] Previously, the initial and ongoing funding of an adequate law library had often been the source of continuing dispute between law schools and their central university administration, except in a limited number of the traditional law schools.[3]

II INFLUENCE OF THE INTERNET

Much of this challenge of granting greater accessibility to both public access to legal information throughout Australia and legal education programs had been brought about by the increasing utilisation of the Internet, a medium which had changed the nature of the legal profession's approach to information delivery and communications.[4] This development also had wide ramifications for law academics, particularly those involved in legal research. In this respect the Internet created a major change in how law schools conducted their research into case law and legislation. This innovation was both efficient and cost-effective, and enabled law schools to match their aspirations to provide a relatively cheap and productive range of legal materials for both undergraduate and postgraduate students.

III EARLY DEVELOPMENT OF LEGAL INFORMATION SYSTEMS

While there had been early development of commercial legal information systems in the United States and subsequently in Australia, the Law Faculty at Cornell University established the first free website to facilitate access over the web to the United States Supreme Court decisions and other legal sources.[5]

In Australia attempts were made to develop two government sponsored database systems – one was SCALE (Statutes and Cases Automated Legal enquiry), and the other was CLIRS (Computerized Legal Information Retrieval Service). Neither system gained any major support from the legal profession, so it was left to Australian law schools to take the lead in the further development of legal information databases which would provide a universal free access to all users.

IV ESTABLISHMENT OF AUSTLII

As Universities realised the possibilities of the world-wide-web for the publication of legal material, one outcome was the establishment in 1995 of AustLII under the co-direction of Graham Greenleaf and Andrew Mowbray.[6] It was originally created to provide access to Australasian legal material to anyone who had access to the internet. Whilst the Institute was, and is, physically located at UTS, it was developed as a joint facility of UTS and the University

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[2] Dennis Pearce, Enid Campbell and Don Harding, *Australian Law Schools, A Discipline Assessment for the Commonwealth Tertiary Education Commission* (Australian Government Publishing Service, 1987) lxxii, rec 30 ('the Pearce Report').

[3] David Barker, *A History of Australian Legal Education* (Federation Press, 2017) 179.

[4] Andrew Mowbray, 'Justice and Technology' in Russell Fox (ed), *Justice in the Twenty-First Century* (Cavendish Publishing, 2000) 207, 209.

[5] See Helen Laurence and William Miller, *Academic Research on the Internet: Options for Scholars and Libraries* (Routledge, 2000) 160.

[6] See Andrew Mowbray, Philp Chung and Graham Greenleaf, *AustLII – 30 Years of Free Access to Law* (Report, 15 September 2025) dx.doi.org/10.2139/ssrn.5594030; Andrew Mowbray, Philip Chung and Graham Greenleaf, *Australasian law in 1,000 databases: The evolution of AustLII* (Report, March 2024).

of New South Wales ('UNSW') Faculties of Law. Compared to previous initiatives, AustLII has been successful because Andrew Mowbray developed an exceptional text retrieval search engine known as SINO ('size is no object'). In addition, the relevant government departments made available all their information relating to legislation and court judgments. Apart from these primary materials, other institutions provided secondary materials such as law reform commission reports, bilateral and multilateral treaties and human rights materials. Realising the advantage of an electronic delivery service to meet the needs of New South Wales legal practitioners, the Law Foundation of New South Wales gave AustLII a substantial grant which, as it continued an annual basis for some years, ensured AustLII's financial stability in the early stages.

Since these formative AustLII has continued to expand, developing to 998 its number of databases available on the service. In addition to the afore mentioned law reform, treaties and human rights material, they also include databases of legislation and related material, case law decisions and judgments, journal articles and scholarship as well as other legal and quasi-legal resources, including royal commissions and boards of inquiry, coronial findings, and indigenous legal resources from Australia and New Zealand.[7] In addition, it has published 2,300 databases internationally via the World Legal Information Institute ('WorldLII') portal. Apart from its online library of legal information to the community, AustLII also has a Research Centre, again a collaboration between the two Law Faculties of UTS and UNSW, which conducts leading edge international research in technologies for developing legal information systems. is means that the revenue opportunities that accrue to the academic sector from research grants and contract research feeds back into and opens opportunities for the foundation, stakeholder engagement activity by the Foundation can often be leveraged for grant applications available to the Research Centre.

V THE SEMINAL CASE FILES OF THE HIGH COURT OF AUSTRALIA

The 1,000 database on AustLII incorporated the Seminal Case Files of the High Court of Australia ('HCASCF'). Current justices of the High Court selected 37 which they considered to be of formative importance to the development of jurisprudence in Australia.[8] It is anticipated that these will be the first instalment of a major development of jurisprudence in Australia. It is intended that these will also be the first part of a major project to digitise and make available the complete files of all these cases on AustLII.[9]

VI MOST RECENT AUSTLII INNOVATIONS

Normal users of AustLII probably use it for obtaining information of current statutes and case law decisions, and so much of its research goes unrecognised. Its 2022 Report 2022 highlights four major strategic goals which AustLII has set for itself, and which are incorporated in its Strategic Plan.[10] In addition to free access to the Australian legal system, it also undertakes to

[7] Richard Hunter, 'AustLII's 1,000th Database' (Media Release, 7 February 2024).
[8] For the 37 cases, their citations and links, see Mowbray et al, *Australasian law in 1,000 databases* (n 6).
[9] Ibid.
[10] AustLII, *2022 Year in Review, Annual Report* (Report, 2022).

'2. Innovation: Implement and enhance effective and innovate technological and policy approaches to free access to law in Australia.'[11] Together with '3. Engagement: to develop and strengthen strategies and processes to engage, collaborate and respond to stakeholder and users.'[12] In addition, '4. Sustainability: To ensure financial sustainability and good corporate governance.'[13]

Examining the outputs of these innovations in greater detail reveals the amount and complexity of the detail incumbent on AustLII staff to achieve these objectives.

AustLII has long been recognized as a pioneer in the realm of free legal information dissemination. Its commitment to accessibility and transparency has set benchmarks that many organizations worldwide have emulated. From its inception, AustLII has championed the notion that free access to legal resources is a cornerstone of democracy and the Rule of Law. Its early strides in digital legal databases paved the way for the creation of interconnected systems, both domestically and internationally, showcasing the transformative power of collaboration in legal technology.

A *The Australian Royal Commissions and Public Inquiries Library*

This project was funded by an Australian Research Council, Linkage Infrastructure Equipment and Facilities ('LIEF') Grant. It has resulted in the creation of 40 new databases, including Reports of Royal commission, Boards and Commission of Public Inquiry, and Reports of Parliamentary Select Committee of Public Inquiry, and the addition of more than 500,000 new pages of AustLII.[14]

B *The Australian Coronial Law Library*

In this respect AustLII introduced for the first time a comprehensive Australian Coronial Law Library which had never been attempted before. It was able to do this with funding from the Australian Research Date Commons, providing an expansive perspective and free access to legislation, case law, scholarship and law reform materials all relating to coronial law. The library consists of 14 coronial databases incorporating 10,000findings, recommendations and responses. This was unique form or research which had never been attempted before in respect of this topic, and it has resulted in the material which has been processed and extracted being integrated with all other primary legal resources on AustLII.[15]

C *Strategic Partnership with University Libraries*

This is the development of a co-operative funding arrangement with the Council of Australian University Librarians ('CAUL') whereby member libraries are able to make a voluntary

[11] Ibid 4.
[12] Ibid.
[13] Ibid.
[14] Ibid 2.
[15] Ibid.

financial allocation to AustLII. This is based on AustLII being recognised as an essential open access information resource for academic teaching and research in law.[16]

D *Applying DataLex 'Rules as Code'*

This involves a complex area of law and legal information technology. The development of DataLex by AustLII has been undertaken to suit the needs of the evolving concept of Rules of Code ('RaC'), meaning that rendering rules in legislation, regulation and policy as code means that they can be consumed and interpreted directly by computers. It is intended that this will make legislation and regulation more accessible for humans and machines. This has been taken further by AustLII finalising an agreement with Standards Australia to provide funding to apply AustLII's DataLex RaC technology to Australian Standards. The intention is to make standards easier to access and more productive to use and apply.[17]

VII AUSTLII USAGE

The most fascinating information relating to AustLII is the use which is made daily of its databases. The most up to date information regarding this is contained in its 2024 Annual Report. This indicates:

- Total hits for 2024 exceeded 453 million and averaged 1,239,457 hits per day.
- Over 10.2 million distinct hosts were served.
- Data downloaded in 2024 was over 51.9 terabytes.[18]

AustLII continues to be ranked in the top 1,000 most accessed websites in Australia. It has maintained its number one spot position in the 'business and finance – legal category' throughout 2024.[19] This website includes government, publishers, courts and tribunals, law societies, legal firms and barristers.

VIII INTERNATIONAL INVOLVEMENT

AustLII has had a major influence on the development of similar national free legal information bases throughout the world and particularly within the Commonwealth. Most of these owe their original establishment to AustLII's influence. Currently AustLII operates three multi-LII systems for international free access legal information These are operated through what is known as the 'WorldLII Consortium',[20] which involves the co-operation of other Legal Information Institutes based in other countries. Among the other initiatives, the three multi-LII systems are:

[16] Ibid.
[17] Ibid 14.
[18] AustLII, *2024 Year in Review* (Report, 2024)
[19] Ibid.
[20] Ibid

A *WorldLII*

The World Legal Information Institute, which has a searchable content which includes 2,429 national databases from collaborating LIIs including international law resources from the United Nations and other international organisations.[21]

B *CommonLII*

The Commonwealth Legal Information Institute was launched at the Commonwealth Law Conference held in London in 2006 and provides access to 60 Commonwealth and common law jurisdictions, with AustLII maintaining the Caribbean Law Project, Commonwealth Criminal Law Library and the Common Law Library foundations.[22]

C *Asian LII*

The Asian Legal Information Institute provides free access to legal information from 28 countries and territories in Asia.[23]

D *LawCite*

LawCite is the only internationally free-access case and journal article citator which operates in conjunction with the same group of collaborating LIIs. It uses data-mining techniques to examine the content provided by participating LIIs and AustLII has described it as the 'glue' which binds together the date contained within the MultiLII systems.[24]

In addition, AustLII also supports the maintenance of the Legal Information Institutes of India, Samoa, the Pacific Islands and the Liberian Legal Information Institute which it does by back-up data storage and hosting.[25]

E *FALM*

Since its foundation in 1995, AustLII has taken a major interest in the development of access to free legal information throughout the world and particularly within the Commonwealth. In the early days of it being established the databases of the British and Irish Legal Information Institute ('BAILII') located at the Institute of Advanced Legal Studies in London, and in Ireland at University College, Cork were formerly held by AustLII.[26] Philip Chung the CEO of AustLII remains a member of the BAILII Board. AustLII was one of the founders and still an active member of the Free Access to Law Movement, which in 2022 had 65 members.[27]

[21] AustLII (n 7) 22.
[22] Ibid.
[23] Ibid.
[24] Ibid.
[25] Ibid.
[26] David Barker, *Law Made Simple* (Routledge, 2020) 20.
[27] 'Members of the Free Access to Law Movement (FALM)', *FALM* (Web Page) <https://falm.info/members/current/>.

IX AUSTLII – GOVERNANCE, ADMINISTRATION AND FUNDING

AustLII has been greatly influenced by its joint founders, Graham Greenleaf and Andrew Mowbray, who insisted from its foundation it would be a not-for-profit organisation dedicated to providing free access to law in support for the Rule of Law. This means that it is reliant upon voluntary donations and contributions.

The Annual Report lists the legal profession, business and industry, courts and tribunals, government agencies, educational institutions and the general community who all make contributions to support AustlII. In 2020, nearly 300 organisations and individuals made contributions ranging in value from $5 to $125,000. The total contributed in 2024 was $2,175,495.

Although AustLII is involved in considerable and vast operations few staff manage and administer its operations. Apart from Philip Chung, the Managing Director and Andrew Mowbray, Executive Director, there are seven full-time staff, two part-time staff and two pro-bono senior researchers.

Since 2000 until recently AustLII was governed by AustLII Foundation Ltd, a public company limited by guarantee. It consists of a Board of Nine directors of which the foundation chair was Jeff Fitgerald, who on his recent retirement was replaced by Ian Govey AM, a former Australian Government Solicitor. Also, members of the Board were Chung and Mowbray, together with Anita Stuhmcke and Andrew Lynch, the Deans of the Law Faculties of UTS and UNSW respectively, the co-sponsors of AustLII.

At the end of 2024, when UNSW withdrew from both the company and the research institute, the AustLII Foundation assumed a more expansive role. UTS remained as the sole member of the company and continued to generously physically host AustLII. While Mowbray continued as a Professor in the UTS Faculty of Law, Macquarie Law School appointed Chung as a Professor, with Graham Greenleaf also being appointed as an Honorary Professor. These were major changes in the operation of AustLII with the focus of its operations becoming more reliant on wider financial support from the general legal community and an expectation of recognition by the legal profession in this respect.

X FORMAL RECOGNITION OF MEMBERS OF AUSTLII

The efforts of those of involved with the Institute were recognized when both Mowbray and Chung were appointed Members of the Order of Australia (AM) in the January 2025 Australia Day Birthday Honours. The citation noted their significant services to the law, particularly their contribution to public access to legal information, and to tertiary education. (Greenleaf had been awarded an AM in 2010.)

XI AUSTLII FOUNDATION PRESS

AustLII has built on its role as a significant publisher of secondary resources to launch a project offering free access to law textbooks and journals, published by the AustLII Foundation Press

('AFP').[28] The first journal publication was the launch of the journal *Computers and the Law: Journal for the Australian and New Zealand Societies for Computers and the Law* in November 2023. AustLII recognised that one of the increasing major challenges facing law students was the high cost of commercial legal textbooks and journals in core legal areas. The aim of this publishing initiative is to enhance access, reduce costs to both universities and students and improve equity. Obviously, it is necessary for AustLII to seek and support the authors in developing this publishing initiative with a particular focus on the provision of free access and casebooks, primarily concentrating on core legal subject areas. In this respect there is an expectation to seek financial support for grants for funding to assist authors in developing textbooks and also for use of teaching marking buyouts, editorial assistance and similar publishing tasks.[29]

AustLII intends to establish an Editorial Board/Advisory Committee to provide quality control and to build trust in the books and journals published under the AFP imprint. While online publishing via AustLII will be the primary means of publishing, print-on-demand at cost may be available.

XII CONCLUSION

2025 not only marks the thirtieth anniversary of AustLII's establishment but is also a time of significant changes both to its organisation and future direction. The concept of digitisation of legal information is ever changing, and it is important that an organisation such as AustLII not only keeps up with its everchanging demands but remains in the forefront of creating new initiatives for its future development.

This article highlights the pivotal role AustLII has played in reshaping legal access by embracing technology and the internet as foundational tools. It emphasizes the transformative impact of AustLII's approach on both legal professionals and academics, enabling them to transcend previous barriers of cost and physical library access. Furthermore, the text highlights AustLII's advancements in legal database architecture, which not only expanded the availability of essential legal material but also promoted inclusivity within legal education and practice.

[28] 'About AustLII Foundation Press', *AustLII Press* (Web Page) <https://www.austlii.press/>.
[29] Ibid.

TRAINING SESSIONAL STAFF TO ENGAGE AND SUPPORT DIVERSE LEARNERS IN LEGAL EDUCATION

Amanda-Jayne Bull, Amanda Kennedy** and Rebecca Wright****

ABSTRACT

This article examines approaches to supporting sessional academics in Australian law schools and the pedagogical considerations associated with their teaching role. Drawing on national data and a case study from QUT Law School, it highlights the need for discipline-specific training to support diverse learners. The initiative includes tailored resources and workshops that foster inclusive teaching practices and community among sessional staff. Feedback from the initiative indicates improved engagement and teaching quality, highlighting the importance of school-level support for casual educators in legal education in all Australian law schools.

Keywords: Sessional Staff, Casual Staff, University, Law School, Law, Training, Diverse, Learners, Australia

I INTRODUCTION

The higher education sector is among the largest employers of casual staff in Australia,[1] with consistently high rates of casualisation since 2010.[2] According to the Department of Education, 22.1% of university roles in 2021 were casual, up from 15.8% in 1995.[3] In more recent years, the proportion of casual staff has declined, influenced by the COVID-19 pandemic and legislative changes to the *Fair Work Act 2009* (Cth), which enabled certain casual staff to transition to permanent roles.[4] In 2023, 53.5% of staff employed in roles classified as 'Below Lecturer' (Level A), previously categorised as 'Tutors' or 'Entry Level Academics', were

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[1] Suzanne Ryan et al, 'Casual Academic Staff in an Australian University: Marginalised and Excluded' (2013) 19(2) *Tertiary Education and Management* 161, 162; Alisa Percy et al, 'The RED Report, Recognition - Enhancement - Development: The contribution of sessional teachers to higher education', *University of Wollongong* (Report, 2008) 240 <https://hdl.handle.net/10779/uow.27696891.v1>.

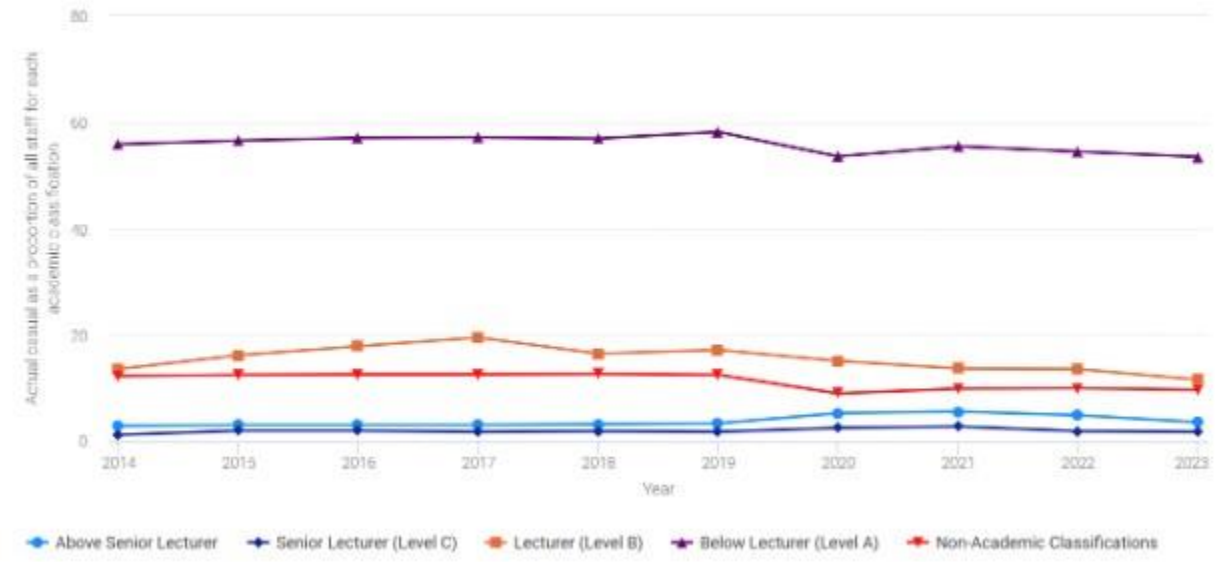
[2] 'Australian Universities Accord – Final Report', *Department of Education* (Report, 2024) 232 <https://www.education.gov.au/australian-universities-accord/resources/final-report>.

[3] Ibid 231 (Table 6).

[4] 'Key Findings from the 2024 Higher Education Student Statistics', *Department of Education* (Report, 2024) <https://www.education.gov.au/higher-education-statistics/staff-data/selected-higher-education-statistics-2024-staff-data/key-findings-2024-higher-education-staff-statistics>.

casual employees (see Figure 1).[5] This figure reflects a significant reliance on casual staff for the delivery of tutorials, marking and other administrative roles.[6]

Figure 1 - Casual staff according to academic classification - 2015-2024[7]



This article focuses on sessional academics in Australian law schools. For this article, sessional academics are defined as 'university instructors who are not in tenured or permanent positions'.[8] Despite the decline in casual staff in the wider higher education sector, Australian law schools continue to rely on sessional academics,[9] particularly in 'Below Lecturer' (Level A) roles.[10] This is because, in legal education, sessional academics can offer a significant advantage by bringing current professional expertise and industry connections directly into the classroom. Their roles as practicing solicitors, barristers and other legal professionals help bridge the gap between theory and practice, enriching students' learning with real world perspectives. While the *Australian Universities Accord Final Report*,[11] has raised concerns about the potential impact of casualisation on teaching quality, institutions cite benefits such as workforce flexibility, cost-efficiency and the ability to engage legal professionals as

[5] Ibid.

[6] Ibid.

[7] Ibid.

[8] Jill Cowley, 'Confronting the Reality of Casualisation in Australia. Recognising Difference and Embracing Sessional Staff in Law Schools.' (2010) 10(1) *QUT Law Journal* 27, 27; Mary Heath et al, 'Beginning to Address "the Elephant in the Classroom": Investigating and Responding to Australian Sessional Law Teachers' Unmet Professional Development Needs' (2015) 38(1) *University of New South Wales Law Journal*; Australian Universities Teaching Committee, *Training, Support and Management of Sessional Teaching Staff: Final Report* (Technical Report, March 2003) 3.

[9] Natalie Skead and Shane L Rogers, 'Sessional Law Teacher Well-Being: An Empirical Australian Study' in Caroline Strevens and Emma Jones (eds), *Wellbeing and the Legal Academy* (Springer International Publishing, 2023) 57, 60.

[10] 'Key Findings from the 2024 Higher Education Student Statistics' (n 4).

[11] Universities Accord (n 2) 232.

educators.[12] Their involvement not only enhances teaching, but frees up 'the full-time, tenured staff to pursue research or other necessary tasks'.[13]

However, legal expertise does not necessarily translate into effective teaching practice. The early needs of sessional staff are no different to the needs of early career academics.[14] Yet, unlike tenured academics, sessional staff do not benefit from informal, day-to-day pedagogical exchanges, such as spontaneous conversations with colleagues that tenured academics benefit from through their regular presence in the workplace and in other academic communities.[15]

The precarity of sessional employment can also create challenges for sustaining a high level of legal education. The quality of teaching in law schools significantly influences student learning, retention, and progression. Recognising this, the Council of Australian Law Deans ('CALD') Standards requires law schools to define the roles and responsibilities of casual teachers and to provide appropriate induction, training, and ongoing support.[16] These expectations align with CALD's broader standards for good governance and fostering an inclusive and collegial learning environment.[17] Meeting them not only supports teaching quality but also helps to build a sense of community by integrating sessional academics into the wider academic community.[18]

Given that sessional staff engage with a substantial proportion of law students, it is critical that they understand and acknowledge the diversity of learners across backgrounds, study modes, motivations, and learning styles. Refining teaching practices to meet these varied needs is important to enhance student learning and retention. Acknowledging that students learn in different ways is fundamental to building positive learning environments and student engagement. Literature has long emphasised the need to adapt teaching practices to support visual, auditory, kinaesthetic, and tactile learners, as well as personality-based approaches such as the Myers-Briggs classifications.[19] In light of the high rates of casualisation in higher education, particularly in law schools, and a greater acknowledgement of the need to engage diverse learners, including those with differing personality-based learning styles, this article

[12] Helena Kadmos and Jessica Taylor, 'No Time to Read? How Precarity Is Shaping Learning and Teaching in the Humanities' (2024) 23(1) *Arts and Humanities in Higher Education* 87, 89; Department of Education (n 2) 232.

[13] Cowley (n 8) 34.

[14] Pam Parker and Neal Sumner, 'Tutoring Online: Practices and Developmental Needs of Part-Time/Casual Staff' in Fran Beaton and Amanda Gilbert (eds), *Developing Effective Part-Time Teachers in Higher Education* (Routledge, 2012).

[15] Torgny Roxå and Katarina Mårtensson, 'Significant Conversations and Significant Networks - Exploring the Backstage of the Teaching Arena' (2009) 34 *Studies in Higher Education* 547.

[16] Christopher Roper and CALD Standing Committee on Standards and Accreditation, *Standards for Australian Law Schools: Final Report* (Council of Australian Law Deans, March 2008) 66.

[17] Ibid 99 (Annexure E).

[18] Nicolae Nistor et al, 'Sense of Community in Academic Communities of Practice: Predictors and Effects' (2015) 69 *International Journal of Higher Education Research* 257, 258, 270.

[19] Robin A Boyle and Rita Dunn, 'Teaching Law Students through Individual Learning Styles' (1998) 62(1) *Albany Law Review* 213, 156; MH Jacobson, 'A Primer on Learning Styles: Reaching Every Student' (2001) 25(1) *Seattle University Law Review* 139; Robin A Boyle, Jeffrey J Minneti and Honigsfeld, 'Law Students Are Different from the General Population: Empirical Findings Regarding Learning Styles' (2009) 17 *Perspectives: Teaching Legal Research and Writing* 153; Ian Weinstein, 'Learning and Lawyering Across Personality Types' 21 *Clinical Law Review* 427.

argues for targeted, discipline-specific training to foster a culture of teaching excellence among sessional academics in law schools.

This article begins by examining the literature on diverse learners in law schools, highlighting the importance of equipping sessional staff with the skills and knowledge necessary to support such learners effectively. It argues that law school specific training may better prepare sessional staff to engage with the pedagogical needs of law students. The literature review identifies Universal Design for Learning ('UDL') and trauma-informed teaching approaches as appropriate frameworks to inform the development of sessional training programs. This article then outlines the QUT Law School's response in the form of a Sessional Staff Training Initiative. It concludes with a high-level analysis of the results of that initiative and offers recommendations for future iterations.

II LITERATURE REVIEW

This part provides a literature review, focusing on the role of and support for sessional law teachers.

A *Diverse Learners in Context*

Given the high rates of casualisation in Australian law schools noted above, it is important for sessional staff to appreciate the diversity of learners in their classrooms. The literature suggests that inclusive environments, those which empower strong, supportive, and healthy learning communities, are essential for optimal student outcomes.[20] Research further acknowledges that Australian university students come from diverse backgrounds,[21] recognising the need to adopt approaches within the classroom to support all learners.[22] Student learning may be impacted by individual characteristics, strengths, weaknesses, familiarity with university, and prior knowledge and experiences.[23] Universities Australia claims that, for the period between 2008 and 2020, the Australian higher education market experienced significant growth in enrolments for equity groups evidencing the extent of diverse learners in our classrooms (see Figure 2).[24] With a 169% increase in students with a disability, a 63% increase in students from low socio-economic backgrounds, and a 43% increase in regional and remote students, it is clear that academic staff, whether tenured or sessional, must adapt approaches to cater for greater diversity (see Figure 2).[25]

[20] See eg, Katie Novak and Seán Bracken, 'Introduction: Universal Design for Learning: A Global Framework for Realizing Inclusive Practice in Higher Education' in Sean Bracken and Katie Novak (eds), *Transforming Higher Education through Universal Design for Learning: An International Perspective* (Routledge, 2019) 1, 4; Danielle Hitch et al, 'The Transition to Higher Education: Applying Universal Design for Learning to Support Student Success' in *Transforming Higher Education Through Universal Design for Learning* (Routledge, 2019) 88-89.

[21] Hitch et al (n 20) 85.

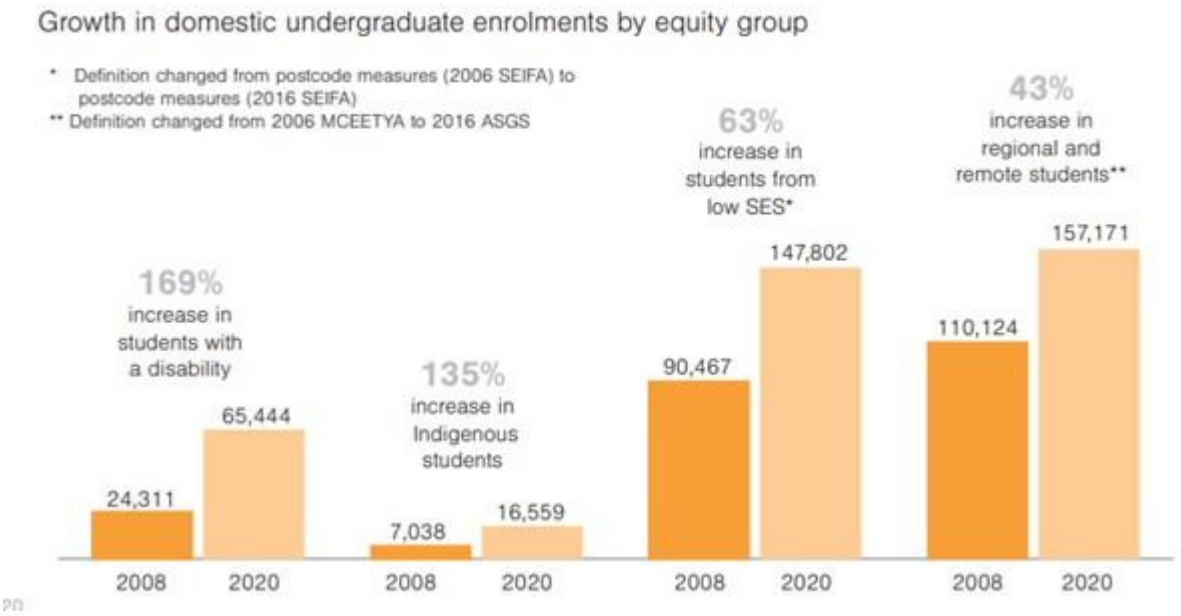
[22] Aida M Alaka, 'Learning Styles: What Difference Do the Differences Make?' (2011) 5 *Charleston Law Review* 133.

[23] Janice Carello and Lisa D Butler, 'Practicing What We Teach: Trauma-Informed Educational Practice' (2015) 35(3) *Journal of Teaching in Social Work* 262, 269.

[24] Catriona Jackson, 'Data Snapshot' *Universities Australia* (Web Page, 2022) <https://universitiesaustralia.edu.au/wp-content/uploads/2022/08/220523-Data-snapshot-2022_web.pdf>.

[25] Ibid.

Figure 2 - Growth in Domestic Undergraduate Enrolments by Equity Group - 2008 to 2020[26]



According to the Department of Education, there has been a 4.9% increase in First Nations students in 2023 and relatively stable numbers of low socio-economic and remote and regional students (see Figure 3).[27] The number of commencing onshore students with a disability increased by 5.5% between 2022 and 2023, noting the change following 2021 when the scope of reportable disabilities expanded to include intellectual, mental, acquired brain injury, and neurological disabilities (see Figure 3).[28]

[26] Ibid.

[27] 'Key Findings from the 2023 Higher Education Student Statistics', *Department of Education* (Web Page, 2023) <https://www.education.gov.au/higher-education-statistics/student-data/selected-higher-education-statistics-2023-student-data/key-findings-2023-student-data>.

[28] Ibid.

Figure 3 - All commencing onshore domestic students by equity group, 2017-2023[29]

The statistics categorise equity groups broadly, however for the purposes of this article, the focus will be on diverse learning styles. The literature refers to numerous attempts to categorise learners according to their optimal learning styles,[30] though these classifications have evolved and been increasingly scrutinised in recent years. Common learning styles include the Myers-Briggs Type Indicator ('MBTI'), VAKT (or VAK or VARK), the Felder-Silverman Learning Style Model, and Kolb's Learning Style Inventory.[31] For example, MBTI categorises individuals into 16 personality types based on four dimensions, considering concepts such as introversion versus extroversion, sensing versus intuition, thinking versus feeling, and judging versus perceiving.[32] Similarly, the VAKT learning styles, based on visual, auditory, kinaesthetic, and tactile modalities formed the foundation of research by Dunn and Dunn, who proposed that learners tend to favour one or more of these modalities when processing information,[33] and that 'three-fifths of learning style is biologically imposed'.[34] These frameworks have historically informed strategies for designing and delivering content in ways that accommodate diverse learning preferences.[35]

However, it is important to approach these models with a critical lens. Although a substantial body of research continues to advocate for their integration into curriculum design and pedagogical practice,[36] substantial scholarly critique has emerged regarding their empirical

[29] Ibid.

[30] Alaka (n 22).

[31] Daniel H Robinson, 'What Are Learning Styles and How Did They Get Started?' in Daniel H Robinson, Veronica X Yan and Joseph A Kim (eds), *Learning Styles, Classroom Instruction, and Student Achievement* (Springer International Publishing, 2022) 3, 4–5.

[32] Alaka (n 22) 150.

[33] Ibid 146.

[34] Ibid 147.

[35] See, for example, Boyle and Dunn (n 19); Anil Balan, 'Cultural Diversity and Widening Participation: Enhancement of Teaching and Feedback Practices for Law Students from a Diverse Range of Backgrounds' (2024) 58(3) *The Law Teacher* 327 ('Cultural Diversity and Widening Participation'); Alaka (n 22).

[36] Alaka (n 22); Christopher Califf, 'Incorporating Kinesthetic Learning into University Classrooms: An Example from Management Information Systems' (2020) 19 *Journal of Information Technology Education: Innovations in Practice* 31, 32 ('Incorporating Kinesthetic Learning into University Classrooms').

validity and pedagogical efficacy. [37] Critics argue that matching teaching styles to individual learner preferences may oversimplify the complexity of how students learn.[38] Instead, research increasingly supports the idea that all learners may benefit from exposure to a variety of instructional modalities.[39] For example, educators could adopt different activities to engage all students and learning styles within a single tutorial class, including icebreaker activities,[40] small group learning,[41] movement and drawing,[42] and by collaborating with technology such as Padlet,[43] online polling,[44] Google Documents,[45] and breakout rooms.[46]

As a result, the training materials developed by the QUT Law School referenced these models not as prescriptive tools, but as prompts for reflective teaching practice, encouraging sessional staff to consider the diversity of student experiences in their teaching approaches.

B *Frameworks to Support Learners*

Drawing on the work of Novak and Bracken,[47] and Hitch et al,[48] it is evident that students benefit from participating in varied learning activities. The literature proposes several frameworks to support diverse learners, with recent literature focusing particularly on UDL[49] and Trauma Informed Teaching.

UDL is grounded in three core principles: (1) providing multiple means of engagement, (2) multiple means of representation, and (3) multiple means of action and expression.[50] As Novak and Bracken assert, failing to incorporate UDL principles to accommodate diverse learners

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[37] John Hattie and Timothy O'Leary, 'Learning Styles, Preferences, or Strategies? An Explanation for the Resurgence of Styles Across Many Meta-Analyses' (2025) 37(2) *Educational Psychology Review* 31, 31 ('Learning Styles, Preferences, or Strategies?').

[38] Ibid 30; Philip M Newton and Mahallad Miah, 'Evidence-Based Higher Education - Is the Learning Styles "Myth" Important?' (2017) 8 Frontiers in Psychology 444.

[39] Alaka (n 22); Califf (n 36) 32.

[40] Marie Kavanagh, Clark-Murphy Marilyn and Leigh Wood, 'The First Class: Using Icebreakers to Facilitate Transition in a Tertiary Environment' (2011) 7 *Asian Social Science* 84, 85 ('The First Class').

[41] Julian Laurens, Alex Steel and Anna Huggins, 'Works Well with Others: Examining the Different Types of Small Group Learning Approaches and Their Implications for Law Student Learning Outcomes' [2013] *Journal of the Australasian Law Teachers Association* 1, 11.

[42] Califf (n 36); Patricia Davis-Wiley and Deborah Wooten, 'Enhancing Metacognitive Literacy: A Research Study Using Sticky Notes in the Classroom' (2015) 5(4) *American International Journal of Contemporary Research*.

[43] Liana Gill-Simmen, 'Using Padlet in Instructional Design to Promote Cognitive Engagement: A Case Study of Undergraduate Marketing Students' (2021) 20 *Journal of Learning Development in Higher Education* 2.

[44] Abdollah Malekjafarian and Meisam Gordan, 'On the Use of an Online Polling Platform for Enhancing Student Engagement in an Engineering Module' (2024) 14 *Education Sciences*; Trevor John Price, 'Real-Time Polling to Help Corral University-Learners' Wandering Minds' (2022) 15(1) *Journal of Research in Innovation & Learning* 98.

[45] Wenyi Zhou, Elizabeth Simpson and Denise Pinette Domizi, 'Google Docs in an Out-of-Class Collaborative Writing Activity' (2012) 24(3) *International Journal of Teaching and Learning in Higher Education* 365.

[46] Shonagh Douglas, 'Achieving Online Dialogic Learning Using Breakout Rooms' (2023) 31 *Research in Learning Technology* 1.

[47] Novak and Bracken (n 20) 4.

[48] Hitch et al (n 20).

[49] Novak and Bracken (n 20), 4; Hitch et al (n 20).

renders 'our institutions, our classrooms, our curriculum and our teaching … disabling'.[51] Inclusive environments that embed UDL principles are widely-recognised as critical to achieving positive student outcomes.[52] UDL encourages the adoption of practical strategies, such as collaborative documents, hands-on activities, oral debates, and group work, that enhance comprehension of complex legal concepts and promote deeper engagement.[53] By providing multiple means of engagement, representation and expression, these strategies support diverse learners and contribute to improved learning outcomes.[54]

In addition to UDL, some scholars advocate for the integration of trauma-informed teaching practices within higher education. Acknowledging that a significant proportion of university students have experienced trauma, Carello and Butler propose a move toward learner-centred approaches that prioritise psychological safety.[55] This includes creating 'a structured and predictable learning environment',[56] issuing content warnings for potentially disturbing content, and avoiding dismissive or impatient communication.[57]

Despite the compelling rationale for adopting UDL and trauma-informed approaches, their implementation poses considerable challenges for academic staff, including sessional academics. Novak and Bracken recognise the necessity of institutional support, including access to professional development resources and training and the cultivation of shared collegiate practices.[58]

D *Supporting and Training Sessional Staff*

The quality of teaching in law schools plays a critical role in shaping student learning, retention, and progression. It is also central to meeting regulatory obligations imposed by bodies such as the Tertiary Education Quality and Standards Agency and the Legal Practitioners' Admission Board.[59] Sessional law academics play an important role in fulfilling these responsibilities, contributing practical legal experiences that bridge the gap between academic study and professional practice.[60] However, legal expertise does not necessarily mean that an individual has the necessary skills to teach.[61]

While sessional staff bring valuable insights from legal practice, their effectiveness as educators depends on adequate training and support. Research indicates that engagement, motivation, and pedagogical skills among sessional teaching staff are essential for quality

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[52] See eg, ibid; Hitch et al (n 20) 88-89.

[53] Elisabeth Ransanz Reyes, Ainhoa Arana-Cuenca and Ana Isabel Manzanal Martínez, 'Recommendations for Designing Collaborative Activities in Online Higher Education: A Systematic Review' (2025) 15(1) *Journal of Technology and Science Education* 4.

[54] Qais I Almeqdad et al, 'The Effectiveness of Universal Design for Learning: A Systematic Review of the Literature and Meta-Analysis' (2023) 10(1) *Cogent Education* 2218191.

[55] Carello and Butler (n 23) 263-264.

[56] Ibid 266.

[57] Ibid 263-266.

[58] Novak and Bracken (n 20) 7.

[59] Heath et al (n 8) 241.

[60] Ryan et al (n 1) 171; Heath et al (n 8) 241.

[61] Heath et al (n 8) 241.

learning and teaching outcomes.[62] These can be enhanced through structured interaction with permanent staff, including unit coordinators, and access to discipline-specific professional development.[63]

Despite earlier findings that sessional staff share similar learning needs to new tenured academics, they often face greater barriers to accessing training and career development support (such as time constraints and limited campus presence), which limit opportunities for 'informal learning that naturally takes place when a person spends time with colleagues from a full-time academic community'.[64]

The need to train sessional staff has been the subject of academic research for well over a decade.[65] As Hamilton and the Smart Casual Project highlight,[66] institutional-level sessional training models have been criticised for their lack of discipline focus and limited impact on the quality of teaching.[67] The burden of ensuring quality sessional staff training frequently falls to permanent staff,[68] which adds to their already stretched workload and can lead to inconsistencies in both the depth and quality of instruction across teaching teams.[69]

Sessional staff report feeling marginalised and on the periphery in higher education institutions, and that their contributions are undervalued.[70] Higher education institutions must implement programs that acknowledge the importance of sessional academics in educating law students.[71] This lack of recognition is often reflected in the lack of focused and discipline-specific training. As one participant in Ryan et al's study observed:

> As far as I know they do the university orientation, which is that online kind of stuff. Then the process is, once they are allocated their course, each course coordinator is supposed to have a meeting, and we go through the course content and how we want it to be taught and so on.[72]

Another participant noted, 'I find out how to do things by trial and error'.[73]

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[62] Philippa Byers and Massimiliano Tani, 'Engaging or Training Sessional Staff: Evidence from an Australian Case of Enhanced Engagement and Motivation in Teaching Delivery' (2014) 56(1) *Australian Universities' Review* 13, 14.

[63] Ibid 13.

[64] Parker and Sumner (n 14) Ch 9; Vivien McComb, Narelle Eather and Scott Imig, 'Casual Academic Staff Experiences in Higher Education: Insights for Academic Development' (2021) 26(1) *International Journal for Academic Development* 95, 99.

[65] Michael Fine, Sara Graham and Marina Paxman, *Survey of the Working Conditions of Casual Academic Employees at the University of New South Wales* (Report, Social Policy Research Centre, 1992); Jillian Hamilton, Michelle Fox and Mitchell McEwan, 'Sessional Academic Success: A Distributed Framework for Academic Support and Development' (2013) 10(3) *Journal of University Teaching & Learning Practice* 1, 1-2, 15; McComb, Eather and Imig (n 64) 98.

[66] Jillian Hamilton, 'The Sessional Academic Success (SAS) Project' in *Setting the Standard for Quality Learning and Teaching by Sessional Staff* (2013) 1; Cowley (n 8) 40.

[67] Cowley (n 8) 40; Mary Heath et al, *Smart Casual: Towards Excellence in Sessional Teaching in Law* (Final Report, Australian Government, Department of Education and Training, 2018) 5-6.

[68] Cowley (n 8) 34.

[69] Ryan et al (n 1) 168.

[70] McComb, Eather and Imig (n 64) 97.

[71] Heath et al (n 68) 5–7.

[72] Ryan et al (n 1) 169.

[73] Ibid.

Hamilton's foundational work, and the Smart Casual project, sought to address this concern in their research which found that sessional training is essential to ensuring quality in learning and teaching.[74] Hamilton proposed that effective sessional training should engage staff in learning, provide access to support, and foster a sense of belonging.[75] Heather et al build upon this approach by suggesting that professional development should 'enable sessional teachers to develop professionally, help students learn, and work towards wider school and university objectives'.[76]

Unlike many other disciplines, sessional law staff are overwhelmingly current or former legal practitioners, rather than PhD candidates.[77] As such, training must be delivered flexibly to accommodate their professional commitments.[78] Chugh et al, in their study on academic integrity training, also recognise the importance of training before course engagement and note that while webinars offer flexibility and convenience, they provide limited opportunities for interaction between participants, limiting their effectiveness.[79]

In line with best practice and workplace requirements, training should be voluntary and remunerated.[80] In addition, institutional recognition of sessional staff is vital to cultivating a supportive teaching culture,[81] and this is particularly important given the limited status and opportunity for promotion experienced by casual staff compared to the tenured academic workforce.[82] Training must be regularly updated to remain relevant and provide ongoing support as contemporary issues arise.[83] School-level training fosters collegiality, enhancing teaching quality and building a community of practice for sessional staff in each school.[84]

III SESSIONAL STAFF TRAINING INITIATIVE – THE QUT LAW SCHOOL APPROACH

It was evident from the literature that law school specific training for sessional staff is likely to be the most effective means of equipping sessional staff to engage diverse learners through recognised teaching practices. Existing research suggests that all Australian law schools should consider implementing targeted sessional training initiatives to respond to the need for quality teaching. As discussed earlier, teaching quality is a key driver of improved student outcomes, including retention and progression.

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[74] Hamilton, Fox and McEwan (n 66) 4; Percy et al (n 1) 241; Heath et al (n 68) 5-7.

[75] Hamilton (n 67) 4.

[76] Heath et al (n 8) 244; Anne Gaskell, 'Policy and Practice to Support Part-Time Teachers At Scale: The Experience Of The UK's Open University' in *Developing Effective Part-Time Teachers in Higher Education* (Routledge, 2012) 52.

[77] Cowley (n 8) 37-39; Heath et al (n 8); Heath et al (n 68) 2.

[78] Ritesh Chugh et al, 'Back to the Classroom: Educating Sessional Teaching Staff about Academic Integrity' (2021) 19 *Journal of Academic Ethics* 119.

[79] Ibid 119, 129-130.

[80] Byers and Tani (n 63) 15; Heath et al (n 68) 7; McComb, Eather and Imig (n 65) 99.

[81] Alisa Percy et al (n1).

[82] McComb, Eather and Imig (n 65) 99.

[83] Heath et al (n 68) 7.

[84] Ibid 5; Colin Bryson and Richard Blackwell, 'Managing Temporary Workers in Higher Education: Still at the Margin?' (2006) 35(2) *Personnel Review* 216-217, 219-220; Jacquelin McDonald and Cassandra Star, 'The Challenges of Building an Academic Community of Practice: An Australian Case Study' in *Engaging Communities* (2008) 230; Nistor et al (n 18).

Two of the authors, both formerly long-standing sessional academics at QUT and now Associate Lecturers, participated in a Pathways to Teaching Excellence program provided by QUT's Academy of Learning and Teaching. Following the program, the authors recognised that whilst some of those university-wide training modules were available to sessional staff, the time commitment and some aspects of the content were not specifically tailored to teaching in the discipline of law.

With the support of the Executive Dean of the Faculty of Business and Law and the current Head of the School of Law, resources tailored for law school sessionals were compiled on QUT's learning management system ('LMS'), Canvas. These resources built upon the university-wide training modules available to all teaching staff and the concept of law school-specific sessional training advocated by the Smart Casual Project, and sought to provide resources on an 'as needs' basis to law school sessional staff who want professional development to be time-efficient.[85] All currently engaged law school sessional academics were invited to access the resources. In addition, a three-hour training session was developed, focusing on strategies to engage diverse learners and create a supportive teaching culture. This in-person training workshop, held prior to the commencement of the academic year, also provided an opportunity to meet and engage with each other and with the authors to build connections with the QUT Law School.[86]

The LMS site focused on three modules, including engaging and supporting diverse learners, assessment marking and feedback and academic integrity. The following section outlines the resources and training provided in the modules.

A *LMS Site Module - Engaging and Supporting Diverse Learners*

Drawing on research highlighting the importance of quality teaching and the diversity of learners in higher education classrooms, a key module in QUT Law School's Sessional Staff Training Initiative was focused on engaging and supporting diverse learners.

B *Creating an Engaging Learning Environment*

The Canvas site refers sessional academics to QUT's Real World Learning Vision, noting the UDL principles are encouraged in all learning environments.[87] In particular, sessional staff are encouraged to use multiple means of engagement and representation to cater for diverse learning styles.[88] The Canvas site includes examples of how the UDL principles have been incorporated in both on-campus and Zoom tutorials in the QUT Law School. The Canvas site provides sessional academics with literature on diverse learners and how teaching philosophy can impact learning outcomes.

In terms of engaging diverse learners, sessional staff accessing the Canvas site are encouraged to consider the factors that impact engagement in a tutorial (see Figure 4). Such factors include determining the backgrounds and needs of their learners and what resources will allow learners to collaborate, connect and communicate in the learning environment.

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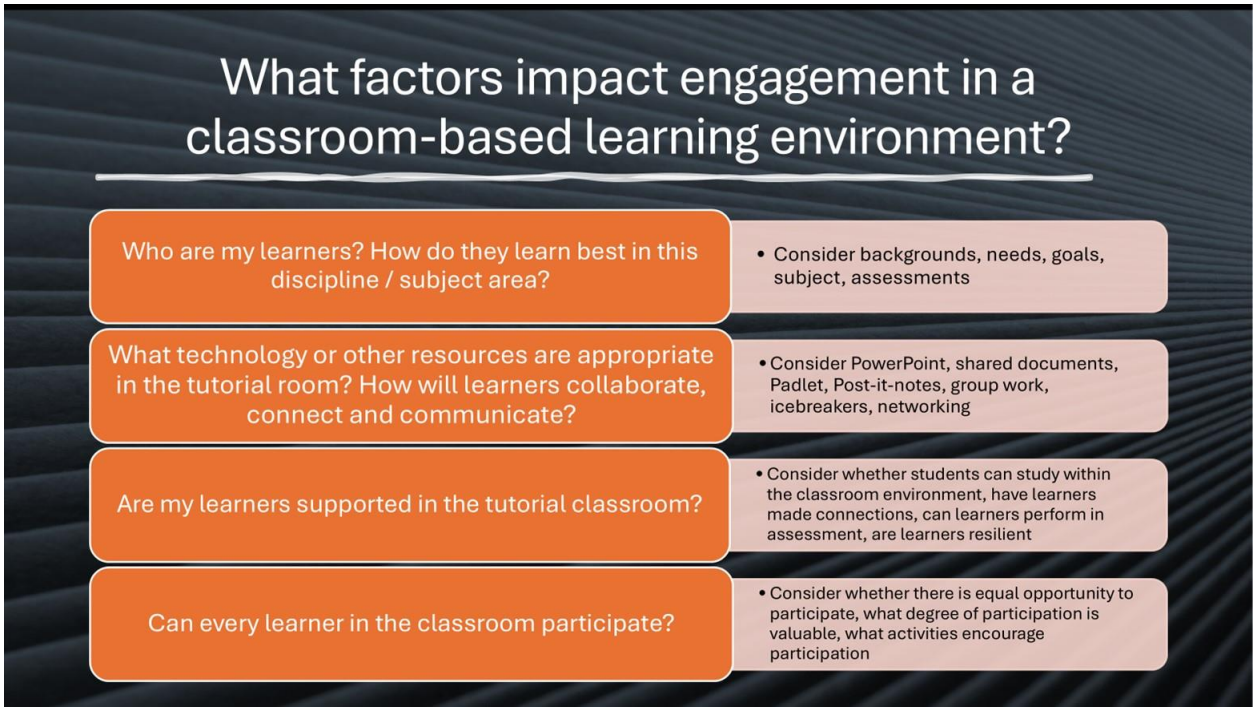
[85] Heath et al (n 68) 6.

[86] The authors acknowledge this article draws on insights from a single iteration of the sessional workshop and that the initiative remains in the early stages of implementation. Despite this limitation, the preliminary reflections offered are intended to contribute to the dialogue around pedagogical training in legal education for the sessional academic community. Future iterations of the workshop and longitudinal evaluation will be necessary to substantiate and refine the observations presented.

[87] Novak and Bracken (n 20).

[88] Hitch et al (n 20); Alaka (n 22); Newton and Miah (n 38); Hattie and O'Leary (n 37).

Figure 4 - Factors impacting engagement[89]



Videos demonstrating the key facilities and processes used in a typical on-campus tutorial room, as well as example online tutorials, were included to allow sessional staff to benefit from peer experience and gain a sense of confidence with the physical and online environment prior to teaching students.

The Canvas site also suggested methods of engaging students in on-campus classes by detailing activities to encourage participation and connection, including example ice-breaker activities,[90] movement activities for kinaesthetic learners,[91] and small group learning tasks.[92] In response to the need to cater for tactile learners, examples of activities using Post-it notes were also provided.[93] Further, technology tools such as PowerPoint, Padlet and shared documents were included to ensure sessional academics were equipped to design lessons for visual learners.[94]

In addition, suggestions for increasing engagement for diverse learners in the virtual classroom were also provided, including how to socialise the group, use reactions, shared documents and chat features to encourage learners who are otherwise not comfortable to participate by microphone.[95] Information on the use of breakout rooms and polling was also included to

[89] Rebecca Wright and Amanda Bull, 'Engaging Sessional Staff to Create a Supportive Culture for Diverse Learners' (Conference Paper, Australasian Law Academics Association Conference, 2 July 2025).

[90] Kavanagh, Marilyn and Wood (n 40).

[91] Califf (n 36).

[92] Laurens, Steel and Huggins (n 41).

[93] Davis-Wiley and Wooten (n 42).

[94] Zhou, Simpson and Domizi (n 45); Gill-Simmen (n 43).

[95] Zhou, Simpson and Domizi (n 45); David Read et al, 'Supporting Student Collaboration in Online Breakout Rooms through Interactive Group Activities' (2022) 17(1) *New Directions in the Teaching of Physical Sciences* 18; Mark Dixon and Katherine Syred, 'Factors Influencing Student Engagement in Online Synchronous Teaching Sessions: Student Perceptions of Using Microphones, Video, Screen-Share, and Chat' in P Zaphiris and A Ioannou

ensure sessional academics had the tools to implement effective learning activities during tutorials.[96]

Finally, the Canvas site included video interviews with sessional staff discussing how they continue to engage students in both the on-campus and online learning environments. For example, discussions on using real world legal experiences to show students the relevance and importance of the content being taught, and strategies to set expectations for student participation from the outset of a semester.

D *Supporting Diverse Learners*

Acknowledging that tutors are often the only point of interaction with students in higher education courses, the authors recognised the need to ensure relevant information was included on the Canvas site for supporting learners. In addition to links to general university and law school-specific support services, the training site included videos recorded with other sessional academics discussing ways in which they support students in the classroom.

As an example, suggestions were drawn from an interview between two experienced sessional academics on the Canvas site, such as using visual aids including writing on a whiteboard or using a shared collaborative online document to cater for visual learners.[97] In addition, technology tools, including shared documents and Padlet, were noted as allowing less confident students to contribute anonymously, creating a more inclusive learning environment.[98]

Other examples of supporting students in their learning discussed by academics on the Canvas site include the use of PowerPoint to structure and guide the tutorial, which provides a visual basis for learners to follow, aligning with the literature on catering to individual learning styles.[99] Further suggestions to support diverse learners on the Canvas site include not requiring students to have their cameras on in Zoom,[100] the use of chat to ask and answer questions in online classes, and the use of polls and Padlets for anonymous participation.[101]

Former and current sessional academics also shared how they build connections with students to ensure students feel appropriately supported in the learning environment and with the university as a whole. One academic proposed the use of small group learning to build connections among peers,[102] and attending law school wide student wellbeing events to encourage a connection between educators and students. Further reflections were made on the importance of learning student names and sharing the academic's experiences with the class to promote relatability. Ultimately, the Canvas site was designed to provide practical suggestions for how students could be supported in their learning.

(eds), *Learning and Collaboration Technologies: Designing the Learner and Teacher Experience* (Springer International Publishing, 2022).

[96] Price (n 44); Read et al (n 97); Malekjafarian and Gordan (n 44).

[97] Zhou, Simpson and Domizi (n 45).

[98] Gill-Simmen (n 43).

[99] Hattie and O'Leary (n 37); Alaka (n 22).

[100] Sebahat Sevgi Uygur and Yasemin Kahyaoğlu Erdoğmuş, '(In)Visible Students: Investigating Why Students Turn off Their Cameras during Live Lessons' (2025) 132 *International Journal of Educational Research* 102637 ('(In)Visible Students').

[101] Gill-Simmen (n 43); Dixon and Syred (n 96).

[102] Laurens, Steel and Huggins (n 41).

The Canvas site also provided a table with all QUT Law School's support services to ensure sessional academics could direct students in need of support to the appropriate area or team. These services include academic assistance and wellbeing support such as counselling, medical centres, student societies, and security.

E *Sessional Training Session*

In addition to the Canvas site that contained detailed resources for sessional staff to access at their convenience, the authors also held a three-hour in-person training workshop on campus in the Law School Staff Meeting Room. The Law School Staff Meeting Room, the central meeting place for all academic staff in the QUT Law School, was specifically chosen to build a sense of belonging with the Law School.

All 38 sessional staff members with an active teaching contract in the QUT Law School for Semester 1, 2025 as at 12 February 2025 were invited to participate in the in-person training workshop. The email invitation included a link to the LMS site for sessional staff. Eighteen sessional staff attended on Friday, 21 February 2025, which was almost 50% of all sessional staff with an active teaching contract at that date.

Acknowledging the diverse nature of learners, including diversity within the sessional staff attendees, resources were provided in various mediums such as written, video and in-person formats to accommodate various learning styles.[103]

F *Building Connections and Community*

The workshop commenced with a welcome from the authors in their respective capacities, reiterating the importance of sessional academics as integral members of the QUT Law School's teaching team. The welcome also emphasised the Law School's commitment to fostering a community of practice where ideas and experiences could be shared.[104] It was important the authors acknowledged the diverse experience levels among attendees, ranging from long-serving sessional staff with over 20 years of teaching, to those newly appointed. This recognition was strengthened by the fact that all three authors had themselves worked as sessional academics for extended periods before moving into ongoing teaching roles. Their familiarity with the sessional experience enabled engagement with each workshop participant in ways that reinforced a strong sense of collegiality.

To further build community and institutional connection, attendees were shown the QUT Connections video and provided with photographs and contact details of key Law School staff. The Connections video outlined QUT's strategic and educational purpose, helping sessional staff situate their teaching within the broader institutional framework. Participants were also introduced to QUT's Real World Learning Vision, highlighting the importance of aligning teaching and unit content with its core principles. The workshop emphasised three key components of the learner experience: (1) creating inclusive environments that empower strong, supportive and healthy learning communities; (2) personalising flexible learner experiences to better meet lifelong needs of our diverse students; and (3) employing contemporary digital practices across physical and virtual learning environments.[105]

[103] Hattie and O'Leary (n 37).

[104] McDonald and Star (n 85); Nistor et al (n 18).

[105] 'Connections', *QUT* (Web Page, 2023) <https://www.qut.edu.au/connections>.

Participants were encouraged to form connections with other sessional staff in units at similar stages of the law degree, by sharing interesting facts about themselves and their experience at QUT with a view to creating a thriving and collaborative teaching community.[106]

G *Training Focus – Engaging and Supporting Diverse Learners*

The second phase of the workshop focused on practical strategies for engaging and supporting diverse learners. Attendees were shown a video featuring sessional academics discussing classroom engagement and strategies for overcoming common teaching challenges. Participants also shared their own experiences with digital tools and engagement techniques, including online collaboration tools, icebreaker activities, and methods for engaging students online.[107]

Recognising QUT's commitment to inclusive education,[108] the workshop addressed the diversity present within classrooms. Participants were encouraged to reflect on how their teaching approaches could accommodate a broad range of learners' needs. Experienced sessional staff shared how their approaches had evolved over time, including moving away from the Socratic method, incorporating visual cues, and enabling anonymous student participation.

The session reinforced findings from the literature that law school-focused sessional training, rather than institution-wide training, is necessary to engage and support the diverse range of students.[109] It also highlighted the value of a school-based repository of relevant training materials tailored for law school sessional staff with varying levels of experience. Such resources not only enhance teaching quality but also alleviate pressure on permanent academic staff.

IV OBSERVATIONS, FEEDBACK, RESULTS AND THE FUTURE OF THE INITIATIVE

In terms of engagement, the Canvas site has had 772 page views in a period of three months since it was published for 38 sessional academics. The sessional training workshop evidenced excellent engagement, and more senior sessional academics were able to share experiences with less experienced sessional staff during the workshop.[110] Importantly, the authors also found that newer sessional staff were able to share fresh ideas with more experienced staff, and feedback suggested that this was invaluable for those long-standing colleagues with sessional roles in units.

Feedback on the initiative was obtained using a poll in Padlet at the end of the training session. Responses were resoundingly positive. Approximately 50% of participants responded to the

[106] As reported by Nistor et al's research, it is essential that members of a community of practice have sufficient opportunities of getting to know each other because without this, knowledge sharing is 'hardly possible.' Nistor et al (n 18) 271; Communities of Practice, such as the sessional training initiative, provide 'safe and supportive environments for members to share, debate and build their learning and teaching expertise...': McDonald and Star (n 85) 234-235.

[107] Zhou, Simpson and Domizi (n 45); Gill-Simmen (n 43); Kavanagh, Marilyn and Wood (n 40); Dixon and Syred (n 96).

[108] Queensland University of Technology, 'Real World Learning Vision', *Queensland University of Technology* (Web Page, 2025) <https://qutvirtual4.qut.edu.au/group/staff/teaching/learning-teaching-strategy/about-our-vision>.

[109] Hattie and O'Leary (n 37) 30; Newton and Miah (n 38).

[110] This observation aligns with the findings from Nistor et al (n 18) 259, 261-262 who found that 'knowledge is most significantly shared between experts and novices'...when they feel a sense of belonging, trust, mutual benefit and shared emotional connection.

poll, and 100% of those respondents rated the in-person training session as 'very useful' on a Likert scale ranging from 'not useful' to 'very useful'.

In addition to the poll results, the authors received numerous emails and verbal feedback highlighting the benefits of the project. These included praise for the training materials provided on the Canvas site, the workshop activities and the opportunity to create connections within the sessional academic community and with permanent staff. Consistent with other comments, one senior sessional staff member remarked, '...this is something that has been needed for a long time'.[111]

Acknowledging that law school sessional staff come from a variety of backgrounds and that many have significant practical experience that is vital for engaging students, law schools value their role in providing positive student experiences for learners. It is clear that university-wide general training is important, but that school-specific training is fundamental to achieving consistency and quality in teaching style and student learning outcomes. In addition, as discipline-specific training is often left to permanent academic staff, formal sessional staff training within a school can assist in reducing the already heavy workload of permanent academic staff. As sessional staff participants reported a desire for connection and a sense of community following the workshop, it is apparent that school-specific training sessions can provide these opportunities to connect and share experiences to build a culture of teaching excellence.[112]

It is therefore apparent that continuing this project in future years is important, especially the in-person training sessions. The initiative could also be expanded to other schools and faculties, especially those in the social sciences where sessional staff are from practical, 'real world' backgrounds rather than PhD candidates who have limited 'real world' experience.

The authors acknowledge several limitations of the initiative. First, the project was only considered in the QUT Law School context, and at the date of writing, as only one iteration of the session has been delivered, empirical data is limited to feedback from this single iteration. Furthermore, given the timing of the initiative, it would be helpful to follow up with sessional staff to determine whether the specific teaching activities or support strategies were implemented during Semester 1, 2025 and to gather any feedback on their effectiveness.

Despite these limitations, the initiative is supported by strong pedagogical foundations, and the overwhelmingly positive responses suggest promising early indications of the initiative's impact. The authors emphasise that this initiative is intended to supplement rather than replace the high-quality training already available from the institution. These preliminary findings are offered as a foundation for ongoing evaluation and future development.

Empirical studies would be useful to obtain data from sessional academics participating in the initiative. Given the significant amount of literature focused on university factors, teaching styles and student engagement levels prior to COVID-19, future research and refinements to the initiative will build upon that literature in light of the post COVID-19 landscape. In addition, further investigations could include training sessional staff in disciplines other than law and preparing training resources to support students with personal disclosures, disabilities and equity plans. The authors also intend to undertake further research into the development of

[111] The authors recognise that the feedback data may be subject to self-selection bias, as it captures only the responses of those who attended the workshop. The authors intend to explore the perspectives of non-attendees in future evaluations, including identifying barriers to participation and assessing whether alternative modes of engagement may be more accessible or effective for some sessional staff.

[112] McDonald and Star (n 85).

sessional staff communities with a particular focus on wellbeing, collegial connection and sustained pedagogical support.

V CONCLUSION

The continued reliance on sessional academics in Australian law schools highlights the urgent need for targeted, discipline-specific training that supports both teaching quality and student engagement. As demonstrated through the QUT Law School Sessional Staff Initiative, providing sessional staff with access to tailored resources and opportunities for community-building can significantly enhance their capacity to support diverse learners. The initiative's success (evidenced by strong engagement, positive feedback and collaborative knowledge sharing) reinforces the importance of recognising sessional staff as integral members of the academic community. While institutional training remains valuable, school-level programs offer the specificity and relevance needed to address the unique pedagogical demands of legal education. Future iterations of this initiative will include empirical evaluation, expansion to other disciplines, and consideration of additional support mechanisms for students with equity plans or personal disclosures. Ultimately, investing in the professional development of sessional staff is not only a matter of quality assurance, but a commitment to inclusive, effective and future-focused legal education. In light of the *Australian Universities Accord's* concerns about the impact of casualisation on teaching quality,[113] all Australian law schools are urged to implement discipline-specific training programs for their sessional staff as an essential step towards ensuring excellence in legal education.

[113] 'Key Findings from the 2024 Higher Education Student Statistics' (n 2) 232.

THE REFLECTIVE LAW STUDENT: A MULTI-LENSED APPROACH TO UNDERSTANDING REFLECTION IN LEGAL EDUCATION

Stephanie Falconer[*]

ABSTRACT

Reflective practice in legal education has gained widespread recognition for its capacity to foster deeper learning, ethical awareness, and professional development. However, its implementation often lacks theoretical coherence. This article argues for a multi-lensed theoretical framework – drawing on Transformative Learning Theory, Professional Identity Formation, and Affect Theory (via Critical Emotional Reflexivity) – to enrich the pedagogical application of reflection. Through a narrative literature review and an illustrative classroom example based on the Buried Bodies Case, the article demonstrates how these frameworks collectively support intellectual rigour, emotional engagement, and ethical growth. It offers practical recommendations for legal educators seeking to embed reflective practice in ways that cultivate resilient, socially conscious, and professionally grounded law graduates.

I INTRODUCTION

Reflective practice in legal education is not merely a pedagogical tool. When done well, it can be a transformative process that shapes the ethical, emotional, and professional identity of future lawyers.[1] Substantial recent scholarship has demonstrated the value of reflective practice in legal education, both as a teaching tool to support legal educators, and as a learning tool to enhance students' engagement and deeper learning.[2] While reflective practice has become a widely endorsed pedagogical strategy in legal education, its implementation often lacks

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[1] Elimma C Ezeani, 'Measuring Teaching Effectiveness: Transformative Learning in Legal Education' (2024) 58(4) *The Law Teacher* 469, 472; Haley McEwen, 'Reflection in Legal Education – So What, Now What?: An Academic's Reflection on the Benefits and Challenges of Implementing Reflective Practice in an Online Law Degree' (2022) 15 *Journal of the Australasian Law Academics Association* 1, 5; Anna Cody, 'Reflection and Clinical Legal Education: How Do Students Learn about Their Ethical Duty to Contribute towards Justice' (2020) 23(1-2) *Legal Ethics* 13 ('Reflection and Clinical Legal Education'); Anna Cody, 'Developing Students' Sense of Autonomy, Competence and Purpose Through a Clinical Component in Ethics Teaching' (2019) 29(1) *Legal Education Review* 1.

[2] See eg, Michele M Leering, 'Integrated Reflective Practice: A Critical Imperative for Enhancing Legal Education and Professionalism' (2017) 95(1) *Canadian Bar Review* 47; Michele M Leering, 'Integrative Reflective Practice in Canada and Australia: Enhancing Legal Education Pedagogy and Professionalism' (PhD Thesis, Queens University, 2023); Sandra Noakes and Anna Cody, 'Building a (Self) Reflective Muscle in Diverse First-Year Law Students' (2022) 32(1) *Legal Education Review* 69; Chloe Sheppick, 'Unveiling the Benefits of Reflective Learning in Professional Legal Practice' (2024) 31(2) *International Journal of the Legal Profession* 207.

theoretical coherence and depth. This article argues that a multi-lensed theoretical approach offers a more robust and nuanced framework for understanding and applying reflective practice. The three theories explored are Transformative Learning Theory ('TLT'), Professional Identity Formation ('PIF'), and Critical Emotional Reflexivity ('CER') as a proponent of Affect Theory ('AT'). By integrating these complementary perspectives, legal educators can design reflective activities that not only support intellectual and ethical development but also engage with the emotional realities of legal learning, ultimately cultivating more resilient, socially conscious, and professionally grounded law graduates.[3] Although increasingly used in legal education, reflective practice remains underutilised due to inconsistent methodologies and limited theoretical research.

This analysis does not advocate for the adoption of a singular theoretical framework as a prerequisite for evaluating the utility of reflective practice in legal education – although such an approach may be contextually appropriate. Instead, the central proposition is that reflective practice is most effectively conceptualised through a multi-theoretical lens. Rather than privileging one model, this article proposes an integrative approach that draws on TLT, PIF, and CER to enrich student learning experiences. Legal education encompasses diverse learning environments, pedagogical aims, and institutional imperatives, all of which demand a nuanced theoretical foundation to support student development. By interrogating how distinct theoretical perspectives shape reflective practice, legal educators can design learning activities that are more intentionally aligned with their teaching objectives and more responsive to student needs. This position is informed by the inherent complexity of legal education as a regulated and accredited discipline, and by the evolving expectations and challenges faced by contemporary law students.

While recent scholarship has highlighted the benefits of reflective practice in legal education, few studies anchor their analysis in explicit theoretical frameworks. This article addresses that gap by demonstrating how diverse theoretical perspectives can deepen our understanding and enhance the pedagogical application of reflection. Adopting a narrative literature review approach, it examines the three key frameworks to illustrate their individual and collective value.[4] Each framework contributes uniquely to understanding how reflection can be used within law programs. For instance, TLT illuminates epistemological shifts in student understanding; PIF explores the development of an ethical and professional self, and CER foregrounds the emotional dimensions of learning. This focused approach does not aim to exhaust the theoretical landscape. Rather, it acknowledges the breadth of existing scholarship while offering a manageable and meaningful framework for analysis. Moreover, given the inconsistent and often implicit use of theory in existing literature, a purposive interpretive approach was adopted to align the most relevant frameworks with the article's aims.[5] This analysis, grounded in critical pedagogy and reflective inquiry, acknowledges that framework selection is itself a reflective act shaped by disciplinary values and the author's experience as

[3] McEwen (n 1) 5.
[4] Ben Kei Daniel, Tony Harland and Navé Wald, *Higher Education Research Methodology* (Routledge, 2024) 113.
[5] Anthony Onwuegbuzie and Rebecca Weinbaum, 'A Framework for Using Qualitative Comparative Analysis for the Review of the Literature' (2017) 22(2) *The Qualitative Report* 359.

a legal educator.[6] The discussion culminates in a case for an integrated, multi-lensed approach, supported by practical recommendations for legal educators, which include an example of a class activity designed around the controversial and authentic ethical dilemma of the 1975 US *Buried Bodies Case*.[7]

II REFLECTIVE PRACTICE AND SELECTED THEORETICAL FRAMEWORKS

Though a clear definition of reflective practice is still debated, there is sufficient agreement among scholars that reflection is the process of examining assumptions, experiences, and values to understand how they shape views and actions.[8] It involves questioning these influences, considering how they evolve over time, and adapting perspectives in light of new insights or experiences.[9] Donald Schön's seminal works, particularly *The Reflective Practitioner: How Professionals Think in Action* (1983) and *Educating the Reflective Practitioner* (1987), introduced the contemporary concept of reflective practice, fundamentally shaping the discourse on professional learning.[10] Schön's framework highlighted key concepts such as 'reflection-in-action' and 'reflection-on-action', emphasising the intuitive 'knowing-in-action' and retrospective analysis crucial for professional development.[11] His critique of 'technical rationality' and advocacy for 'professional artistry' have been profoundly influential, leading to widespread adoption of reflective practice across numerous professional disciplines, including medicine, nursing, and social work.[12] These fields have subsequently generated a substantial body of theoretical, empirical, and practical literature affirming reflective practice as a core competency for continuous learning and professional growth which have supported an advancement in similar scholarship in the legal education context.[13] Given this extensive and well-established scholarship on Schön's work, this article will build upon these widely recognised tenets rather than re-exploring them in depth.

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[6] Daniel, Harland and Wald (n 4) 113.

[7] Lisa G Lerman et al, 'The Buried Bodies Case: Alive and Well After Thirty Years' (2007) 19 *The Professional Lawyer* 19.

[8] John Dewey, *How We Think: A Restatement of the Relation of Reflective Thinking in the Educative Process* (Health, 1933); Donald A Schön, *The Reflective Practitioner* (BasicBooks, 1983) ('*The Reflective Practitioner*'); David Boud, R Keogh and David Walker (eds), *Reflection: Turning Experience into Learning* (Kogan Page, 1985) ('*Turning Experience into Learning*'); Jack Mezirow, 'Learning to Think Like an Adult: Core Concepts of Transformation Theory' in *Learning as Transformation. Critical Perspectives on a Theory in Progress* (Jossey-Bass, 2000); Stephen Brookfield, 'The Concept of Critical Reflection: Promises and Contradictions' (2009) 12(3) *European Journal of Social Work* 293; David A Kolb, *Experiential Learning: Experience as the Source of Learning and Development* (Prentice-Hall, 1984); Jennifer A Moon, *Learning Journals: A Handbook for Academics, Students and Professional Development* (Kogan Page, 1999); Leering, 'Integrated Reflective Practice' (n 2); Cody, 'Reflection and Clinical Legal Education' (n 1).

[9] Leering, 'Integrated Reflective Practice' (n 2); Noakes and Cody (n 2).

[10] Schön, *The Reflective Practitioner* (n 8); Donald A Schön, *Educating the Reflective Practitioner: Toward a New Design for Teaching and Learning in the Professions* (Basic Books, 1987).

[11] See also Donald A Schön, 'The Theory of Inquiry: Dewey's Legacy to Education' (1992) 22(2) *Curriculum Inquiry* 119; Donald A Schön, 'Knowing-In-Action: The New Scholarship Requires a New Epistemology' (1995) 27(6) *Change: The Magazine of Higher Learning* 27.

[12] Schön, 'Theory of Inquiry' (n 11); Schön, 'Knowing-in-Action' (n 11).

[13] Leering, 'Integrated Reflective Practice' (n 2); Michele M Leering, 'Perils, Pitfalls and Possibilities: Introducing Reflective Practice Effectively in Legal Education' (2019) 53(4) *The Law Teacher* 431 ('Perils, Pitfalls and Possibilities'); Noakes and Cody (n 2).

Theoretical frameworks are not neutral instruments applied passively to a subject. Rather, theorising is an active process that shapes how we perceive and interpret reality.[14] It does not uncover objective truths but constructs meaning through the lens of its own assumptions and boundaries. This interpretive act can generate valuable insights, yet it may also obscure alternative perspectives due to the limitations inherent in any given framework.[15] In legal education, the choice of theoretical lens significantly influences what is highlighted, prioritised, and understood in reflective practice. Different frameworks illuminate different dimensions of the same issue, leading to varied interpretations. To gain a deeper and more nuanced understanding of reflection – or any educational concept – it is essential to recognise the formative role that theory plays in shaping perception. A multi-lensed approach that embraces the varied realities created by different conceptual angles can significantly enhance the use of reflection in learning activities and assessments for law students. This ensures that the desired skills and substantive knowledge acquisition can be properly scaffolded. Together, the frameworks explored in this article offer a developing view of reflection's value; not just as a learning strategy, but as a cornerstone of legal education's mission to cultivate thoughtful, principled, and effective practitioners.

A *Theoretical Basis for Reflective Legal Pedagogy*

In 2017, Leering argued that integrating reflective practice into legal education enhances the 'holistic development of future legal professionals'.[16] Since then, several scholars have contributed to the reflective legal pedagogy discourse, sharing their experiences, and demonstrating that it can foster the development of technical competence, ethical leadership, personal well-being and social responsiveness.[17] Looking at reflective practice through a theoretical framework is valuable because it provides a roadmap for systematically introducing and operationalising reflective practice in legal education. It allows educators to explicitly identify desired, beneficial, and necessary types of reflection for law students and to consider the most effective 'where, when and how' to introduce them throughout the curriculum. A theoretical framework provides a structured foundation for effective implementation by guiding the design of reflective activities and supporting students' development from novice to professional, through its focus on clearly identifiable attributes. To that end, this section explores the value of reflective practice in legal education through three distinct, yet wholly relatable, theoretical lenses: TLT, PIF, and CER.

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[14] Tara Fenwick and Richard Edwards, 'Introduction: Reclaiming and Renewing Actor Network Theory for Educational Research' (2011) 43(sup1) *Educational Philosophy and Theory* 1; Judith Schoonenboom, 'Reflection – How Methodological Innovation Contributes to Theory Development' in Crina Damsa et al (eds), *Re-Theorising Learning and Research Methods in Learning Research* (Taylor & Francis Group, 2023) 209, 254.

[15] J Law, *After Method: Mess in Social Science Research* (Routledge, 2004).

[16] Leering, 'Integrated Reflective Practice' (n 2).

[17] Cody, 'Reflection and Clinical Legal Education' (n 1); Ozlem Susler and Alperhan Babacan, 'Embedding Critical Reflection in Legal Education' (2021) 37(3) *Law in Context. A Socio-legal Journal* DOI: 10.26826/law-in-context.v37i3.154; Frances Maureen Schnepfleitner and Marco Paulo Ferreira, 'Transformative Learning Theory – Is It Tıme to Add A Fourth Core Element?' (2021) 1(1) *Journal of Educational Studies and Multidisciplinary Approaches* 40; McEwen (n 1); Noakes and Cody (n 2); Ezeani (n 1); Leering, *Enhancing Legal Education Pedagogy and Professionalism* (n 2).

B *Transformative Learning Theory*

Transformative learning theory ('TLT') is a process of effecting change in a frame of reference, which leads to individuals exploring their assumptions to make them 'more inclusive, discriminating, open, emotionally capable of change, and reflective'.[18] This is different from the process of 'informational learning' because the focus is no longer on simply increasing skills or existing cognitive structures. Rather, it requires a constructivist approach to learning, embracing a 'deep, structural shift in basic premises of thought, feelings and actions'.[19] Thus the core elements of TLT include critical reflection, dialogue, and individual experience.[20] Critical reflection is crucial as it 'transcends mere doing' and mitigates the risk of superficial learning.[21]

Though often discussed in a general sense, the relevance of TLT to legal education in particular is profound in a rapidly evolving profession where rote learning and 'technical brilliance' alone is insufficient.[22] TLT in legal education can help to develop graduates who can 'positively manage the uncertainty that comes with change and to cope more effectively with a rapidly changing profession'.[23] It is a crucial facet of law school's duty to prepare students for life and work beyond university, moving beyond mere academic grades. This responsibility is especially urgent given the high prevalence of mental health challenges affecting both law students and legal professionals, which underscores the need for emotionally intelligent, resilient, and ethically grounded graduates.[24]

Pedagogically, TLT supports a learner-centred approach, a contrast to traditional teacher-centred legal education.[25] Teachers can most effectively facilitate this student focused pedagogy through discourse guided by integrated and informed critical reflection.[26] The process of transformative learning includes exposing students to 'disorienting dilemmas'[27] – facts or information that contradict prior beliefs, prompting significant shifts in 'meaning

[18] Mezirow, 'Learning to Think Like an Adult' (n 8) 7-8.
[19] Robert Kegan, 'What "form" Transforms? A constructive-developmental approach to transformative learning' in Knud Illeris (ed), *Contemporary Theories of Learning* (Routledge, 2009) 35; Andrew Kitchenham, 'The Evolution of John Mezirow's Transformative Learning Theory' (2008) 6(2) *Journal of Transformative Education* 104; Daniel Mathis, 'Transformational Learning: Challenging Assumptions in the Workplace' (2010) 24(3) *Development and Learning in Organizations: An International Journal* 8; Jack Mezirow and Edward W Taylor, *Transformative Learning in Practice: Insights from Community, Workplace, and Higher Education* (John Wiley, 2011).
[20] Schnepfleitner and Ferreira (n 17) 42.
[21] Stuart Nairn et al, 'Reflexivity and Habitus: Opportunities and Constraints on Transformative Learning' (2012) 13(3) *Nursing Philosophy* 189. See also Samuel Knapp, Michael C Gottlieb and Mitchell M Handelsman, 'Enhancing Professionalism Through Self-Reflection' (2017) 48(3) *Professional Psychology, Research and Practice* 167.
[22] Law Society of New South Wales, *FLIP: The Future of Law and Innovation in the Profession* (Report, 2017) 77-79; McEwen (n 1) 6.
[23] Ibid 2.
[24] S Douglas, 'Incorporating Emotional Intelligence in Legal Education: A Theoretical Perspective' (2015) 9(2) *E-Journal of Business Education & Scholarship of Teaching* 56.
[25] Marcus Smith, 'Integrating Technology in Contemporary Legal Education' (2019) 54(2) *The Law Teacher* 209.
[26] Jack Mezirow, 'Transformative Learning: Theory to Practice' (1997) (74) *New Directions for Adult and Continuing Education* 5, 5-7.
[27] Ibid 13-14.

perspective'.[28] Such experiences, practised through reflection, can increase students' sensitivity to social justice and access to justice issues, fostering 'justice readiness'.[29] Practical strategies to nurture critical reflection include group-based learning, simulations, reflective journals, debates, and problem-based analyses, all of which contribute to the learner's active role in their education, effecting transformation, rather than passive learning.[30] These methods encourage students to think flexibly, creatively, and critically, and enhance their overall resilience;[31] challenging assumptions and understanding law within wider social contexts.[32]

In 2010, Australian legal education was recalibrated through the introduction of six Threshold Learning Outcomes ('TLOs').[33] The TLOs aimed to align law degrees with the evolving needs of modern society and students alike, embedding a focus on the skills most needed in ethical and robust professional practice.[34] These outcomes rooted transformative learning elements as core goals, emphasising reflective practice, ethical awareness, and professional identity development as essential components of legal education.[35]

Ultimately, the transformative potential for contemporary law students lies in developing a deeper understanding of themselves and the legal system. It enables them to 'develop new ways of critical appraisal [to] respond to life and social changes more easily'.[36] By fostering self-awareness and self-management, TLT contributes to deeper, more meaningful learning. It equips students to be 'autonomous thinkers' capable of navigating their own values and purposes, rather than passively adopting others' biases.[37] This approach ensures students not only acquire legal knowledge but also develop relational skills like 'listening skills, communication, empathy and, compassion [alongside] virtues such as trustworthiness, integrity and resilience'.[38]

This theoretical framework significantly contributes to understanding how reflection can be taught, scaffolded, and assessed within law school by highlighting its advantages. By prioritising a learner-centred pedagogy and encouraging critical self, collective, and integrative reflection, it moves beyond a focus on grades to cultivating deep learning and professional

[28] Leering, 'Integrated Reflective Practice' (n 2) 72.
[29] Jane H Aiken, 'The Clinical Mission of Justice Readiness' (2012) 32(2) *Boston College Journal of Law and Social Justice* 231, 231.
[30] Susler and Babacan (n 17).
[31] Evelyn M Boyd and Ann W Fales, 'Reflective Learning' (1983) 23(2) *Journal of Humanistic Psychology* 99, 110; Nathalie Martin, *Lawyering from the Inside Out* (Cambridge University Press, 2018).
[32] Susler and Babacan (n 17).
[33] Sally Kift, Mark Israel and Rachael Field, *Learning and Teaching Academic Standards Project (Bachelor of Laws): Learning and Teaching Academic Standards Statement* (Report, 2010) <https://cald.asn.au/wpcontent/uploads/2017/11/KiftetalLTASStandardsStatement2010.pdf>.
[34] Martin (n 31) 64; Leering, 'Perils, Pitfalls and Possibilities' (n 13) 437-38; Susler and Babacan (n 17). See also Anna Huggins, Sally Kift, and Rachel Field, 'Implementing the Self-Management Threshold Learning Outcome for Law: Some Intentional Design Strategies from the Current Curriculum Toolbox' *Legal education review* <https://doaj.org/article/7462d1c7e7404172bf5b26661211ee7d>.
[35] McEwen (n 1) 5-6.
[36] Ezeani (n 1) 472.
[37] Valerie Grabove, 'The Many Facets of Transformative Learning Theory and Practice' (1997) 1997(74) *New Directions for Adult and Continuing Education* 89; Ezeani (n 1) 477; Schnepfleitner and Ferreira (n 17) 46.
[38] McEwen (n 1) 5.

identity.[39] It provides pathways for educators to design curricula that explicitly develop skills essential for adaptable, ethical, and socially conscious legal professionals, enabling students to continuously learn from experience and integrate theory with practice. While TLT underscores the role of critical reflection and personal growth in legal education, PIF extends this perspective by centring on the cultivation of a legal professional identity.

C *Professional Identity Formation*

Professional Identity Formation ('PIF') theory is deeply intertwined with and fundamentally supported by reflective practice in legal education.[40] The pedagogical utility of PIF theory is rooted in its capacity to guide deep and transformative learning.[41] It encourages students to examine their assumptions, biases, perspectives, epistemologies,[42] and enhances skills such as critical thinking, problem-solving, and ethical decision-making in ways that they perceive as relevant to their future career.[43] Indeed, research suggests that law students begin forming their professional identity from their first engagement with law school,[44] and it is relatively settled that adopting an integrated approach to legal education is crucial for developing effective, ethical, and adaptable legal practitioners.[45] A substantial body of scholarship in legal education explores the development of professional identity throughout law school, though often articulated using varied terminology.[46]

In essence, PIF, in the context of legal education, cultivates the development of an understanding of 'the values, guiding principles, and well-being practices' considered

[39] Leering, *Enhancing Legal Education Pedagogy and Professionalism* (n 2) 21; Leering, 'Integrated Reflective Practice' (n 2) 53; Vivien Holmes et al, 'Practising Professionalism: Observations from an Empirical Study of New Australian Lawyers' (2012) 15(1) *Legal Ethics* 29, 46.

[40] Neil W Hamilton, 'The Foundational Skill of Reflection in the Formation of a Professional Identity' (2005) 12(2) *St Mary's Journal on Legal Malpractice & Ethics* 254; Fred Korthagen and Angelo Vasalos, 'Levels in Reflection: Core Reflection as a Means to Enhance Professional Growth' (2005) 11(1) *Teachers and Teaching* 47; Lawrence Krieger, 'The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity and Happiness' (2005) 11(2) *Clinical Law Review* 425; Dorthe Høj Jensen and Jolanda Jetten, 'Exploring Interpersonal Recognition as a Facilitator of Students' Academic and Professional Identity Formation in Higher Education' (2017) 8(2) *European Journal of Higher Education* 168.

[41] Sheppick (n 2) 210; Jan Fook and Gurid Aga Askleand, 'The "Critical" in Critical Reflection' in S White, J Fook and F Gardner (eds), *Critical Reflection in Health and Welfare* (Open University Press, 2006). See also; McEwen (n 1) 2.

[42] C Beauchamp, 'Understanding Reflection in Teaching: A Framework for Analyzing the Literature' (PhD, McGill University, 2006) 147.

[43] For discussions on the importance of these skills, see Moon (n 8); Sheppick (n 2) 2010; Leering, 'Perils, Pitfalls and Possibilities' (n 13); Susan G Forneris and Cynthia J Peden-McAlpine, 'Contextual Learning: A Reflective Learning Intervention for Nursing Education' (2006) 3(1) *International Journal of Nursing Education Scholarship*; Susler and Babacan (n 17); Cody, 'Reflection and Clinical Legal Education' (n 1); Nancy L Bennett, 'Donald A. Schön, Educating the Reflective Practitioner' (1989) 9(2) *Journal of Continuing Education in the Health Professions* 115; Yvonne Daly and Noelle Higgins, 'The Place and Efficacy of Simulations in Legal Education: A Preliminary Examination' (2011) 3(2) *All Ireland Journal of Teaching and Learning in Higher Education* DOI: https://doi.org/10.62707/aishej.v3i2.58.

[44] Jensen and Jetten (n 40) 1038.

[45] See Leering, 'Integrated Reflective Practice' (n 2).

[46] See, for example, Krieger (n 40); Noakes and Cody (n 2); Melissa Kidder, 'Fostering a Law Student's Professional Identity: How Law School Field Placements and Online Programming Can Develop the Next Generation of Rural Lawyers' (2024) 69 *South Dakota Law Review* 590; Yvonne Skipper and Michael Fay, 'The Relationship between the Sense of Belonging, Mental Wellbeing and Stress in Students of Law and Psychology in an English University' (2023) 4(1) *European Journal of Legal Education* 5.

foundational to successful legal practice.[47] PIF theory is highly relevant because it extends legal education beyond mere 'black letter law' to foster a holistic understanding of the profession.[48] It emphasises developing an 'ethical muscle' and a 'reflective muscle',[49] crucial for self-management and well-being both at law school and later, into professional practice. PIF can operate as a pedagogical response to what has been described as the 'unrelenting, dynamic and transformative change'[50] in the legal profession, including technological shifts and mental health challenges.[51] Clinical legal education and other experiential learning opportunities can be 'major catalysts' for critical reflection, providing 'coal face exposure' to justice issues and an authentic professional experience.[52] Though opportunities outside of the clinical context can be equally as valuable using a PIF approach.

PIF theory offers significant transformative potential, enabling students to achieve 'perspective transformation' by examining their own beliefs and challenging the 'status quo'.[53] It fosters a strong sense of professional responsibility for access to justice,[54] and prepares students for the stresses of practice by building resilience and adaptability.[55] This theory promotes the integration of personal and professional identity, ultimately leading to emotionally intelligent and self-aware lawyers. The benefits of applying a PIF lens to teaching and assessing reflective practice in law school are clear. This theoretical framework significantly contributes to understanding how reflection can be taught, scaffolded, and assessed within law school. Reflection is not innate; it 'needs to be developed' through pedagogical interventions.[56] To teach reflection, educators should provide clear guidelines, specific reflective questions, and model their own reflective practices while authentically linking it back to the profession.[57]

Even so, while PIF offers a valuable lens for understanding the developmental journey of law students in a professional sense, it is not a complete account of what contemporary legal education, or practice, demands. When viewed alongside TLT, we can see that PIF builds upon the strong foundations by further guiding students toward an integrated sense of self as ethical

[47] Hamilton (n 40). See also Neil W Hamilton and Louis D Bilionis, *Law Student Professional Development and Formation* (Cambridge University Press, 2022).
[48] Susler and Babacan (n 17); Robin L West, *Teaching Law* (Cambridge University Press, 2013); Leering, 'Integrated Reflective Practice' (n 2).
[49] Mary Gentile, *Giving Voice to Values* (Yale University Press, 2010); Doris DelTotso-Brogan, 'Stories of Leadership Good and Bad: Another Modest Proposal for Teaching Leadership in Law Schools' (2021) 45(2) *Journal of the Legal Profession* 183, 226.
[50] Canadian Bar Association, *Futures: Transforming the Delivery of Legal Services in Canada* (Report, 2014); Leering, 'Integrated Reflective Practice' (n 2) 53. Though published in the Canadian context, many of the issues raised are applicable to the Australasian legal education contexts.
[51] Sheppick (n 2) 210. See also Judith Marychurch, Kate Fischer Doherty and Jacqueline Weinberg (eds), *Wellness for Law: Reflecting on the Past Shaping the Future* (LexisNexis, 2024).
[52] A Evans et al (eds), *Australian Clinical Legal Education: Designing and Operating a Best Practice Clinical Program in an Australian Law School* (ANU Press, 2022); Leering, *Enhancing Legal Education Pedagogy and Professionalism* (n 2).
[53] Noakes and Cody (n 2) 84.
[54] Cody, 'Reflection and Clinical Legal Education' (n 1) 109; Leering, 'Integrated Reflective Practice' (n 2) 50.
[55] Leering, 'Perils, Pitfalls and Possibilities' (n 13); McEwen (n 1) 3; Sheppick (n 2) 210.
[56] Erik Driessen, Jan van Tartwijk and Tim Dornan, 'The Self Critical Doctor: Helping Students Become More Reflective' (2008) 336(7648) *BMJ* 827; Hedy S Wald and Shmuel P Reis, 'Beyond the Margins: Reflective Writing and Development of Reflective Capacity in Medical Education' (2010) 25(7) *Journal of General Internal Medicine* 746.
[57] Krieger (n 40) 438; Cody, 'Reflection and Clinical Legal Education' (n 1) 107.

and reflective practitioners. But the emotional, relational, and embodied dimensions of learning are brought into sharper focus when examined together with CER as complementary frameworks that, when used together, draw on the strengths of each to more fully support the evolving needs of today's law students.

D *Critical Emotional Reflexivity*

Critical Emotional Reflexivity ('CER'), as an extension of Affect Theory ('AT'), offers a transformative approach to understanding reflective practice. Understanding the value of CER requires an understanding of AT as the foundational theory. While AT and its role in reflection generally has scholarly support,[58] scholarship on its value towards understandings of legal education pedagogy is underdeveloped.[59] At its core, AT fundamentally challenges the traditional view of emotions as merely private, internal experiences, or irrational impulses separate from cognition.[60] Instead, it posits that emotions are socially and materially situated,[61] actively shaping our perception of reality and the boundaries of ourselves and our worlds.[62] AT does not require a positive or negative value attachment to a subject, but rather operates as an interpretive tool that is both malleable and context-dependent.[63] It invites the user to acknowledge and consider the real impact of emotions, both personal and social, on their understanding of the information, or situation, they are interacting with.

AT reconceptualises emotions not as irrational impulses but as integral to cognition.[64] Emotions are 'subjectively experienced feelings related to affect and mood'.[65] They are part of reasoning itself, not merely its fuel.[66] Emotions involve evaluative judgments that appraise objects as valuable or important, and they mediate between individuals and their environments, engaging the cognitive process.[67] This understanding challenges the dominant framing of reason and rationality in legal education as purely cognitive and emotion-free,[68] and offers an alternative that can enhance legal education pedagogy. Thus, a pluralistic approach that

[58] See for example, Boud, Keogh and Walker (n 8); Moon (n 8).
[59] A comprehensive overview of the importance of emotion in legal education can be found in Emma Jones, *Emotions in the Law School* (Routledge, 2019).
[60] Sara Ahmed, 'Affective Economies' (2004) 22(2) *Social Text* 117; Matteo Cristofaro, '"I Feel and Think, Therefore I Am": An Affect-Cognitive Theory of Management Decisions' (2020) 38(2) *European Management Journal* 344. See also Douglas (n 24).
[61] Ahmed (n 62) 121.
[62] Judith Butler, *Bodies That Matter: On the Discursive Limits of "Sex"* (Routledge, 1993) 9.
[63] Gerald L Clore, Alexander J Schiller and Adi Shaked, 'Affect and Cognition: Three Principles' (2018) 19 *Current Opinion in Behavioral Sciences* 78.
[64] Cristofaro (n 60) 347.
[65] R Kohn and MB Keller, 'Emotions' in A Tasman et al (eds), *Psychiatry Volumes 1 & 2* (Wiley and Sons, 2015) 547.
[66] M Nussbaum, *Upheavals of Thought: The Intelligence of Emotions* (Cambridge University Press, 2001) 3.
[67] Klaus R Scherer and Agnes Moors, 'The Emotion Process: Event Appraisal and Component Differentiation' (2019) 70(1) *Annual Review of Psychology* 719, 14.3. See also U Neisser, *Cognitive Psychology* (Appleton-Century-Crofts, 1967); Daniel Kahneman and Amos Tversky, 'Subjective Probability: A Judgment of Representativeness' (1972) 3(3) *Cognitive Psychology* 430; Daniel Kahneman and Amos Tversky, 'Prospect Theory an Analysis of Decision under Risk' (1979) 47(2) *Econometrica* 430.
[68] Paul Maharg and Caroline Maughan, *Affect and Legal Education: Emotion in Learning and Teaching in the Law* (Routledge, 2011); Colin James, 'Lawyers' Wellbeing and Professional Legal Education' (2008) 42(1) *The Law Teacher* 85; Angela P Harris and Marjorie M Shultz, '"A(Nother) Critique of Pure Reason": Toward Civic Virtue in Legal Education' (1993) 45(6) *Stanford Law Review* 1773.

embraces both emotion and reason, and mirrors developments in socio-legal studies can offer a more holistic educational model.

Zembylas advances this idea through the concept of CER as an extension of AT, which integrates emotions into reflective practice as a necessary precondition.[69] Initially conceptualised in the context of teacher reflection, CER moves beyond introspection to consider the normative and relational dimensions of reflection as an educative practice.[70] In this way, it can inform legal education pedagogy because it positions reflection as a social and emotional act of empowerment, linking emotions to power structures and social justice agendas; themes which often sit at the core of legal education.[71]

The relevance CER, therefore, to legal education is profound, as law has traditionally been 'uncomfortable with emotions',[72] largely seeking to 'disregard them as irrelevant or irreverent, or [attempting] to suppress them as difficult, damaging or even dangerous'.[73] This discomfort reflects a paradox which sees law, and by extension traditional understandings of legal education, actively attempt to suppress the 'very emotions that necessitate its existence'.[74] Yet emotions are inescapable in both legal practice and legal education,[75] and ignoring them is detrimental to the goals of legal education.[76] AT applied in this context foregrounds the role of emotions in human experience, challenging the traditional preference for reason and objectivity in legal discourse.[77] Jones argues that acknowledging the role and utility of emotions can have a 'transformative' effect on law schools, leading to fundamental shifts in how students and educators engage with legal learning.[78]

Acknowledging that emotions are here to stay, and that legal education does itself and its students a disservice by holding onto the myth of reason divorced from emotion, this article suggests that any use of reflective practice in legal education must be informed by AT generally, and CER specifically, to be truly transformative. Emotions are already present in law school; they shape student experiences, academic engagement, and professional

[69] Michalinos Zembylas, 'The Place of Emotion in Teacher Reflection: Elias, Foucault and "Critical Emotional Reflexivity"' (2014) 6(2) *Power and Education* 210, 213-14. Zembylas proposed the theory of CER in the context of teacher reflection. This article argues that the learnings are equally as valuable for legal education.
[70] Catriona Mackenzie, 'Critical Reflection, Self-Knowledge, and the Emotions' (2002) 5(3) *Philosophical Explorations* 186, 191.
[71] Jennifer K Harrison and Ruth Lee, 'Exploring the Use of Critical Incident Analysis and the Professional Learning Conversation in an Initial Teacher Education Programme' (2011) 37(2) *Journal of Education for Teaching* 199, 201.
[72] Peter Goldie, *The Emotions* (Oxford University Press, 2002); K Oatley, D Keltner and JM Jenkins (eds), *Understanding Emotions* (Blackwell Publishing, 2006).
[73] Jones (n 59) 1.
[74] Merridee L Bailey and Kimberley-Joy Knight, 'Writing Histories of Law and Emotion' (2017) 38(2) *The Journal of Legal History* 117; Terry A Maroney, 'Law and Emotion: A Proposed Taxonomy of an Emerging Field.' (2006) 30(2) *Law and Human Behavior* 119; Renata Grossi, 'Understanding Law and Emotion' (2014) 7(1) *Emotion Review* 55; Susan A Bandes and Jeremy A Blumenthal, 'Emotion and the Law' (2012) 8(1) *Annual Review of Law and Social Science* 161.
[75] For more discussion see Jones (n 59); Douglas (n 24).
[76] Angela Burton, 'Cultivating Ethical, Socially Responsible Lawyer Judgment: Introducing the Multiple Lawyering Intelligences Paradigm Into The Clinical Setting' (2004) 11 *Clinical Law Review* 15, 15.
[77] Douglas (n 24).
[78] Jones (n 59).

development.[79] Though there is no 'one size fits all' solution,[80] reflection provides a practical avenue for engaging with emotions constructively.

While Dewey[81] and Schön[82] acknowledged emotions in reflective thinking, they did not see them as central.[83] CER fills this gap by inviting practitioners to critically examine the social sources of their emotions and their entanglements with power.[84] This approach is especially relevant in legal education, where students must navigate complex emotional landscapes shaped by institutional pressures and societal expectations. Even so, it is important to recognise that the transformative potential of engaging law students with the emotional dimensions of legal education is not inherently positive.[85] While such practices can foster deep reflection and personal growth, they may also provoke discomfort, resistance, or even emotional harm. Therefore, careful consideration must be given to how these pedagogical strategies are designed and facilitated. Educators, therefore, should ensure that reflective activities involving emotional engagement are appropriately scaffolded, ethically sensitive, trauma informed, and supported by safe learning environments that prioritise student wellbeing.

III BRINGING IT ALL TOGETHER: AN ARGUMENT FOR A MULTI-LENSED THEORETICAL APPROACH TO REFLECTIVE PRACTICE

Reflective practice holds significant pedagogical value in legal education, particularly when approached through a multi-lensed theoretical framework that integrates TLT, PIF, and CER as a proponent of AT. Each framework contributes distinct yet complementary insights into how law students can best engage with learning, develop professionally, and navigate the emotional dimensions of legal study, and later practice. TLT emphasises critical reflection and personal transformation, encouraging students to challenge assumptions and engage with disorienting dilemmas that prompt shifts in meaning and perspective.[86] This learner-centred approach fosters resilience, adaptability, and justice readiness; qualities essential for contemporary legal practice.[87] PIF builds on this foundation by focusing on the development of a legal self, shaped through ethical reasoning, self-awareness, and exposure to authentic legal experiences.[88] It positions reflection as a means of integrating personal values with professional expectations, helping students cultivate the reflective and ethical capacities needed for meaningful legal work.[89]

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[79] Ibid 18.
[80] Ibid 23.
[81] Dewey (n 8).
[82] Schön, *The Reflective Practitioner* (n 10); Schön, *Educating the Reflective Practitioner* (n 10).
[83] Zembylas (n 69) 213.
[84] Ibid 214.
[85] Allan C Hutchinson and Patrick J Monahan, 'Law, Politics, and the Critical Legal Scholars: The Unfolding Drama of American Legal Thought' (1984) 36(1/2) *Stanford Law Review* 199.
[86] Jack Mezirow, *Transformative Dimensions of Adult Learning* (Jossey-Bass, 1991) 211; Leering, 'Integrated Reflective Practice' (n 2) 72.
[87] Aiken (n 29) 231.
[88] Moon (n 8); Leering, 'Perils, Pitfalls and Possibilities' (n 13); Forneris and Peden-McAlpine (n 45). See also Noakes and Cody (n 2) 70.
[89] Hamilton (n 40) 258. See also Hamilton and Bilionis (n 47).

Both TLT and PIF, however, risk overlooking the emotional and relational dimensions of learning that are central to the lived experience of law students. CER, as a subset of AT, addresses this gap by foregrounding emotions as socially situated and integral to cognition, challenging the traditional rationalist framing of legal education.[90] It invites educators to consider how emotional reflexivity can deepen students' understanding of justice, power, and their place within the legal system.[91] When applied to reflective practice, CER enhances the capacity of students to engage with complex emotional landscapes, fostering empathy, compassion, and critical emotional reflexivity.[92]

Together, these three frameworks offer a robust foundation for designing reflective activities that are intellectually rigorous, ethically grounded, and emotionally resonant. A multi-lensed approach enables legal educators to scaffold reflection in ways that support not only academic achievement but also personal growth and professional readiness. It acknowledges the complexity of legal education and the diverse needs of contemporary students, offering a more holistic and responsive model of teaching and learning. By integrating TLT, PIF, and CER, reflective practice becomes not just a pedagogical technique but a transformative process that prepares students to be thoughtful, principled, and emotionally intelligent legal professionals. This multi-lensed theoretical foundation invites legal educators to move from conceptual endorsement to practical application by embedding reflective strategies into curriculum design, classroom activities, and assessment practices that are responsive to the emotional, ethical, and intellectual dimensions of legal learning.

To illustrate how an integrated theoretical approach can be effectively and accessibly embedded into legal education, this article presents a classroom-based example that engages students intellectually, ethically, and emotionally to develop their reflective capacities. The example is drawn from a final-year ethics subject taught at a Victorian university, where students are introduced to a real-world ethical dilemma through the 1975 *Buried Bodies Case*.[93] In this case, two US criminal defence lawyers chose to uphold client confidentiality after their client confessed to multiple murders, later disclosing the locations of more victims' bodies during privileged conversations.[94] The lawyers, believing they were bound by professional duties, including fidelity, confidentiality, and the protection of lawyer-client privilege,[95] did not disclose this information, despite knowing that investigations were stalled with the victims' families unaware of their fates. Although the lawyers were ultimately absolved of wrongdoing, the case presents a profound ethical tension from the outset. Its controversial nature and emotional complexity make it a powerful tool for reflective practice in legal ethics, offering

[90] Jones (n 59); Zembylas (n 69).
[91] Zembylas (n 69).
[92] Ibid 214.
[93] Lerman et al (n 7). See also *People v Belge*, 372 NYS2d 798 (1975). Despite its age, and jurisdiction, this case holds timeless significance because questions of morality and professional obligation are also contemporary concerns.
[94] An additional factor in this scenario was that the lawyers verified the confessions by visiting the location where they found the bodies and failed to disclose it to law enforcement.
[95] In Victoria, these duties are captured in the *Legal Profession Uniform Law Australian Solicitors Conduct Rules 2015* (NSW), r 4.1 (Act in best interests of client); r 9 (Confidentiality) and in the *Evidence Act 2008* (Vic), part 3.10 (Privileges).

'immediacy and humanity'[96] that compel students to grapple with difficult questions about professional responsibility and moral judgment.[97] It invites students to consider how they might respond in similar circumstances and which imperatives – legal or ethical – they would prioritise.

From a TLT lens, this case presents a clear 'disorienting dilemma' as a morally troubling scenario that challenges students' assumptions about legal ethics, confidentiality, and justice.[98] It facilitates critical reflection on professional norms and personal values, prompting students to re-evaluate their ethical frameworks and develop more inclusive, informed, and socially responsive understandings. The authenticity of the scenario as a real-life example takes the transformative potential of this exercise even higher, encouraging students to more deeply engage with their learning regarding ethics and professional responsibilities beyond mere hypotheticals. This already strong foundation can be even further enhanced when adding the PIF lens to task because it forces students to confront the tension between legal obligations and moral reasoning, inviting them to reflect specifically on what kind of lawyer they aspire to be; and, indeed, what it is to *be* a lawyer. It supports the development of an ethical and professional self by asking students to consider how they would act in a similar circumstance and what values would guide their professional decision making.[99] Finally, what makes this example such an effective one is its *affect*. That is, the moral issues at the core of this scenario are extremely emotional. The emotional discomfort and moral ambiguity inherent in the case foreground the role of emotion in legal reasoning. Students may experience shock, anger, or empathy, which can be used to explore how emotions shape ethical judgment and professional identity. Applying CER to a reflective task that engages students in discussion and writings requiring them to critically examine their emotional responses, alongside TLT and PIF approaches, can consolidate the pathway of their transformation from student to practitioner in an emotionally intelligent and self-aware way.

IV RECOMMENDATIONS FOR LEGAL EDUCATORS

Legal educators should be alive to the pedagogical advantages offered by a multi-lensed approach when integrating reflective practice into teaching and assessment. By consciously adopting an approach that draws on TLT, PIF, and CER, educators can design learning experiences that are not only intellectually and ethically robust but also emotionally attuned to the realities of legal education. This integration enhances the efficacy of reflective practice by supporting deeper engagement, fostering resilience, and promoting the development of emotionally intelligent and socially conscious legal professionals who better understand their choices and assumptions. Ultimately, such an approach can better equip students with the tools to navigate the complexities of legal practice with confidence, compassion, and critical insight

[96] Lerman et al (n 7) 21.
[97] Indeed, this case has been the subject of publications, a podcast by *RadioLab* in 2016, and even a *Law & Order* episode 'Bodies' in 2003, due to its significant controversy. For more information, see Tom Alibrandi with Frank Armani, *Privileged Information* (HarperCollins, 1984) and Lawrence Gooley, *Terror in the Adirondacks: The True Story of Serial Killer Robert F Garrow* (Bloated Toe Publishing, 2009).
[98] Mezirow, *Transformative Dimensions* (n 86) 211; Leering, *Enhancing Legal Education Pedagogy and Professionalism* (n 2) 508.
[99] See Cody, 'Reflection and Clinical Legal Education' (n 3).

– building stronger, more adaptable graduates prepared for the demands of a dynamic profession.

Educators can begin by embedding structured opportunities for critical reflection throughout the curriculum, using TLT to guide students through disorienting dilemmas that encourage deep shifts in perspective. Activities such as reflective journals, debates, and simulations can foster self-awareness and critical thinking when designed with purpose,[100] helping students connect legal theory with lived experience.[101] Simultaneously, PIF can inform the development of reflective tasks that support students in constructing a professional identity. This includes integrating ethical reasoning, self-management strategies, and exposure to authentic legal contexts, not only through clinical education or experiential learning, but also in academic contexts that integrate authentic learning opportunities. Here educators can model reflective practice and provide clear scaffolding to help students link personal values with professional expectations. To fully realise the transformative potential of reflection, educators must also engage with AT by acknowledging the emotional dimensions of legal learning. This involves, as a matter of priority, creating safe spaces for emotional expression, encouraging emotional reflexivity, and recognising the role of empathy, discomfort, and relational dynamics in shaping student engagement. Incorporating AT into legal learning via CER can further deepen reflection by linking emotions to power structures and social justice concerns.[102] By intentionally combining these frameworks, legal educators can enhance the efficacy of reflective practice, support holistic student development, and prepare graduates to be thoughtful, resilient, and socially conscious legal professionals.

The integration of multi-lensed reflective practice into legal education need not be overly complex. A range of accessible and pedagogically sound options are available to legal educators seeking to embed this approach. Using the *Buried Bodies Case* again as an illustrative example, educators can design reflective tasks that engage students intellectually, ethically, and emotionally while drawing on the combined strengths of TLT, PIF, and CER.

One effective implementation begins with an in-class, facilitated dialogue. Students are introduced to the case and prompted to consider competing ethical imperatives, the role of the lawyer, and their initial emotional responses to the troubling facts. This discussion positions the case as a disorienting dilemma, encouraging students to critically examine their assumptions about legal ethics, justice, and professional integrity.[103] Educators can model their own reflective engagement in real time, guiding students to identify shifts in their thinking and explore evolving perspectives. This approach activates core elements of each theoretical framework, fostering a holistic and dynamic reflective experience.

[100] To be clear here, debates and simulations alone only have a small impact on student reflections. Their value is enhanced when paired with reflective class discussions or linked to a reflective journal where students are required to actively interrogate their experiences and choices.
[101] See eg, ibid; Noakes and Cody (n 2); Susler and Babacan (n 17).
[102] Zembylas (n 69).
[103] Mezirow, *Transformative Dimensions* (n 86) 211; Leering, *Enhancing Legal Education Pedagogy and Professionalism* (n 2) 508.

To incorporate an assessment component, students may be asked to complete a preparatory reflective journal task prior to class discussion. This could involve engaging with a reading, a podcast, or a video about the case prior to the class discussion. To support this, educators should scaffold baseline reflective skills to ensure the integrity of the assessment and enhance the pedagogical value of each phase of reflection.[104] A particularly accessible method is the 'What? So What? Now What?'[105] model of reflection. Originally developed for the physical sciences, this framework is equally effective in legal education due to its clarity and simplicity. It guides students to articulate what they are reflecting on, why it matters, and how their understanding has changed. When applied through a multi-lensed framework, scaffolding must also prompt students to consider specifically how their views on professional identity have been shaped and which emotions the case evokes, ensuring full integration of TLT, PIF, and CER.

To consolidate the learning, and to continue the development of the students' reflective skills, educators should follow the initial journal and class discussion with a second reflective journal entry.[106] This task invites students to revisit their earlier reflections and assess how their views have shifted, explicitly engaging with the core dimensions of transformation, identity development, and emotional reflexivity. This sequence – preparatory reflection, facilitated dialogue, and post-discussion re-reflection – offers a practical, effective, and meaningful way to embed multi-lensed reflective practice in legal education, ensuring a deeper, transformative learning experience.

V CONCLUSION

Reflective practice in legal education is most powerful when approached through a multi-lensed theoretical framework that integrates TLT, PIF, and AT, via CER. This article has argued that such an integrated approach provides a richer, more nuanced understanding of, and contribution to, student experience, authentic learning, and professional identity development.

TLT offers a foundation for critical reflection and personal transformation, encouraging students to confront disorienting dilemmas and shift their perspectives in ways that foster resilience, adaptability, and justice readiness.[107] PIF builds upon this by guiding students in the construction of a legal self; one that is ethically grounded, self-aware, and responsive to the

[104] The emergence of generative AI poses significant challenges to the integrity of assessments in legal education, particularly those designed to foster authentic student reflection. Where this is an immediate concern, educators can consider running these assessment activities in class, though in the context of contemporary legal education, this may not be a fix-all solution. While these issues warrant careful consideration, a comprehensive analysis of generative AI's impact on assessment design warrants careful attention and falls outside the scope of this article. For more discussion on this important issue see: Joseph Corbeil and Maria Corbel, *Teaching and Learning in the Age of Generative AI: Evidence-Based Approaches to Pedagogy, Ethics, and Beyond* (Taylor & Francis, 2025) ch 6; John Bliss, 'Teaching Law in the Age of Generative AI' (2024) 64(2) *Jurimetrics* 111; Victoria Barnes, Liam Sunner and Monica Vessio, 'Pericles and the Plumber: Reigniting the Debate of the Purpose of Legal Education for the age of AI' (2025) 7(1) *Amicus Curiae* 67.

[105] G Rolfe, D Freshwater and M Jasper, *Critical Reflection in Nursing and the Helping Professions: A User's Guide* (Palgrave Macmillan, 2001).

[106] Where educators are concerned about academic integrity, an option is to run the activity offline and in class, with students handwriting their responses to preserve authenticity. Even so, with non-compulsory attendance, accessibility concerns, and the expectations of the contemporary student, this is not necessarily always an appropriate option.

[107] Mezirow, *Transformative Dimensions* (n 86) 211; McEwen (n 1); Schnepfleitner and Ferreira (n 19).

demands of professional practice.[108] AT, through CER, complements these frameworks by foregrounding the emotional dimensions of legal learning, challenging the traditional rationalist paradigm and inviting deeper engagement with empathy, discomfort, and relational dynamics.[109] The illustrative example of the *Buried Bodies Case* demonstrates how these theories can be operationalised in practice, offering a compelling model for embedding reflection into legal education in a way that is rigorous, relevant, and resonant.

This broader view of reflection's contribution to legal education, encompassing humanist and critical perspectives, adds philosophical depth and practical relevance to the task. Failing to equip law students with emotional maturity, as well as a deeper understanding of education's transformative potential, and the paradigms of lawyering, is a failure of higher education.[110] The evidence for the transformative power of emotions and professional identity development, is grounded in reason, supported by science, education, and emerging legal scholarship.[111] Embracing a multi-lensed theoretical framework, including CER, allows legal education to reflect law's true role in society – complex, human, and emotionally rich – enhancing law school's ability to cultivate reflective practitioners who are equipped to navigate the moral, emotional, and professional complexities of legal practice.

[108] Noakes and Cody (n 2); Leering, 'Integrated Reflective Practice' (n 2).
[109] Zembylas (n 69); Jones (n 59); Douglas (n 24).
[110] L Boran and D Delany, 'Enhancing Self-Control: Insights from Neuroscience' in Paul Maharg and Caroline Maughan (eds), *Affect and Legal Education: Emotion in Learning and Teaching in the Law* (Routledge, 2011) 61. See also Christine Parker, 'A Critical Morality for Lawyers: Four Approaches to Lawyers' Ethics' (2004) 30(1) *Monash University Law Review* 49.
[111] See Jones (n 59).

CRIMINAL CARTEL SANCTIONS: COMPARATIVE REGIMES, EARLY OUTCOMES AND ENFORCEMENT DYNAMICS

*Simone Lydia Schwoerer**

ABSTRACT

This article examines the implementation and enforcement dynamics of criminal cartel sanctions in the United Kingdom, Australia and Aotearoa New Zealand. While these regimes aim to deter anti-competitive conduct through severe penalties and societal condemnation, enforcement outcomes reveal a heavy reliance on negotiated guilty pleas and limited contested trials. This pattern reflects institutional challenges and strategic prosecutorial choices. Viewed through the lens of the enforcement pyramid, criminal sanctions represent the apex of a graduated enforcement strategy, reserved for the most serious cases. The pyramid is essential because it promotes regulatory compliance through a flexible, proportionate approach that begins with cooperation and education before escalating to stricter measures. By starting with persuasion and guidance at the base and moving upward through warnings, civil penalties and director disqualification orders, regulators can deploy the least severe tools necessary while maintaining the credible threat of criminal punishment at the top. To reinforce their symbolic and deterrent function, criminal sanctions must be complemented by sustained public education on the harms of cartel conduct and a robust system of intermediate sanctions. This article argues that a pragmatic enforcement framework that balances efficiency, visibility and proportionality, is essential to ensuring that criminalisation remains a credible and effective component of competition law.

I INTRODUCTION

Cartel conduct is widely recognised as among the most egregious forms of anti-competitive behaviour.[1] Cartels arise when competing businesses agree to coordinate their behaviour rather than compete, thereby undermining market dynamics. The Organisation of Economic Co-Operation and Development ('OECD') identifies four main forms of cartel conduct: price fixing, market allocation, output restrictions and bid rigging.[2] Such agreements eliminate competition through collusion and can inflict significant harm on consumers. Empirical studies suggest that approximately 94% of detected cartels lead to price increases,[3] and that just 16 international cartels caused an estimated USD 55 billion in trade harm.[4] These numbers signal both the prevalence and the scale of the problem and have fuelled calls for stronger deterrence by regulators.

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[1] OECD, *Recommendation of the Council concerning Effective Action against Hard Core Cartels* OECD/LEGAL/0294 (Report, 25 March 1998); Rod Sims, 'Cartel Conduct: The Most Egregious Forms of Anti-Competitive Behaviour' (Speech, Law Council of Australia Competition and Consumer Law Committee Annual Workshop, 25 May 2018); Rex Ahdar, *The Evolution of Competition Law in New Zealand* (Oxford University Press, 2020) 111.

[2] 'Cartels and anti-competitive agreements', *OECD* (Web Page) <https://web.archive.org/web/20220205183238/https://www.oecd.org/competition/cartels/>.

[3] John M Connor, 'Cartel Overcharges' in James Langenfeld (ed), *The Law and Economics of Class Actions: Research in Law and Economics* (Emerald Group Publishing, 2014) 249, 290.

[4] The Competition Committee's survey described 133 cartel cases from 1996–2000, representing less than half of all prosecutions in the OECD and responding non-member countries due to reporting burdens and confidentiality,

A cartel in the corrugated fibre packaging market (better known as the cardboard boxing market) in Australia is a well-documented example. The two dominant firms, Visy Australia and Amcor Australasia Ltd, colluded to coordinate market shares and raise prices, while also agreeing not to poach each other's customers. The Australian Competition and Consumer Commission ('ACCC') initiated proceedings and one of the collaborators subsequently applied for, and was granted, leniency.[5] The ACCC continued proceedings against Visy,[6] with the result that the company admitted to contraventions of the *Trade Practices Act 1974* (Cth) and agreed to pay AUD 36 million in civil penalties in 2007.[7]

Given the limits of civil penalties, a growing response has been the introduction of criminal cartel sanctions.[8] These sanctions comprise criminal penalties imposed on individuals and corporations found guilty of serious cartel conduct, including imprisonment for individuals and substantial fines for both parties. Criminalisation aims not only to deter through severe penalties but also to affirm society's moral condemnation of cartel conduct.

This article explores the implementation and enforcement dynamics of criminal cartel sanctions in the United Kingdom, Australia and Aotearoa New Zealand. It argues that, despite the symbolic and deterrent ambitions of criminalisation, enforcement outcomes in these three jurisdictions remain heavily dependent on negotiated pleas. This reliance raises questions about how criminalisation operates within broader regulatory frameworks. In practice, criminal sanctions for cartel conduct are marked by prosecutorial caution, institutional limitations and a reliance on guilty pleas rather than contested trials. These dynamics suggest a need to re-evaluate the role of criminal law in competition enforcement and to consider whether alternative approaches, such as those reflected in the enforcement pyramid model,[9] might better serve the aims of deterrence and market integrity.

The criminalisation of cartel conduct has attracted sustained academic attention across jurisdictions that have considered and adopted criminal cartel sanctions.[10] Scholars have examined its symbolic dimensions,[11] normative foundations and enforcement challenges.[12] While much of this literature focuses on legal design and theoretical justification, fewer studies have mapped enforcement outcomes

though many larger cases were included. See genrally, OECD, *Hard Core Cartels: Recent Progress and Challenges Ahead* (Paris, 2003).

[5] In a request for leniency cartel participants might be offered (partial) immunity in exchange for cooperation with the agency.

[6] ACCC, 'Proceedings Instituted Against Visy Group, Senior Executives for Alleged Cartel in the Corrugated Fibreboard Container Market' (Media Release, 21 December 2005).

[7] Cartel conduct had not yet been criminalised in 2007. However, no separate penalty was sought against the director: Dewi Cooke and Leonie Wood, 'Visy and Pratt Fined $36m over Price Fixing', *The Sydney Morning Herald* (online, Sydney, 2 November 2007).

[8] Generally, over twenty countries have criminalised cartel conduct since 2000 with criminal sanctions being introduced for individuals only, as in Brazil and the United Kingdom, or for individuals and/or corporations, such as in Japan, Australia and Aotearoa New Zealand.

[9] See further discussion in Part III.

[10] See, Caron Beaton-Wells, 'Capturing the Criminality of Hard Core Cartels: The Australian Proposal' (2007) 31 *Melbourne University Law Review* 675; Andreas Stephan, 'Survey of Public Attitudes to Price-Fixing and Cartel Enforcement in Britain' (2008) 5(1) *Competition Law Review* 123; Christopher Harding, 'Business Collusion as a Criminological Phenomenon: Exploring the Global Criminalisation of Business Cartels' (2006) 14 *Critical Criminology* 181.

[11] Stephan (n 10).

[12] Caron Beaton-Wells and Ariel Ezrachi, 'Criminalising Cartels: Why Critical Studies?' in Caron Beaton-Wells and Ariel Ezrachi (eds), *Criminalising Cartels: Critical Studies of an International Regulatory Movement* (Hart Publishing, 2011) 3.

across multiple jurisdictions.[13] This article contributes to this gap by offering a comparative procedural overview of criminal cartel enforcement in the United Kingdom, Australia and Aotearoa New Zealand, with a focus on how institutional constraints and prosecutorial discretion shape outcomes.

II LEGISLATIVE TIMELINES AND EARLY ENFORCEMENT OUTCOMES

The ACCC's success in the Visy/Amcor cartel investigation was a contributing factor in advancing criminal cartel sanctions in Australia. Another significant influence was the United Kingdom's decision to criminalise cartel conduct in 2002.

A *United Kingdom*

The United Kingdom's first version of the criminal cartel sanction, introduced through the *Enterprise Act 2002* (UK) s 188, applied only to individuals who may face imprisonment for up to five years and/or unlimited fines. It required the prosecution to proof that the accused had *dishonestly* entered into a cartel arrangement involving price fixing, bid rigging, market allocation or output restriction.[14] The requirement to prove dishonesty created a significant barrier to prosecution.

In the first 13 years of the law's operation, only one successful prosecution occurred, the so-called 'Marine Hose' case, which itself originated in a United States investigation.[15] The three defendants had already pleaded guilty in the United States and accepted a United Kingdom conviction as part of a broader plea agreement.[16] Subsequent prosecutions, such as the "Galvanised Steel Tanks" case, ended with acquittals, with juries unconvinced that the individuals engaging in cartel conduct acted dishonestly.[17] One explanation for jury reluctance lies in the nature of the offence itself; cartel conduct, while illegal, often occurs between otherwise reputable businesspeople and may be framed (and understood) by the public as a form of normal commercial negotiation.[18] Without clear evidence of concealment or personal enrichment, jurors may be reluctant to label such conduct as criminally dishonest. This dynamic reflects a broader cultural hesitancy to condemn white-collar crimes which is often considered morally neutral.[19]

[13] For a brief practitioner-oriented overview of jurisdictions that have adopted criminal cartel offences, see Mark Simpson, 'The Criminal Cartel Offence around the World' (2016) 2 *Competition World* 6. While not comparative in nature, the article surveys global developments and highlights the growing international momentum behind criminalisation.
[14] *Enterprise Act 2002* (UK) s 188.
[15] The conduct consisted of rigging bids for the supply of special rubber hoses to offshore drilling projects worldwide: *R v Whittle* [2009] UKCLR 247.
[16] Office of Fair Trading, 'Three Imprisoned in First OFT Criminal Prosecution for Bid Rigging' (Media Release, 11 June 2008).
[17] The Galvanised Steel Tank case led to one guilty plea and two acquittals where the directors contested the facts: Competition and Markets Authority, 'Director Sentenced to 6 Months for Criminal Cartel', *UK.gov* (Web Page, 14 September 2015) <https://www.gov.uk/government/news/director-sentenced-to-6-months-for-criminal-cartel#:~:text=Nigel%20Snee%20was%20today%20sentenced,who%20were%20acquitted%20in%20June>.
[18] Luke Danagher, 'Strict Liability and the Mens Rea of Cartel Crime' (2009) 9 *Criminal Law Review* 789, 790; Stephan (n 10).
[19] Cf Beaton-Wells (n 10) 677; Francis Sayre 'Public Welfare Offenses' (1933) 33 *Columbia Law Review* 55, 79.

Only two additional cases led to guilty pleas, yet neither significantly altered the broader enforcement landscape.[20] Despite a subsequent amendment that removed the dishonesty requirement,[21] and a change in enforcement agency from the Office of Fair Trading ('OFT') to the Competition and Markets Authority ('CMA'), criminal cartel enforcement in the United Kingdom has remained limited.[22]

B *Australia*

In 2009, Australia enacted the *Trade Practices Amendment (Cartel Conduct and Other Measures) Act 2009* (Cth), which introduced criminal sanctions for both individuals and corporations.[23] Under this regime, individuals found guilty of cartel offences face up to 10 years' imprisonment or a fine of 2,000 penalty units (currently AUD 660,000).[24] For corporations, the criminal financial penalties mirror the civil regime: the greater of AUD 50 million, three times the benefit gained, or 30 per cent of the company's turnover during the relevant period.[25]

Australia's enforcement experience has been more active than that of the United Kingdom, though not without setbacks. Since the introduction of criminal cartel sanctions, the ACCC has initiated criminal proceedings in 11 cartel cases. Most of these have resulted in guilty pleas.[26] However, in the only contested trial to date, the accused were acquitted.[27] Additionally, three other prosecutions were withdrawn,[28] raising questions about the evidentiary challenges involved in securing convictions under the criminal regime.

These results foreshadow one of the key themes discussed later in this article; the rarity of contested trials in criminal cartel enforcement. The high evidentiary burden, combined with the technical nature of the offence, the higher prosecution costs and the complexity of explaining the detriments of cartel conduct to a jury, may lead both prosecutors and defendants to prefer negotiated outcomes. Such

[20] Competition and Markets Authority, 'Supply of Precast Concrete Drainage Products: Criminal Investigation' (Web Page, 15 September 2017) <https://www.gov.uk/cma-cases/criminal-investigation-into-the-supply-of-products-to-the-construction-industry>; Competition and Markets Authority, 'CMA Statement Following Completion of Criminal Cartel Prosecution' (Media Release, 24 June 2015).

[21] Under the new offence it is enough to show an intention to enter or implement a cartel arrangement of the specified type, subject to exceptions designed to distinguish hard-core cartel agreements from benign or pro-competitive arrangements. *Enterprise Act 2002* (UK) ss 188-188B.

[22] Between 2003 and today, the United Kingdom's cartel offence has only resulted in eight criminal investigations (three of which closed without charges being brought, two acquittals and three convictions after guilty pleas): Competition and Markets Authority, 'Competition and Markets Authority cases and projects', *UK.gov* (Web Page) <https://www.gov.uk/cma-cases?case_type%5B%5D=criminal-cartels>.

[23] These laws were part of the reforms that both defined the original wording of cartel conduct and created the cartel offence. They amended the *Trade Practices Act 1974* (Cth) that introduced the regime in sub-div A and illustrated the offences in ss 44ZZRF-44ZRI with ss 44ZZRJ-44ZRK describing the penalties.

[24] *Competition and Consumer Act 2010* (Cth) s 79 (offences against ss 45AF or 45AG).

[25] Ibid s 45AG (giving effect to a cartel provision).

[26] See, eg, *CDPP v Nippon Yusen Kabushiki Kiasha* [2017] FCA 876; *CDPP v Kawasaki Kisen Kaisha Ltd* [2019] FCA 1170; *CDPP v Wallenius Wilhelmsen Ocean AS* [2021] ALR 98; *CDPP v Alkaloids of Australia Pty Ltd* NSD1196/2021*; CDPP v Christopher Kenneth Joyce* NSD1149/2021; *CDPP v Vina Money Transfer Pty Ltd* [2022] FCA 665; *CDPP v Aussie Skips Bin Services Pty Ltd* [2024] FCA 122; *CDPP v Bingo Industries Pty Ltd* [2024] FCA 121.

[27] *Commonwealth Director of Public Prosecutions v The Country Care Group Pty Ltd* (No 2) 2019 FCA 2201; ACCC, 'Country Care, CEO and Former Employee Acquitted of Criminal Cartel Offences' (Media Release, 2 June 2021).

[28] See eg, ACCC, 'Criminal Cartel Charges Against CFMMEU and Jason O'Mara Withdrawn' 'Media Release, 17 August 2021); ACCC, 'CDPP Withdraws Charges in Bank Criminal Cartel Case' (Media Release, 11 February 2022); ACCC, 'First Individuals Are Sentenced for Criminal Cartel Conduct' (Media Release, 8 September 2022).

dynamics, while efficient, risk weakening the expressive and deterrent value that criminalisation is intended to provide.

C *Aotearoa New Zealand*

Aotearoa New Zealand initially explored criminal sanctions following Australia's lead in 2010, but delayed implementation due to political hesitation and stakeholder resistance. Initially, the C*ommerce (Cartels and Other Matters) Amendment Bill 2011* (NZ) introduced a criminal offence for cartel conduct in 2011. However, no further progress was made until 2015, when the offence was removed from the Bill after extensive consideration and stakeholder engagement. At the time, business groups argued that criminalisation would 'chill' legitimate commercial collaboration and lead to over-deterrence.[29]

Eventually, a change in government led to the *Commerce (Criminalisation of Cartels) Amendment Act 2019* (NZ), which introduced criminal liability for both individuals and corporations under the *Commerce Act 1986* (NZ). As a result, from April 2021 onwards, criminal penalties mirror the existing civil sanctions, prescribing fines of up to NZD 10 million for companies, and for individuals, fines of up to NZD 500,000, imprisonment of up to seven years, or both.[30] Just three years after the criminal offence provisions came into force, the New Zealand Commerce Commission secured its first guilty plea.[31] While this outcome demonstrates the operationalisation of the criminal regime, it remains too early to assess its broader deterrent impact.

III UNDERSTANDING THE LIMITS OF CRIMINAL CARTEL DETERRENCE

Despite the formal adoption of criminal sanctions for cartel conduct in Australia, the United Kingdom and Aotearoa New Zealand, enforcement has remained limited. Across these jurisdictions, contested trials are rare, with most cases resolved through plea agreements. While such agreements offer procedural efficiency and save resources, they may also reflect concerns about litigation costs and evidentiary risks and may limit opportunities for judicial scrutiny as well as the deterrent potential of criminal law.

The enforcement pyramid, developed by Ayres and Braithwaite, provides a useful framework for understanding this cautious enforcement landscape.[32] At its base are informal mechanisms such as education, guidance and warnings; civil penalties and administrative sanctions occupy the middle tiers; and criminal prosecution sits at the top, reserved for the most serious or persistent violations. This model emphasises proportionality and strategic escalation: regulators begin with less intrusive measures and escalate only when necessary. Importantly, Ayres and Braithwaite argued that the presence of "big guns" at the top of the pyramid, such as criminal sanctions, can enhance the effectiveness of lower-level interventions, because when these are available 'the greater the success regulators will achieve by speaking softly'.[33] In the context of competition law, this framework helps explain why criminal cartel

[29] Paul Goldsmith, 'Amendments to Cartel Bill' (Media Release, 9 December 2015). The Minister explained in a Cabinet Committee Paper that 'further engagement with stakeholders' had informed him of the 'significant risk that cartel criminalisation [would] have a chilling effect on pro-competitive behaviour': see Cabinet Committee Paper, 'Removal of the Criminal Offence for Cartels from the Commerce (Cartels and Other Matters) Amendment Bill' (9 December 2015) [14].
[30] *Commerce Act 1986* (NZ) ss 80(2B), 82B(2)-(3).
[31] *R v Kumar* [2024] NZHC 3955.
[32] Ian Ayres and John Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (Oxford University Press, 1992) 35.
[33] Ibid 19.

prosecutions are rare; not necessarily because the regime is ineffective, but because criminalisation is deployed selectively within a broader enforcement architecture.

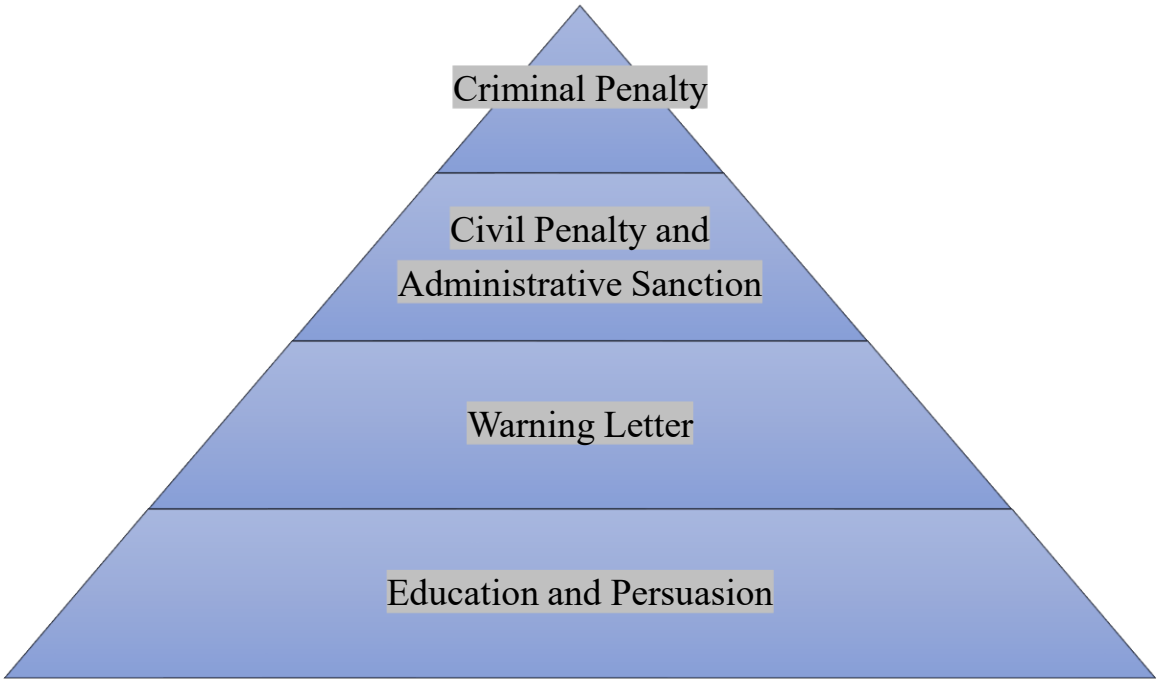

Figure 1 - Example of an enforcement pyramid.

A *Deterrence Theory and Criminalisation*

Deterrence theory provides one framework for understanding the rationale behind criminal cartel sanctions.[34] The basic concept of deterrence is very simple: possible cartel participants should be deterred from entering into unlawful agreements.

1 *Neo-Classical Economic Approach*

In neo-classical economic theory, state intervention in markets is justified for the most egregious antitrust violations, such as price-fixing or mergers to monopoly, which reduce total welfare.[35] Efficiency is prioritised, and concepts such as morality, fairness or honesty are excluded from the analysis.[36] Sanctions are designed by balancing the expected costs and benefits 'to deter calculating companies from committing antitrust violations', and deter unwanted conduct by creating a credible threat of penalties.[37] This approach seeks to introduce fines that will be higher than the possible expected gain through the violation to deter firms to breach the law because the sanction will remove all benefits.

[34] Caron Beaton-Wells and Christine Parker, 'Justifying Criminal Sanctions for Cartel Conduct: A Hard Case' (2013) 1 *Journal of Antitrust Enforcement* 198, 199.
[35] For a discussion of the background on economic theories, see Ahdar (n 1) 11; William M Landes, 'Optimal Sanctions for Antitrust Violations' (1983) 50 *University of Chicago Law Review* 652, 653; Maurice E Stucke, 'Behavioral Economists at the Gate: Antitrust in the Twenty-First Century' (2007) 38 *Loyola University Chicago Law Journal* 513, 539.
[36] Welfare in this sense did not mean consumer welfare but a deadweight loss overall in terms of efficiency: Stucke (n 35).
[37] Wouter Wils, 'Optimal Antitrust Fines: Theory and Practice' (2006) 29 *World Competition* 183, 189-90.

Gary Becker introduced a formula to calculate the optimal penalty.[38] The offender was seen as capable of understanding and following the rules of the market, aware of the illegality of their conduct, and willing to weigh the likelihood of detection against the benefits of wrongdoing. William Landes extended this approach to antitrust violations,[39] arguing that the optimal penalty should equal the total harm caused, including both illegal gain and deadweight loss to society.[40]

While theoretically sound, such optimal fines are often politically and practically unachievable,[41] especially because these models often rely on assumptions that are difficult to implement in practice. Consequently, criminalisation is sometimes proposed as a complementary tool to enhance deterrence through the additional threat of imprisonment,[42] particularly where civil penalties may be seen to be insufficient.

2 *Behavioural Economics and Psychological Deterrence*

Behavioural economists have challenged the rational offender model and state that cartel participation may be driven by factors other than profit maximisation.[43] They suggest that cartel participation may also be influenced by social norms, cognitive biases and organisational culture.[44] Additionally, they have added the consequential problem that the prosecutors/courts/juries are not prepared to impose optimal fines. This approach accepts that criminalisation may contribute to deterrence by signalling the moral wrongfulness of cartel conduct; however, its effectiveness depends on broader institutional mechanisms, such as a consistent enforcement, structural means, whistleblower regimes, and protections and leniency regimes.[45] Consequently, criminalisation may change the legal landscape, but without deeper institutional commitment, it will not instil the moral and social concerns that are essential to genuine deterrence.[46]

B *Plea Bargains and the Deterrence Gap*

In practice, negotiated outcomes dominate criminal cartel enforcement in the three jurisdictions analysed in this article. While cooperation by defendants can expedite proceedings and conserve prosecutorial resources, it also reduces opportunities for judicial scrutiny and the development of legal precedent in this under-litigated area. Prosecutorial caution in criminal cartel cases often stems from the high evidentiary burden and complex nature of the offences, which make contested trials risky and resource intensive. Courts and agencies often refer to evidentiary difficulties and jurisdictional complexity.[47] This cautious approach naturally encourages reliance on plea agreements as a pragmatic

[38] The penalty formula Becker created aimed to increase social wealth that can be seen as the economic equivalent to deterrence because the expected benefits for the crime should be smaller than the expected costs: Gary S Becker, 'Crime and Punishment: An Economic Approach' (1968) 76 *Journal of Political Economy* 169, 207.
[39] Landes (n 35) 656.
[40] Ibid.
[41] Cf Wils (n 37) 196-99. He explains the limits to high fines.
[42] Julie Clarke, 'Criminal Penalties for Contraventions of Part IV of the Trade Practices Act' (2005) 10(1) *Deakin Law Review* 141, 151-52.
[43] Maurice E Stucke, 'Am I a Price-Fixer? A Behavioral Economics Analysis of Cartels' in Caron Beaton-Wells and Ariel Ezrachi (eds), *Criminalising Cartels: Critical Studies of an International Regulatory Movement* (Hart Publishing, 2011) 263.
[44] Ibid.
[45] Cf ICN Working Group on Cartels, *Defining Hard-Core Cartel Conduct: Effective Institutions, Effective Penalties* (Report, 2005) vol 1, 51-52.
[46] Caron Beaton-Wells and Fiona Haines, 'Making Cartel Conduct Criminal: A Case Study of Ambiguity in Controlling Business Behaviour' (2009) 42 *Australian and New Zealand Journal of Criminology* 218.
[47] For example, the *British Airways* case in the United Kingdom where the OFT failed to prosecute the cartel due to mistakes in their prosecutorial approach: see Andreas Stephan, 'Collapse of BA Trial Risks Undermining Cartel

means to secure convictions and conserve judicial resources. Although reliance on guilty pleas may dilute the symbolic impact of criminalisation, it also reflects pragmatic enforcement choices consistent with broader regulatory strategies, particularly within the framework of the enforcement pyramid (see Figure 1).

Sanctions that fall substantially below statutory maxima raise legitimate questions about the deterrent reach of criminalisation, suggesting that greater seriousness in sentencing may be needed to reinforce both the expressive and deterrent functions of the law. However, such outcomes may also reflect institutional constraints and strategic calibration, rather than a failure of the regime itself. This dynamic further illustrates the reality that well-resourced businesses can afford to contest charges rather than plead guilty, particularly when there is a realistic prospect of acquittal or withdrawal. In this context, negotiated outcomes may be both a reflection of prosecutorial caution and a rational response to evidentiary complexity.[48]

C *Barriers to Prosecution*

Reluctance to prosecute individuals is a recurring feature of enforcement practice. The challenge is equally evident in civil cartel cases; in Aotearoa New Zealand, for example, only 21 individuals have been charged out of 73 defendants across 19 cartel cases, with personal penalties typically reduced due to financial hardship or other mitigating circumstances.[49] If courts are hesitant to impose civil sanctions on individuals, they are likely to be even more reluctant to apply criminal penalties.

Moreover, civil enforcement reflects a broader culture within cartel regulation, where penalties are typically negotiated between the enforcement agency and the wrongdoers; of the 41 cartel investigations undertaken by the Commerce Commission, more than half have resulted in negotiated settlements.[50] This tendency arguably extends to white-collar enforcement more broadly, where substantial sentence reductions are often granted to individuals who enter guilty pleas.[51] While such resolutions may be pragmatic, they risk falling short of delivering adequate denunciation or holding individuals accountable in a manner proportionate to the harm caused. Generally, this pattern may reflect a broader regulatory culture in which criminal sanctions are reserved for the most serious cases, consistent with the enforcement pyramid model.[52]

IV ALTERNATIVE ENFORCEMENT TOOLS

The enforcement patterns outlined above prompt critical reflection on the criminal law's role in regulating anti-competitive conduct. Some argue that the predominance of guilty pleas indicates an effective system, wherein deterrence operates through both actual sanctions and the credible threat of prosecution. Directors who settle may do so precisely because they perceive conviction as a real and

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Enforcement', *Competition Policy Blog* (Web Page, 12 May 2010) <https://competitionpolicy.wordpress.com/2010/05/12/collapse-of-ba-trial-risks-undermining-cartel-enforcement/>.

[48] Sentencing presents further limitations. Under the *Sentencing Act 2002* (NZ) ss 7–8, judges are required to balance deterrence, rehabilitation, the seriousness of the offending, the interests of victims, consistency with comparable cases, and the personal circumstances of the offender.

[49] 'Case Register', *Commerce Commission* (Web Page) <https://comcom.govt.nz/case-register>.

[50] Ibid.

[51] Mirko Bagaric and Theo Alexander, 'A rational approach to sentencing white-collar offenders in Australia' (2014) *Adelaide Law Revie* 34, 317–349; Lisa Marriott 'White-Collar Crime: The Privileging of Serious Financial Fraud in New Zealand' (2019) *Social & Legal Studies* 29(4), 486-506.

[52] Ayres and Braithwaite, *Responsive Regulation* (n 32).

imminent risk, and because negotiated outcomes can mitigate reputational damage that might otherwise follow a contested trial. From this viewpoint, criminal law effectively encourages early resolution and deters future misconduct.

However, this interpretation risks undue optimism. The concentration of guilty pleas alongside a scarcity of contested convictions suggests that enforcement agencies may be reluctant to pursue complex, high-stakes litigation. This concern is particularly acute in cases involving large, well-resourced firms, where the potential for significant market harm is greatest.[53] Such entities can mount sophisticated defences, prolong proceedings and challenge regulatory evidence. Moreover, governments often impose restrictive limits on the resources available to enforcement bodies, further constraining their capacity to pursue protracted litigation. Consequently, there is a risk that the most serious offenders are the least likely to face meaningful sanction.

A more detailed enforcement approach may provide a more balanced and pragmatic path forward. The United Kingdom's use of director disqualification, for example, targets individuals most directly responsible for cartel conduct without invoking the full weight of criminal prosecution.[54] At the same time, continuing to apply civil penalties enables agencies to maintain steady enforcement momentum and efficiently resolve lower-level cases. This approach reflects the logic of the enforcement pyramid, which emphasises a graduated response to regulatory breaches. It also recognises the limitations of criminal law while reserving its symbolic and deterrent force for the most egregious violations.

All three jurisdictions have constantly expanded and refined their leniency and whistleblower regimes to enhance cartel detection.[55] Improved whistleblower protections and clearer incentives for cooperation help address the information gaps that typically impede prosecution, encouraging insiders to come forward and assist authorities.[56] These mechanisms also align with broader behavioural approaches to deterrence, which emphasise the importance of institutional design and moral framing in shaping compliance.[57]

However, these leniency and whistleblower mechanisms can also reinforce the existing plea-bargaining dynamic. By incentivising early cooperation, they often lead to negotiated settlements rather than contested trials, which may prioritise procedural efficiency over the development of robust public awareness of the harm caused by cartel conduct and legal consequences. While this may be consistent with a strategic enforcement model, it raises questions about whether the expressed aims of criminalisation, such as deterrence and norm-setting, are being fully realised.[58]

Insights may also be drawn from other regulatory domains. In Aotearoa New Zealand's workplace health and safety regime, for instance, sustained regulatory reform and strategic enforcement have

[53] See eg, ACCC, 'CDPP Withdraws Charges' (n 28).
[54] Competition and Markets Authority, 'Competition and Markets Authority Cases and Projects' <https://www.gov.uk/cma-cases?case_type%5B%5D=competition-disqualification>. A tool that has not been used much in New Zealand or Australia. See Matt Sumpter, 'Competition Law' [2017] *New Zealand Law Review* 485, 493.
[55] See, eg Commerce Commission, *Cartel Leniency and Immunity Policy* (2024); Competition and Markets Authority, *Applications for Leniency and No-Action in Cartel Cases* (2025); Australian Competition and Consumer Commission, *ACCC Immunity and Cooperation Policy for Cartel Conduct* (2024).
[56] Compare for NZ: Commerce Commission, 'Reporting Cartel Conduct" (Web Page, updated 2025 https://www.comcom.govt.nz/business/avoiding-anti-competitive-behaviour/what-is-a-cartel/reporting-cartel-conduct/, where it describes the improved whistleblower tool 'WhistleB'.
[57] Ayres and Braithwaite (n 32).
[58] Regulators in other contexts also face this problem; in New Zealand, for example, the Serious Fraud Office does.

successfully transformed organisational culture, elevating compliance to a priority for senior management.[59] A similar cultural shift in competition enforcement could be achieved if legal and institutional frameworks incentivise proactive compliance and personal accountability. This may involve not only criminal sanctions, but also civil, administrative and reputational tools, such as director disqualification orders, that collectively can reshape corporate behaviour. It also requires rethinking the extent to which the enforcement pyramid remains a useful framework, particularly in light of contemporary challenges in cartel enforcement.[60]

Ultimately, the question is not merely whether cartel conduct can be criminalised, but whether criminalisation represents the most effective and proportionate tool for deterring and addressing anti-competitive harm in complex markets. This assessment must consider the broader enforcement architecture, including the interplay between criminal, civil and administrative mechanisms, and the institutional capacities required to support them.

V CONCLUSION: REFORM OR RETRENCHMENT?

The criminalisation of cartel conduct in the United Kingdom, Australia and Aotearoa New Zealand reflects a growing international trend to treat serious anti-competitive behaviour as a matter of public wrong, deserving of punitive sanction.[61] However, enforcement outcomes in these jurisdictions suggest that criminal cartel sanctions may continue to be difficult to impose in practice and have yet to achieve their full deterrent potential. Instead, enforcement has largely relied on negotiated pleas, coupled with a rarity of contested prosecutions, with prosecutors exercising caution and defendants opting for resolution over litigation. These patterns may reflect not only evidentiary and procedural challenges, but also strategic choices by the regulators within broader enforcement frameworks.

Viewed through the lens of the enforcement pyramid,[62] criminal sanctions occupy the apex of a graduated response to cartel conduct. Their infrequent use may be consistent with a regulatory strategy that reserves criminal prosecution for the most egregious cases, while relying on civil penalties, leniency programs and administrative tools to address the majority of infringements. However, for criminalisation to remain a credible tool in competition enforcement, it must be supported by adequate resourcing and complemented by robust civil measures, such as director disqualification orders, that enhance the certainty and severity of sanctions.

Equally important is the cultivation of public awareness around the harms of cartel conduct. Criminalising cartel conduct signals its moral and social unacceptability,[63] but broader societal condemnation requires sustained public engagement. For instance, enforcement agencies should invest in education campaigns, promote well-designed whistleblowing and leniency regimes, and ensure that enforcement outcomes are both visible and comprehensible to the public. These efforts can shift public perceptions, deter participation, encourage reporting and increase the likelihood of detection and

[59] While recent policy developments have emphasised education and guidance over enforcement, earlier reforms in the health and safety domain were associated with increased managerial attention to compliance.
[60] A study of all New Zealand cartel cases between 2008 and 2022 concluded that the existing civil regime made use of the full array of enforcement tools, and that the Commerce Commission demonstrated considerable institutional capacity in applying them. See Simone Lydia Schwoerer, 'Criminalising Cartel Conduct in New Zealand' (PhD Thesis, University of Canterbury, 2024).
[61] Beaton-Wells and Parker (n 34).
[62] See Figure 1.
[63] Maurice E Stucke, 'Morality and Antitrust' (2006) 2006 *Columbia Business Law Review* 443.

prosecution. Societal condemnation strengthens prosecutors and courts, and juries may become more willing to impose meaningful sanctions.

This article has argued that the procedural realities of criminal cartel enforcement, marked by institutional constraints and a preference for plea agreements, raise important questions about the expressive and deterrent value of criminalisation. It has sought to map the enforcement dynamics that shape how criminal sanctions are operationalised in practice. Ultimately, the question is not whether cartel conduct can be criminalised, but how criminalisation fits within a broader, pragmatic enforcement framework that balances deterrence, efficiency and justice. The limitations of this study include jurisdictional differences, reliance on publicly available documents, and the perspective of the author as an outsider. Future research might explore whether alternative enforcement models or refinements to existing regimes could better balance symbolic condemnation with practical efficacy, as well as how regulators evaluate the wider range of enforcement tools now available.

COURT OBSERVATION ASSESSMENT IN LAW COURSES

Elizabeth Shi and Lemuel D Lopez***

ABSTRACT

This article contributes to teaching and learning research by explaining and analysing the reflective court observation assessment method and analysing student feedback for this method. It argues that reflective court observation assessment is a powerful method of teaching and assessing on-the-job knowledge and skills, and hence it should be adopted more widely in law schools.

The article firstly examines the theoretical justifications for using court observations and reflective assessments in education. It then provides a step-by-step guide to the reader, describing how the authors carried out the assessment at RMIT University. This is then followed by an analysis of the student feedback from RMIT students, evidencing the success of this assessment method in teaching authentic on-the-job knowledge and skills. Some limitations are also discussed.

I INTRODUCTION

Legal educators face persistent challenges as authentic on-the-job knowledge and skills are difficult to teach and assess in university settings. Teaching and assessing on-the-job knowledge and skills is essential in bridging theoretical knowledge and practical application of law, while giving students a nuanced understanding of the legal profession.[1] Notably, law curriculum often adopts methods which focus on teaching and assessing the knowledge of legal rules and the skills of applying these rules to hypothetical problem scenarios. While this type of teaching and assessment allows students to demonstrate their knowledge of legal content, it does not allow students to observe and reflect on what real life lawyers do in their daily work.

Many law schools would also have legal clinics which are meant to provide students with active experimentation skills through real life client interviews, drafting legal documents, and developing practical legal skills. Although legal clinics provide students with opportunities to learn through active experience, not all law students have the opportunity to participate during their time in law school and the quality of supervision by legal practitioners could be inconsistent.

This article describes the authors' experience in utilising reflective court observation assessment and argues that reflective court observation assessment is a powerful tool to enhance students' understanding of authentic legal processes and achieve a deeper and more critical awareness about the legal profession than other methods. In other words, students learn important on-the-job knowledge and

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[1] See eg, Robert Kuehn and Peter Joy, 'Measuring the Impacts of Experiential Legal Education' (2024) 73(3) *Journal of Legal Education* 598, 635 and 644.

skills through this form of assessment. As such, it should be utilised more widely as an assessment pedagogy in law courses.

In developing the argument that reflective court observation should be utilised, this article firstly examines the theoretical justifications for using court observations and reflective assessments in education. It then describes a practical way to structure the assessment. This is then followed by a discussion of the reflections of RMIT Bachelor of Law students, evidencing the strengths of this assessment method. The key themes, lessons, and limitations of the assessment method are then discussed, followed by the conclusion.

II THEORETICAL JUSTIFICATIONS

The scholarship of education recognises that learning takes place through experience.[2] According to David Kolb's Experiential Learning Theory, this learning is facilitated through a four-stage cycle: concrete experience, observations and reflections, formation of abstract concepts and generalisations, and testing implications of concepts in new situations.[3] The process begins with direct engagement through the senses ('Active Experience').[4] Here, the learner uses senses and perceptions to engage in what is happening – and this '[i]mmediate concrete experience is the basis for observation and reflection'.[5] This is then followed by reflection ('Reflective Observation'), where the learner collects the data and observation, including connecting feelings with ideas.[6] Learners then engage in conceptualisation ('Active Conceptualisation'), where they draw conclusions and forming principles before applying these in practice ('Active Experimentation').[7] This leads back to further experience, thus continuing the cycle.[8]

Kolb argued that effective facilitation of this learning through this four-stage cycle requires four abilities: concrete experience abilities, reflective observation abilities, abstract conceptualisation abilities, and active experimentation abilities.[9] Because these abilities lie on opposite poles – concrete versus abstract, reflective versus active – the learner must continually choose which set of learning abilities they will bring to bear in any specific learning situation.[10] Individuals typically have strengths in certain dimensions but must develop skills across the full range to achieve the 'peak of human functioning'.[11]

Based on Kolb's argument and following Roger's concept of 'peak of human functioning',[12] students need to develop their reflective skills to help them reach their highest potential. Reflection is more than

[2] Eg, John Dewey's 'Reflective Activity'; David Kolb's 'Experiential Learning Theory'; British Further Education Curriculum and Development Unit Model; Shirley Grundy's 'Practical Action Research Model' discussed in David Boud, Rosemary Keogh and David Walker, 'What is Reflection in Learning?' in David Boud, Rosemary Keogh and David Walker (eds), *Reflection: Turning Experience Into Learning* (Kogan Page, 1985) 7, 11-14.
[3] David Kolb and Ronald Fry, 'Towards an Applied Theory of Experiential Learning' in C Cooper (ed), *Theories of Group Processes* (John Wiley & Sons, 1975) 33, 33-34.
[4] Ibid; see also Institute for Experiential Learning, 'What is Experiential Learning?' (Web Page, 2025) <https://experientiallearninginstitute.org/what-is-experiential-learning/> ('IFL').
[5] Kolb and Fry (n 3) 34.
[6] Ibid 33-34; see also IFL (n 4).
[7] Kolb and Fry (n 3) 33-34; see also IFL (n 4).
[8] Ibid.
[9] Kolb and Fry (n 3) 35-36.
[10] Ibid 36.
[11] Ibid 51; see also Carl Rogers, *On Becoming a Person: A Therapist's View of Psychotherapy* (Constable & Co, 1967) 220-224.
[12] See Rogers (n 11); Kolb and Fry (n 3) 51.

a review of events but rather, a conscious process of questioning and evaluating assumptions.[13] As such, conscious reflection is needed because it 'allows us to make active and aware decisions about our learning.'[14] Unfortunately, Kolb's theory does not elaborate the specific processes through which learning occurs through reflection.[15] According to Moon, reflection allows learners to make active and aware decisions about their learning, which help them break habitual ways of thinking.[16] King and Kitchener's concept of reflective judgment recognises that the most advanced form of thinking relies on a person's ability to cope with uncertain knowledge – a progression facilitated through reflection.[17] Mezirow also recognises reflection enables 'perspective transformation,' which is the process of becoming critically aware of how assumptions shape the understanding of oneself and others.[18] Freire, through his concept of 'conscientization', highlights how reflection can challenge false consciousness and lead to social change.[19] Similarly, Reed stresses reflective learning's collective dimension, describing it as a process capable of transforming social consciousness.[20]

Together, these theoretical perspectives underscore that reflection not only enables students to integrate theory and practice more effectively than other methods of learning and teaching (eg, teaching legal concepts in classrooms) but also develop the critical consciousness essential, as discussed in part III C, to the legal profession. These theories also underscore that the quality and depth of reflection are significantly enriched when students engage with an actual experience of the subject matter. In this study, the opportunity to observe a real court in operation provides a form of experiential grounding that cannot be fully replicated in classroom settings. The literature discussed consistently highlights the pedagogical value of such authentic experiences. Accordingly, while classroom teaching supports reflection, this article argues – based on the theories discussed – that it cannot, on its own, provoke the same level of reflective engagement as firsthand observation. This strengthens the pedagogical rationale for enabling students to observe live court proceedings and subsequently reflect on that experience through the court-observation assessment. For law schools, this provides a strong justification for incorporating this court observation assessment.

III THE COURT OBSERVATION ASSESSMENT

For this study, two student groups were involved: students enrolled in Employment Law (EL) in Semester 1, 2025, and in Civil Dispute Resolution (CDR) in Semester 2, 2024. Both groups were given an assessment brief which sets out in detail the steps, guidelines, and tips on how to carry out the assessment. In summary, students were instructed to observe court proceedings, engage with the questions listed in the brief, and then write a critical reflection based on their experience.

A *The Timing of the Assignment*

Both assessments' due dates are around middle and toward the end of the semester to enable students gain some knowledge of the substantive law before they do the observation. For example, for students

[13] Eg, David Boud, Rosemary Keogh and David Walker, 'Promoting Reflection in Learning: A Model' in David Boud, Rosemary Keogh and David Walker (eds), *Reflection: Turning Experience into Learning* (Kogan Page, 1985) 18, 19.
[14] Ibid.
[15] Boud, Keogh and Walker (n 2) 13.
[16] Patricia King and Karen Strohm Kitchener, Developing Reflecting Judgment (Wiley, 1994); see also Jenny A Moon, *Reflection in Learning and Professional Development: Theory and Practice* (Kogan Page, 1999) 15.
[17] See Moon (n 16) 17-18.
[18] Jack Mezirow, 'Perspective Transformation' (1978) 28(2) *Adult Education Quarterly* 100, 107-109.
[19] Paulo Freire, *Pedagogy of the Oppressed* (Continuum International, rev ed, 2005) 67.
[20] David Reed, *Education for Building a People's Movement* (South End Press, 1981) 5-7.

observing an unfair dismissal hearing at the Fair Work Commission, it is helpful for the student to already possess the knowledge of how to find relevant sections of the *Fair Work Act 2019 (Cth)*. Similarly, CDR students are asked to observe court proceedings only after the theories and fundamental principles of civil procedure were discussed in class.

B *The Assessment Brief*

Firstly, the brief describes what type of court proceeding and which courts the students should attend. The EL brief states:

> Your task is to write an observation report, from observing an employment law or discrimination law hearing at the one of the following possible courts:
>
> - Federal Circuit Court
> - VCAT
> - Fair Work Commission
>
> The case you observe should be an employment law or discrimination law case. An example might be unfair dismissal or sexual harassment. The legal issues of the case you observe can be any area of employment law or discrimination, even if it is not covered by the topics in the canvas modules.

Similarly, the CDR brief states:

> You are required to attend a court hearing and reflect on what you have observed in court. You will then write a reflective report on your observations and experiences, integrating theory with practice with reference to procedural rules and topics discussed in class.

Later, in the section, 'Logistics, Court Etiquette and Other Practical Considerations,' the CDR brief instructs students:

> You may choose to attend any court proceedings at any court or court level (in either state or federal court system) on any day based on your availability. Most of the court hearings are open to the public. The various courts publish a daily hearings list….

Given the impossibility of predicting what matters would be available on the days the students go to court, both briefs are open-ended and flexible when suggesting the legal matters the students could observe. This flexibility recognises that the students' need to organise their visits around time constraints placed by their jobs and other commitments. Nonetheless, both teachers advised students to avoid observing purely procedural hearings such as directions hearings, unless the course material itself is about procedure. For example, in EL, students were encouraged to look for Fair Work Commission unfair dismissal hearings, where witnesses are examined and cross examined and evidence is presented to the Commissioner, rather than directions hearings. Similarly, CDR students are encouraged to attend trial hearings, so they can acquire 'sufficient material' for their reflection.

Secondly, both briefs provide guidance on the logistics of organising a court visit. For example, the EL brief instructs students to contact the court registrar before attending to ensure that the hearing is open to public, as some hearings and mediations are private and therefore, observation is not permitted. It also instructs students to attend face-to-face hearings in preference to online hearings as the former

provides a better opportunity for observation, including being in the same physical space as the lawyers, parties and judges. The same instructions are also verbally given in CDR. Only when CDR students are unable to attend face-to-face hearings because of medical or extraordinary reasons are they allowed to attend online hearings.

Both briefs also contain information about court etiquette and other practical considerations. The EL brief states that attendees will need to go through a security check before entering some court buildings; the need for participants to stand up and bow towards the judge when the judge enters the court room; and the fact that attendees need to be absolutely silent when observing a court proceeding. These instructions are also similarly found in the CDR brief, which also includes links to the Supreme Court of Victoria's webpage detailing the expected behaviour when attending hearings and a short YouTube video about court etiquette. Inclusion of this information is important because while these customs might be obvious to a practising solicitor or barrister, they are certainly not obvious to law students who may have never set their foot in a courtroom. Their inclusion also ensures that students feel more comfortable and less anxious during the visit.

EL students are instructed to work in groups of three or four students. This is in response to students' feedback that they are more confident going to court in groups rather than alone. Furthermore, students have shared that while they took written notes individually during the observation, they reflected on the experience afterwards as a group which they considered very beneficial. For example, person A might observe something that person B misses, even though they are in the same courtroom. Therefore, as a group their combined observation was more complete and more thoughtful than individual observation.

On the other hand, CDR students were asked to work individually, although they can attend court proceedings together with their classmates. A major consideration for this is to give students utmost flexibility and autonomy in their choice of civil proceedings and focus of reflection. Furthermore, as a Priestley 11 course, CDR focuses on ensuring that each student acquire the knowledge and skills required by the Victorian Legal Admissions Board; thus, the need for individual assessments.

Thirdly, the brief instructs the students on what to observe and what to write in their report. The EL brief states:

> In your report, you should:
>
> - State the names of the plaintiff and the defendant and the name(s) of the judge(s) / tribunal member(s) presiding.
> - Explain the nature of the hearing.
> - Explain how this hearing relates to an area of employment law or discrimination law and explain the sources of the law (statute and/or case law).
> - Summarise the facts and legal arguments presented in court. Refer to relevant sources of law.
> - Describe the witnesses (if any), lawyers, parties, and the case's outcome (if finalised).
> - Describe your own views / impressions / thoughts about the case and the court procedures in general. For example, do you think the witnesses were credible? Do you think the barristers were skilled and persuasive? What do you think about the judge(s)/ tribunal member(s)? Do you think the atmosphere was relaxed or formal? Would you find the court room intimidating if you were a first-time plaintiff or defendant?

The direction that the report must include the students' own opinions is crucial to the assessment's learning objectives. It elevates the task from one of pure description to one of applying analysis. As analytical skills are highly valued by employers, developing these skills should be high on the educator's agenda. Instead of confining the assessment task to simply observing and reporting, the brief directs students to observe and then form their own opinions on certain elements of their observation.

The CDR brief similarly asks students to include two parts in their reflective report: (1) description and discussion of court experience, and (2) critical reflection. In the first part, students are to provide a short narrative/description/discussion of what they have observed in court. Here, they need to state the case details, and the stage of litigation the proceedings are involved and its relationship and importance to the entire litigation process. In the second part, students are asked to critically reflect on the observed hearing by considering the list of questions in the brief. These questions ask students, among others, to evaluate the parties and lawyers' behaviour, the judge's role, the conduciveness of the civil justice system in resolving disputes, whether the overarching purpose is achievable based on what they have observed, or how the parties and lawyers had fulfilled their overarching obligations in the observed proceedings.

Notably, both briefs encouraged students to develop their own opinions about what they have observed, including choosing the themes they may focus on in their critical reflection. In the CDR brief, students are told that they may formulate their own reflection questions provided they consider the assessment's learning outcomes (eg, critique the broad theoretical basis of the civil justice system). Being overly prescriptive and narrow could be counter-productive here and limit the depth and richness of the reflections.

IV STUDENT REFLECTIONS

In part II, this article explained that the justifications of using reflection included helping students make sense of what they see, challenging their assumptions, and shaping their professional values. This section examines the actual student reflections from RMIT students and argues that these reflections are evidence that the intended objectives were achieved. These reflections demonstrate the strength of this assessment method.

While all student assessment submissions were considered in this study, only those from students who consented to participate in the study are selected in this section. Quotes from student reflections which best represent a particular kind of learning are highlighted. Please also note that in line with privacy requirements, all real names have been removed and replaced with anonymised identifiers.

A *Awareness of Learning and Connecting Theory to Practice*

At its fundamental level, reflection is aimed to lead students to become more aware about their learning. It enables them to consciously connect the lessons discussed in class with what they observed in court thus allowing theoretical concepts to take shape as lived experiences. This deeper awareness not only strengthens their understanding of the law but also helps them appreciate the complexity of its application, bridging the gap between academic study and professional practice.

Several student reflections illustrate this learning, including one that offers a vivid depiction of what the adversarial system looks like in practice:

> During the proceedings, the adversarial nature of the courtroom was on full display as _____'s lawyer fought vigorously to have the internal email chain admitted as evidence while ____'

> representatives argued just as forcefully to exclude it. This back-and-forth battle epitomised the essence of an adversarial system…. The lawyers employed different strategies, presenting arguments tailored to their client's goals, which underscored the procedural party autonomy inherent in the adversarial system.

Another student was able to recognise the immense power yielded by the judge in court proceedings:

> As I observed the court proceeding, the atmosphere was charged with formality and tension. The judge, seated high above the courtroom, commanded the room with a calm yet authoritative presence. His Honour's every word carried weight, and the lawyers, seated on opposite sides of the table directly before him, responded with unwavering focus.

Another student recognised how lawyers upheld their overarching obligations, particularly their duty to act honestly and not mislead the court:

> The legal representation on both sides had an important role in framing their perspective of the issue, and whether the spinal cord injury constitutes a 'serious injury,' and whether it was a result of the workplace accident. The defence had presented strong evidence that contradicted _____' affidavit and sworn statements multiple times, and when he was asked about these inconsistencies he failed to adequately answer them during the cross-examination. Therefore, I presumed that _____' representative team had advised the withdrawal of the application in order to ensure that they maintained their duty to "act honestly and not mislead."

The overarching purpose is a challenging concept to teach because its multiple objectives can conflict and prove difficult to achieve in practice. One student shared that her court experience gave her a more concrete understanding of how these challenges play out in real proceedings:

> The court's goal to conclude before 1 p.m. highlighted the tension between efficiency and thorough consideration. Ms. _____ needed to discuss crucial aspects of her childhood that were significant to her case, but the expedited timeline limited the depth of these important points. While efficiency is achievable, it can sometimes compromise the thoroughness needed for a fair resolution.

The practical dimension of court litigation is often difficult for students to understand through classroom learning alone. Their court experience, however, allowed students to see how strategic decisions were often influenced not only by legal principles but also by the parties' practical circumstances, resources, and needs, highlighting the complex interplay between law in theory and law in action. A student noted:

> I reflected on how the socio-cultural context in which a dispute has arisen informs the ideal forum and procedure for its resolution, to not only obtain a judgement in the favour of a client, but also an outcome which is in alignment with their interests and objectives once the dispute has concluded; for example, considerations of whether the judgement is on the public record or kept private, and the emotional capacity of the client to carry out what is required of them. In this sense, the ability of a party to benefit from this preliminary consideration is interwoven with issues of access to justice; a party's resources will influence their ability to pursue resolutions such as pre-trial settlements when advantageous to them.

B *Critical Thinking and Challenging Assumptions*

Another key product of reflection is critical thinking as it encourages students to move beyond their habitual understandings and to challenge usually taken-for-granted assumptions. This critical reflection opens up space for fresh perspectives and more nuanced reasoning, enabling students to approach legal problems with greater independence and analytical depth.

Several student reflections demonstrated this break from habitual thinking. One group of students from the 2024 EL cohort reported that they thought the self-represented litigant they observed suffered a huge disadvantage compared with the opposing barrister, despite the promise that the Fair Work Commission was supposed to be less formal than a court:

> One of our immediate impressions was the imbalance created by legal representation. As noted, the applicant (the employee) appeared self-represented, while the respondent employer was represented by a barrister. While the applicant presented professionally and respectfully, the disparity in legal experience was evident.

Similarly, one student highlighted the need for more empathetic methods of communication in court (ie, more human-centered approach):

> Witnessing Ms. _____'s emotional response made me think about the benefits of a more human-centered approach. While clients often seek their day in court as a symbol of justice, incorporating more empathetic and communicative methods might enhance the overall process.

Another group of EL students observed that one commissioner had a compassionate approach whereas another commissioner spoke in a less compassionate manner towards the litigant. This led this group to criticise the varying approaches at the Fair Work Commission commissioners. The students showed preference towards the compassionate approach:

> The Commissioner was well mannered and spoke informally to both parties, especially since an interpreter was required for O. Communication between O and The Commissioner avoided all unnecessary legal jargon which seemed to make O feel more comfortable in expressing his complaints and views when answering the Barrister's questions... The Commissioner seemed much kinder and gentler in his approach to communication than other magistrates or judges we have seen in hearings.

The witness' stressful experience prompted one student to suggest that maybe, alternative dispute resolution is more suitable in such situations:

> I observed that when _____ was being cross-examined he was extremely nervous and fidgety, and an ADR would have enabled him a less strenuous and emotional process to seek a resolution.

A goal of the CDR observation assessment was to assess the law student's ability to think critically about whether court procedures achieved the overarching purpose. One student, for example, was struck by the formality of the process and questioned whether court systems are outdated:

> Observing the formality and strict procedures in the courtroom, where the focus was primarily on presenting evidence, led me to question whether our court systems might be somewhat outdated.

One student noted that the preference towards transparency and openness in courts was fulfilled at a cost:

> The disclosure of such personal details in a public setting, combined with the concern that her statements might be used against her, created a significant tension. While transparency in the court system is important, it raises the question: at what cost does this openness come?

Nonetheless, some CDR students reflected that their observation strengthened their belief in the justice system's ability to address conflicting goals. This comment demonstrated critical reflection:

> Since [the plaintiff's lawyers] were ill prepared to honestly refute the claims made by the defence, their overarching obligation to the court prevailed over their obligation to seek compensation for _____'. This showcased the conflict that may occur between legal representatives and clients interests. This reinforced my belief that the framework is adequate in addressing obligation conflicts …..

C *Social Consciousness and Call to Action*

One of reflection's most profound strengths is its potential to inspire a call to action. Paulo Freire described this as 'conscientization,'[21] while Reed referred to it as the 'transformation of social consciousness.'[22] Both emphasise that such change can occur not only at the personal level but also collectively within society. This transformative impulse was well illustrated in one student's reflection on their own envisioned brand of lawyering:

> After observing this special mention, I would approach civil litigation with greater sensitivity and care for my client's well-being. Noting how visibly stressed _____ appeared, if I were her legal practitioner, I would ensure that she fully understood the court procedures in a manner that made her feel more at ease in the courtroom…. Therefore, I would be more committed to achieving the best possible outcome while ensuring that my client's experience in litigation remains manageable and efficient.

Another student emphasised the need for lawyers to research, understand, and develop skills required to identify barriers to civil justice:

> Observing this hearing prompted my reflection on the way forward for a civil justice system operating in a deeply unequal society in which power imbalances will inevitably feature in civil proceedings, without lapsing into cynicism; I theorise that upholding the system's overarching obligations encompasses the task of practitioners and adjudicators to research, understand and acquire the skills to identify both barriers to accessing civil dispute resolutions mechanisms, and the factors informing dispute outcomes for individuals and communities. Translating the idealistic objectives of the Civil Procedure Act into policies and procedures is a complex task, requiring consideration of the context of the disputes in which they are used and the identities of the parties tasked with navigating their processes.

[21] Freire (n 19) 67.
[22] Reed (n 20) 5-7.

IV KEY THEMES, LESSONS, LIMITATIONS

Analysis of the RMIT student reflections reveals several recurring themes and lessons that align closely with the theoretical justifications, thus demonstrating the range of learning outcomes that court observation can achieve when paired with structured reflective assessments.

A *Reflection as a Diagnostic Tool*

The reflection paper becomes a diagnostic tool, evidencing the student's capacity to synthesise legal rules, concepts and legal theory with court experience. As Kolb's theory would predict, student reflections demonstrate the law students' capacity to connect legal concepts to their courtroom experience. Whether identifying the procedural autonomy inherent in the adversarial system, recognising the judge's role in ensuring procedural fairness, or observing lawyers fulfilling their ethical obligations, students articulated concrete examples that transformed abstract doctrinal knowledge into lived experience. This heightened awareness suggests that reflection enables students to recognise the law not as an isolated body of rules but as a system in active operation.

Reflective court observation assessment compliments other forms of assessments ordinarily used in law schools. For example, the learning benefits of a moot or mock client interview are significantly reduced when students have no prior experience observing a real court hearing or real client interview. Hence, courtroom observations prepare students for other assessments, thus also improving diagnostic fairness in measuring legal skills and knowledge. Furthermore, because reflections require linking legal concepts and theory with concrete experiences, they also offer strong potential for addressing concerns about AI use and plagiarism in law assessments.[23]

B *Experience, Reflection and Critical Thinking*

Consistent with Moon[24] and Mezirow[25] pinpointing reflection's capacity to help students break from habitual thinking, the student reflections have shown the effectiveness of reflection in helping law students interrogate their usual understanding of court processes. As such, students have considered court observations as providing them opportunities to reframe their understanding of legal roles and the purpose of the justice system. Several students questioned whether the formalities of the courtroom remained fit for purpose in a contemporary justice system, while others noted the emotional and psychological impact of the adversarial system on vulnerable parties. These insights demonstrate how court observation can prompt students to critically evaluate not only what happens in legal proceedings, but also why those things happen and whether the status quo should continue unchanged.

C *Experiential Learning, Ethical Awareness and Professional Identity*

Several student reflections show early stages of professional identity development, with students articulating their own 'brand' of lawyering. Some students expressed a desire to adopt more compassionate communication strategies than the strategies they observed and to ensure clients and witnesses felt supported through processes which could be intimidating to them. Others recognised the

[23] See eg, Mariano Carrera, 'Writing responsibly: how to use reflective practices to navigate ChatGPT', *Times Higher Education* (online, 18 December 2023) <https://www.timeshighereducation.com/campus/writing-responsibly-how-use-reflective-practices-navigate-chatgpt>; Benjamin Miller, 'Generative AI and reflective writing', *TEQSAGov* (YouTube, 27 October 2024) <https://www.youtube.com/watch?v=e_PMfpcvlpQ&list=PLSCV2cpLC993mqkxonbvO1yKZmmByJoKi&index=3>.

[24] Moon (n 16).

[25] Mezirow (n 18).

lawyer's dual role in serving client interests while upholding overarching obligations to the court. This indicates that reflective court observation can play a formative role in shaping how future lawyers understand their professional responsibilities and values.

D *Reflection as a Call to Action*

Some students have extended their reflections beyond seeing the courtroom as a site where doctrinal knowledge (civil procedure, evidence) intersects with skills (critical thinking, empathy, ethical judgement) to consider broader systemic issues. For example, students commented on the disadvantages faced by self-represented litigants and called for reforms to improve access to justice. Such reflections suggest that the court observation exercise can cultivate a sense of social responsibility and a willingness to contribute to positive change in the legal system.

E *Limitations and Considerations*

While the authors found the outcomes of the reflective court observation to be very impactful, several limitations of this method warrant some consideration. First, the reliance on actual court proceedings translate to uneven student experiences as not all students will observe the same type or quality of court proceedings. Some might witness rich, complex trials while others may attend procedural or administrative hearings (although students were instructed to avoid these types of hearings). Second, students may be unprepared to process (eg, proceedings can be emotionally intense or involve confronting materials) what they witness, affecting their ability to reflect critically or objectively. Third, reflection remains inherently subjective, and assessing its quality can raise questions of fairness and reliability, considering diverse reflective styles. The students' capacity to relate classroom lessons with their court experience requires not only their knowledge of the subject matter but also the psychological preparedness raised in the second point. Fourth, students with disabilities, caregiving responsibilities, limited time, or geographic constraints may find it hard to attend live court hearings, thus inability to attend in person may exacerbate inequities.

Despite these limitations, the evidence from the EL and CDR cohorts suggests that court observation, combined with reflective assessment, offers significant pedagogical value. By making space for students to engage in deep reflection, educators can foster not only cognitive understanding of law but also the critical, ethical, and socially conscious dispositions that underpin effective and principled legal practice.

V CONCLUSION

This article has sought to determine how court observation, combined with reflective assessment, enhance students' understanding of authentic legal processes and achieve a deep and critical awareness about the legal profession.

Education literature sources agree that concrete experiences provide a sound basis for observation and reflection. In turn, reflection helps students make active and aware decisions about their learning, thus, breaking habitual ways of thinking, transforming perspectives, and then helping them interrogate assumptions, perspectives and relationships with certain experiences. At a collective level, this learning can transform social consciousness.

RMIT law school students' reflections evidence how reflective court observation assessment is a truly transformative pedagogical practice. Reflective court observation assessments confirm that they enable students to see the law not as abstract doctrine but as a living system that shapes and is shaped by human

experiences. By fostering critical thinking, ethical awareness, and professional identity formation, reflective assessments ensure that students are not only better prepared to navigate the realities of legal practice but also equipped to question, critique, and improve the justice system itself. As such, law schools should incorporate this powerful assessment into law school curriculum and pedagogy.

BREAKING DOWN SILOS OF LEARNING: A CASE STUDY IN EMBEDDING PRACTICAL LEGAL SKILLS AND AUTHENTIC ASSESSMENTS IN A PROBLEM-BASED CURRICULUM FOR BELONGING

Alyssa Sigamoney and Brianna Chesser***

ABSTRACT

Commencing in 2020, we delivered a problem-based curriculum across three core courses that bridged the silos of learning law through the linkage of practical legal skills and authentic assessment. Our project ran in three core units over four years to bridge the silos of learning and to promote student wellbeing, engagement and belonging. Students were more engaged, connected and ultimately more successful and our forward-thinking curricula successfully integrated essential industry skills and engaged students in inquiry-based learning, enabling them to develop critical problem-solving skills in preparation for employment as world-ready graduates.

I OUR APPROACH TO TEACHING

This article takes the form of a case study and considers an approach to teaching law (introduction to law, criminal law and evidence) aimed at maximising the exposure of students to practical legal skills essential through authentic assessment and inquiry-based learning.[1] The Criminology and Justice ('CJS') Problem Based Learning ('PBL') Team is comprised of award-winning[2] industry embedded teachers who are passionate about seeking student engagement to ensure the best learning outcomes for the creation of world ready and highly employable legal graduates.[3] We apply our academic skills and insights from our collective professional experiences in law, criminology and psychology to craft innovative, engaging and authentic learning opportunities that motivate and inspire students to learn.[4]

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The RMIT University Research Ethics Committee 2020/2022-25130-17310 approved this research project.

[1] Inquiry based learning is a student-centred approach where students explore real-world problems and questions to construct their own understanding: see eg, Cath Sylvester, 'More questions than answers? A review of the effectiveness of inquiry-based learning in higher education' (2015) 10(1) *Journal of Commonwealth Law and Legal Education* 21.

[2] We are experts in the scholarship of learning and teaching and have won a combined six awards including two AAUT citations and a Vice Chancellor's Staff Excellence Award.

[3] Andew Rothwell and Francis Rothwell, 'Graduate Employability: A Critical Oversight' in M Tomlinson and L Holmes (eds), *Graduate Employability in Context: Theory, Research and Debate* (Palgrave Macmillan, 2017) 41.

[4] Dawn Bennett, 'Meeting society's expectations of graduates – Education for the public good' in J Higgs, G Crisp and W Letts (eds), *Education for Employability – The Employability Agenda* (Brill Sense Publishers, 2019); Adrianna Ornellas, 'Enhancing graduates employability skills through authentic learning approaches' (2018) 9(1) *Higher Education, Skills and Work-based learning* 107.

Our teaching team (comprised of four ongoing (two early career academics) and two sessional staff members) is distinguished by our strong links to the legal profession. All team members have been or are currently practicing lawyers with a combined 70 years of practical legal experience. Accordingly, we decided to treat all students as 'professionals in training', allowing them to test their ideas against concrete examples by developing practical professional 'hard' skills, such as problem solving, legal thinking and critical synthesis; alongside less tangible 'soft skills' such as communication, resilience, collaboration and creativity.[5] We created a curriculum that integrates industry practices and engages students in inquiry-based experiential learning.[6] We assessed students using innovative and authentic assessments, allowing them to develop critical problem-solving skills that prepare them for future employment.[7]

II THE CASE STUDY

We teach students enrolled in three programs across CJS; the Bachelor of Legal and Dispute Studies (BP204), the Bachelor of Criminology and Psychology (BP295) and the Bachelor of Criminal Justice (BP023).[8] Our students have excellent graduate outcomes, for example 92% of BP295 graduates go on to careers in law, psychology or the criminal justice system with 87% of the 92% in full time employment (Graduate Experience Survey Data). Our project began in 2020 and ran across three-year levels and in order to maximise our potential for feedback, we waited until we had two iterations of each subject in order maximise the potential for feedback. In examining our programs, we identified that there was a notable gap in the development of key professional legal skills that would see students become world-ready graduates[9]. We focussed our attention on remedying this deficit across year levels and across programs to arm students with the theoretical knowledge and practical skills to be confident and competent in their chosen future professions. To do this we mapped an innovative and inspirational curriculum across all three years of our degree programs that:

- Motivated students to develop a network of peer support through inspirational and authentic assessments.[10]

- Modified best practice connectivisit teaching strategies to mitigate the negative impact of 'traditional' legal education teaching methods on the psychological well-being of students.[11]

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[5] Charlotte Knight, *Emotional Literacy in Criminal Justice: Professional Practice with Offenders* (Palgrave Macmillan, 2014).

[6] Experiential learning is a process of learning through direct experience and reflection, where learners actively participate in hands-on activities to connect classroom theory with real-world situations. Experiential learning is based on the work of educational theorist John Dewey. See John Dewey, *Experience and Education* (Collier Books, 1938).

[7] David Boud et al, *Assessment 2020: Seven Propositions for Assessment Reform in Higher Education'* (Australian Learning and Teaching Council Report, 2010).

[8] In 2024, 557 students were enrolled in BP295, 191 in BP023 and 128 in BP204.

[9] This gap was identified by teaching staff through observation and was reinforced by members of the Industry Advisory Committee who noted that graduates were lacking key professional legal skills.

[10] F Marton and R Säljö, 'On Qualitative Differences in Learning: I – Outcome and Process' (1976) 46(1) *British Journal of Educational Psychology* 4; Rachel Field, James Duffy and Collin James, *Promoting Law Student and Lawyer Well-being in Australia and Beyond* (Routledge, 2016).

[11] Fiona Martin, 'Teaching Legal Problem Solving: A Problem-Based Learning Approach Combined with a Computerised Generic Problem' (2004) 14(1) *Legal Education Review* 77; Andy Martin, Malcom Rees and

- Prioritised creating enjoyable learning experiences to promote student engagement, retention, achievement and well-being.[12]

- Created real world authentic assessments that would prepare students for success in their future workplace.

Our aim was to ultimately improve student outcomes by using authentic assessment to reinforce belonging amongst the student cohort to embed the acquisition of practical legal skills in a problem-based curriculum.

A Phase One: Introduction to Law – First year subject.

Student experience in legal domains can only flourish when law teachers step away from traditional teaching methods and accept innovative practices.[13] We began in 2020 by introducing True Crime problems (short legal problems based on past high profile criminal cases) as collaborative tutorial activities in Introduction to Law (HUSO2235), a Year 1, Semester 1 core course that is taught across all CJS programs. We used these collaborative activities as a novel means of encouraging students to develop analytical and legal synthesis skills.[14] This was a success:

> The tutorial activities are super engaging; I really enjoyed the tutes because they were highly collaborative; / I really enjoyed the tutorial activities of "What's your theory?" as it is really interesting and useful for my career in the future.

Building on the success of 2020 (despite the COVID pandemic) we took the theory and form of the tutorial activities and embedded them within an authentic assessment that asked students to work in groups to develop a True Crime theory, taking students from passive receivers of information to the main 'character' in their active acquisition of practical legal skills.[15] Students were asked to form teams to investigate a homicide using authentic case materials, including legal evidence, suspect alibis, and motives, jointly reporting on the outcome of their investigation through a team podcast. The task was assessed in two parts: the collaborative podcast (valued at 30%) and the individual reflection on the group work experience (10%). Students were also asked to write a team contract to assist in forming team cohesiveness. In explaining the group task, we emphasised both the value of hearing different perspectives to help students' form their own opinions and the value of learning how to negotiate group dynamics. We used our constructivist perspective on assessments to include informal formative

Manvir Edwards, *Work Integrated Learning: A Template for Good Practice – Supervisors' Reflections* (Ako Aotearea, 2011).

[12] Robert Gill, 'Graduate Employability Skills through Online Internships and Projects during the COVID-19 Pandemic: An Australian Example' (2020) 11(1) *Journal of Teaching and Learning for Graduate Employability* 146.

[13] Michael Schwartz, 'Teaching Law by Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching' (2001) 38 *San Diego Law Review* 347.

[14] Andy Pitchford, David Owen and Ed Stevens, *A Handbook for Authentic Learning in Higher Education: Transformational Learning through Real World Experiences* (Routledge, 2020).

[15] Afzal Munna and Md Kalam, 'Teaching and Learning Process to Enhance Teaching Effectiveness: A Literature Review' (2021) 1(4) *International Journal of Humanities and Innovation* 121.

assessments which were used in tutorials to provide immediate and early feedback.[16] By responding to teams' theories as they developed during tutorials, we could give instant feedback and encourage students to elaborate, to provide evidence to support their position and to argue the 'legal logic' of their position.[17]

Early feedback was also available through students' individual reflections. It was clear that the students not only enjoyed the assessment task but felt more connected to their peers and to the cohort during the process:

> [the group assignment] was a massive success… the team work was immensely supportive'/'what I gained most from the group work…was the value of having different viewpoints'/'This has by far been the most collaborative and least stressful group assignment I've ever done'/'it was a great experience to be in such a team' (Student Reflections 2022).

The positive impact on students' wellbeing and belonging was particularly evident:

> The group work at the start of the semester made making friends easier and also made it more fun in classes/ The podcast group work was really good as it allowed me to make friends which I haven't done in other classes.

The responsiveness to these tasks confirmed empirical research highlighting students' desire to engage in real-life problem solving and to embrace the work readiness skills that we provided through these collaborative group activities.[18] There was some initial resistance to this novel approach within the Academic team with some colleagues expressing concern over the confronting nature of the content being 'up front'. Our focus on the student meant careful attention to curriculum design to encourage students to form valid constructions[19] through an experiential PBL curriculum that promotes deep rather than surface learning [20] and prepares students for the workplace. Across 2021, we refined our innovations in Introduction to Law and in 2022, drawing on our learnings from those deliveries, we introduced assessment and curriculum changes emphasising collaborative PBL.

Following the implementation of the True Crime Scenario assessment in Introduction to Law we saw an increase in student satisfaction with the course (mOSI=4.4/5) as well as an increase in motivation (mGTS4 = 4.4/5) and perceptions of how 'interesting' the course was (mGTS4

[16] Paul Black and Dylan Wiliam, 'Assessment and Classroom Learning' (1998) 5(1) *Assessment in Education: Principles, Policy & Practice* 7; Mantz Yorke, 'Formative Assessment in Higher Education: Moves towards Theory and the Enhancement of Pedagogic Practice' (2003) 45(4) *Higher Education* 477.

[17] Maria Ruiz-Primo and Erin Furtak, 'Exploring Teachers' Informal Formative Assessment Practices and Students' Understanding in the Context of Scientific Inquiry' (2007) 44(1) *Journal of Research in Science Teaching* 57, 60. See also Anna Huggins, 'Autonomy Supportive Curriculum Design: A Salient Factor in Promoting Law Students' Wellbeing' (2012) 35(3) *University of New South Wales Law Journal* 683.

[18] Suniti Bandaranaike and John Willison, 'Building Capacity for Work-Readiness: Bridging the Cognitive and Affective Domains' (2015) 16(3) *Asia Pacific Journal of Cooperative Education* 223; Gay Crebert et al, 'Developing Generic Skills at University, during Work Placement and in Employment: Graduates' Perceptions' (2004) 23(2) *Higher Education Research & Development* 147.

[19] Diana Laurillard, *Teaching as a Design Science: Building Pedagogical Patterns for Learning and Technology* (Routledge 2013).

[20] Ference Marton, Gloria Dall'Alba and Elizabeth Beaty, 'Conceptions of Learning' (1993) 19(3) *International Journal of Educational Research* 277.

= 4.8/5). In addition, we saw a drop in the number of students who failed the course, down from 24% to 17%. The positive impact of our changes was also demonstrated in students' written feedback:

> I appreciate that the assignments were creatively designed and interesting to complete. I felt like I got more out of completing these assignments because I was actually engaged in the content and topic, and not stressed about writing a long essay that required 10+ scholarly sources. Thank you team!

and

> I found that the assignments of this course were most effective. The assignments were very creatively structured in a way that allowed me to apply the content taught in the lectures. The innovative assignments were engaging which made the course more enjoyable overall.

It was at that point that our colleagues began to take notice of what had earlier been dismissed as something not suitable for a law course.

B *Phase 2: Criminal Law – Second Year Subject.*

Phase two of our project involved the very successful integration of problem-based learning (PBL) curriculum in HUSO2231 Criminal Law, which is a Year 1, Semester 2 course in two undergraduate CJS programs. We prioritised creating enjoyable learning experiences to promote engagement and well-being by supporting the collaborative construction of knowledge which was central to our design.[21] The same successful format was used in Criminal Law to scaffold students' sense of belonging, continue developing work-ready skills and to bridge any 'silos of learning' across the participating undergraduate programs. New student teams or 'legal firms' were asked to develop and present a legal defence case based on the facts now terms 'brief of evidence' provided in Introduction to Law and similarly reflect on the groupwork experience. By scaffolding learning in this way, and by linking content and assessment modes, we provided ongoing safe opportunities for students to experiment, test their understanding, and learn about themselves in a supportive environment.[22] Linking curriculum across Introduction to Law and Criminal Law helped to create deeper continuous learning environments and encouraged students to be self-regulated learners.[23]

Significantly, there were marked improvements in completion rates for the first major assessment in each course following the introduction of the new True Crime PBL group assessment. The number of students who failed to complete the first major assessment decreased from 9.36% of enrolled students in 2021 to only 3.63% in 2022. Similarly, first assignment non-completions decreased from 9.43% in 2021 to 3.35% in 2022. In Criminal Law, there was a spike in student satisfaction with the unit (mGTS= 4.56) and for the first time there was less than 5% attrition prior to census date. Of most interest was the improvement in

[21] Anthony Herrington and Jan Herrington, 'Authentic Mobile Learning in Higher Education' (Conference Paper AARE Conference, 2007).
[22] Martin (n 11).
[23] Lucy Wheatley et al, 'Feeding Back to Feed Forward: Formative Assessment as a Platform for Effective Learning' (2015) 3(2) *Kentucky Journal of Higher Education Policy and Practice* 1.

the student's ability to link their subject to their work-readiness with an unsolicited email from a student reading, 'I cannot believe that I enjoyed this subject so much, the fact that we were introduced to our client so early on had me thinking in such a different way. I can literally see myself doing this for a job in a few years. I can't wait for evidence!'

Over the same period, the overall student satisfaction index increased from 4 to 4.42 in Criminal Law and from 3.87 to 4.23 in Introduction to Law, and 4.67 for inspiring students to learn.[24] Following our very successful pilot, we have led discussions at our discipline meetings and presented a showcase about this pilot curriculum. The positive impact of our changes was also demonstrated in students' written feedback:

> Real-world scenarios that are interesting and engaging to apply learned knowledge, plus teamwork based.

Several colleagues have now introduced similar collaborative assessments and group contracts in their own courses, with plans to scaffold our innovative PBL and work-skill oriented curriculum across undergraduate programs.

C *Phase 3: Evidence – Third Year Cap-Stone Subject*

In 2023 the final phase of our project began, with the introduction of the problem-based true crime scenario and assessment regime into the third-year capstone subject, Evidence. In this subject the matter that students had been engaging with had proceeded to 'trial. Students were placed into legal firms and were tasked with preparing the prosecution or defence case for trial in the first assessment and on appeal in assessment task 2. In order to facilitate this progression of the case, students were provided with extra materials after the submission of their first assessment task eg, the verdict and judgement from the original trial (Assessment task 1) in order to inform their arguments on appeal (Assessment task 2) where students were asked to represent the alternative side to Assessment task 1. In this way we continually challenged students to view the materials from different perspectives.[25] The assessments in the subject became much more than a mere exercise that allowed students to gain marks– they became an authentic part of the acquisition of legal hard and soft skills that actively enhanced student belonging and improved their work readiness. For the final appeal students were asked to present their arguments in either oral or written form to the court (markers). Over the course of the three years, students were truly able to be immersed in the criminal justice system from different perspectives and had followed a case through from investigation to appeal. We also noticed that the quality of the student reflections improved as their understanding of what reflective practice means grew throughout the years and additional benefit to setting these forms of authentic assessments. Evidence is a notoriously difficult subject for students to grasp and after the introduction of the new forms of assessment we noticed a meaningful difference in student retention rates (retention increased by 7% from 2023 to 2024). We also noticed a significant difference in their overall satisfaction with the subject (mOSI=4.2 (2022) to 4.7

[24] Cohort size of 247 students with a response rate of 40.49% (100 students).

[25] Although it should be noted that this potentially could impact the authenticity of the assessment as 'switching sides' is not ethically permitted in practice. It is however worth noting that in practice it is customary in preparation to anticipate the arguments of the opposing side and to prepare submissions/responses accordingly.

(2023) and 4.8 in 2024) as well as an increase in student motivation (mGTS4 = 4.6 in 2024) and perceptions of how 'interesting' the course was (mGTS5 = 4.8 in 2024 up from 4.2 in 2022). The positive impact of our changes was also demonstrated in students' written feedback: 'I enjoyed the group assignments, made class more engaging and good opportunity to connect, making it easier to ask questions when unsure' (course evaluation survey ('CES') 2024) and when asked about the impact of the subject students responded that the subject also helped them to understand: 'personal accountability in regards to most aspects of what university is all about. Growing up and learning personal accountability' (CES 2024).

III CONCLUSION: THE NEED FOR CONTINUAL IMPROVEMENT

Whilst we had seen improvement in engagement and students' motivation to learn in both Introduction to Law and Criminal Law, we continued to monitor the implementation of the assessment-based project in both courses, adjusting based on student feedback as well as the experiences of the teaching team. We continue to see a reduction in fails rates for all three subjects as well as an increase in grade average for Introduction to Law (70% in 2022 to 75% in 2024), Criminal Law (74% in 2022 to 76% in 2024) and Evidence (68% in 2022 to 74% in 2024). In 2023, student feedback indicated that the timing of the assessment at the beginning of the semester in Introduction to Law was impacting upon student engagement: 'the group assessments. I think we should get to know our class mates a little better before being thrown into a group with them' (CES 2023). Based on this feedback, the True Crime assessment was moved to the middle of the semester, mirroring the approach taken in Criminal Law to allow students to build rapport with the individuals in their class prior to forming groups. This also addressed an ongoing issue identified by tutors of students dropping the course prior to census date, impacting group dynamics. This proved to be a successful adjustment in 2024, with a 94% submission rate for the True Crime Assessment in Introduction to law. We have so far created three entire and vast briefs of evidence to use in alternate years with students and plan to create another so that there will not be any two-year levels completing the subjects with the same facts.

In both Introduction to Law and Criminal Law, we treated all students as 'professionals in training' and saw that students gained the most when they were given the opportunity to test their ideas against concrete examples by developing practical 'hard' skills, such as problem solving, legal thinking and critical synthesis; alongside less tangible 'soft skills' such as communication, resilience, collaboration and creativity.[26] Using an experiential PBL curriculum promoted deep rather than surface learning and we encouraged students in both courses to form valid constructions.[27] Our forward-thinking curricula successfully integrated essential industry skills and engaged students in inquiry-based learning, enabling them to develop critical problem-solving skills in preparation for employment.[28] Our innovative forms of assessment have placed the student at the heart of the learning experience where belonging,

[26] Knight (n 5).
[27] Laurillard (n 22); Ference Marton, Gloria Dall'Alba and Elizabeth Beaty, 'Conceptions of learning' (1993) 19(3) *International Journal of Educational Research* 277.
[28] David Boud et al (n 7).

student achievement and the acquisition of practical legal skills create work ready graduates are our primary focus.

Our students were treated as ‘professionals in training’ throughout the four years but the professional focus differed depending on the unit and year level. In doing so, we sought to broaden the perspective of our graduates and improve their ability to flexibly problem solve and consider other positions in their decision making. We found that students gained the most when given the opportunity to test their own ideas against concrete legal principals.

In making group work a consistent part of the assessment structure we sought to emulate the real legal world where the opinions of others needed to be considered and sought. By being asked to develop a True Crime theory in their first year Introduction to Law subject, students were taken from passive receivers of information to the main 'character’ in their active acquisition of practical legal skills. In the second-year Criminal law subject, student ‘firms’ (teams) were asked to develop and present a legal defence case based on the facts provided in Introduction to Law and reflect on the groupwork experience. In the third year-capstone subject, Evidence and Proof, students mooted the trial and appeal of the accused person that they were introduced to in their Introduction to Law subject. Linking curriculum across core courses within each year of the degree helped to create a deeper continuous learning experience for students. Students developed practical ‘hard’ skills, such as problem solving, legal thinking and critical synthesis; alongside less tangible ‘soft skills’ such as communication, resilience, collaboration and creativity. While this project has been running since 2020, and there have been so many adjustments since then, we are in a continuous state of improvement as we seek to enhance the student experience, to connect them to their colleagues, assist students to achieve and utilise authentic and innovative assessments to prepare world-ready graduates. A future case study may also investigate whether this approach to scaffolded assessments has similar impacts on students who have breaks in study/students who do not have the opportunity to use the same materials alongside the same cohort across three courses.

BRIDGING THE GAP: DESIGNING AND DELIVERING A MENTAL HEALTH AND CRIMINAL JUSTICE COURSE IN AOTEAROA NEW ZEALAND

*Marozane Spamers**

ABSTRACT

This article examines the development and implementation of a new interdisciplinary course on *Mental Health and Criminal Justice* in the Bachelor of Laws and Bachelor of Criminal Justice at the University of Canterbury, New Zealand. The course addresses a critical gap in legal and criminal justice education by equipping students to navigate mental health-related issues in legal practice and the criminal justice system, including the mental health of victims or alleged perpetrators of crime, and of legal and other professionals working in criminal justice. Supported by a custom textbook, the course integrates pedagogical theories such as critical pedagogy, constructivism, transformative learning, and culturally responsive pedagogy. The article explores the rationale, curriculum design, teaching strategies, and broader implications for legal education in Aotearoa New Zealand and beyond. The course design and rationale serve as a model and inspiration for integrating mental health meaningfully into legal and criminal justice education.

Keywords: mental health and criminal justice, legal pedagogy, curriculum design

I INTRODUCTION

Legal and criminal justice education often lacks comprehensive training on the complex realities of how mental health intersects with law and policy in the criminal justice system.[1] Despite the significant overrepresentation in criminal justice systems globally of people experiencing mental distress, both as offenders and victims,[2] mental health remains a peripheral topic in most undergraduate law and criminal justice curricula. It is nevertheless highly likely that law and criminal justice graduates will interact with people involved with the criminal justice system who present with varying levels of distress, mental disorder or disability during their careers.

The gap in holistic and comprehensive education on the topic of mental health in context of the criminal justice system leaves graduates ill-equipped to navigate the realities of practice, undermining both their professional readiness and the justice system's capacity to respond

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[1] Philip Mulvey and Matthew Larson, 'Identifying the Prevalence of Courses on Mental Illness in Criminal Justice Education' (2016) 28(4) *Journal of Criminal Justice Education* 542, 542.
[2] Seena Fazel and John Danesh, 'Serious mental disorder in 23000 prisoners: a systematic review of 62 surveys' (2002) 359(9306) *Lancet* 545, 549.

effectively and ethically to mental health concerns.[3] It also has practical consequences: professionals entering the justice system without adequate knowledge on the wide-ranging issues relating to mental health and justice may inadvertently contribute to rights violations, miscarriages of justice, ineffective outcomes, or their own personal burnout. Likewise, a lack of insight into mental health considerations relating to the victims of crime risks exacerbating the antitherapeutic and potentially traumatic effects of engaging with the criminal justice system.

Further, high rates of mental distress and disorder among law students and professionals have been widely publicised.[4] Legal professionals face high levels of occupational stress, exposure to trauma, and burnout.[5] Beyond the potential for negative outcomes for such individuals, high levels of mental ill health also compromise the effectiveness and integrity of justice institutions.[6] Poor mental health among professionals can affect ethical decision-making and judgement.[7] Increased mental health-related education can help increase wellbeing and resilience legal and justice professionals.[8] Lastly, mental health and justice specific education can prepare and encourage graduates for specialising in the area.[9]

Addressing this gap requires a fundamental shift in how legal education conceptualises and engages with mental health. It demands interdisciplinary approaches, cultural competence, and pedagogical strategies that prepare students not only to understand the law but to apply it in ways that uphold human rights, promote wellbeing, and foster systemic change. This article presents a case study of a project developed at the University of Canterbury, New Zealand in response to this gap: a new course, *Mental Health and Criminal Justice.* The course is offered as a 15-point elective unit of study from 2025 in the Bachelor of Laws ('LLB') and Bachelor of Criminal Justice ('BCJ') degrees.[10] The course, together with an accompanying custom textbook, aims to equip law and criminal justice graduates with the knowledge, skills and cultural competence they need to navigate mental health matters in legal and justice contexts,

[3] Rachel Kim, Nichola Tyler and Yvette Tinsley, '"Wading through the worst that humanity does to each other": New Zealand Crown prosecutors' experiences of working with potentially traumatic material in the criminal justice system' (2023) 14 *Frontiers in Psychology* 1164696, 2.
[4] Aaron Jarden et al, *The mental health and wellbeing of the New Zealand legal profession* (Center for Wellbeing Science, University of Melbourne, 2024) 7.
[5] Jarden et al (n 3); Kim, Tyler and Tinsley (n 3).
[6] Kim, Tyler and Tinsley (n 3).
[7] Jennifer Moore, Donna Buckingham and Kate Diesfeld, 'Disciplinary tribunal cases involving New Zealand lawyers with physical or mental impairment, 2009-2013' (2015) 22(5) *Psychiatry, Psychology and Law* 649, 650; Toni L Rempel, 'The Mental Health Crisis in Law School: Improving Law Student Health Through Wellbeing-focused and Trauma-Informed Legal Education' (LLM Thesis, University of Saskatchewan, 2025) 179.
[8] Janet Ellen Stearns, 'Inoculating the next Generation of Lawyers: Mandating Substance Use and Mental Health Education for Law Students' (2022) 60(3) *University of Louisville Law Review* 499, 500; Lynda Crowley-Cyr, 'Promoting mental wellbeing in law students: breaking-down stigma and building bridges with peers and support services' (2014) 14 (1) *QUT Law Review* 129, 148.
[9] John Monahan, 'Toward undergraduate education in the interface of mental health and criminal justice' (1974) 2(1) *Journal of Criminal Justice* 61, 62.
[10] The BCJ is a 3-year interdisciplinary degree that draws on criminology, sociology, developmental and behavioural psychology, policing, criminal law and procedure, and human services to prepare graduates for careers in criminal justice (including law enforcement, corrections, offender rehabilitation, victim advocacy, security, and border control).

including the mental health of victims or alleged perpetrators of crime, and of legal and other professionals working in criminal justice.

This article first outlines the nature and scope of the problem of mental health and its impact on all aspects of the criminal justice system, then discusses the response – developing the new course and supporting textbook. The article next explores relevant scholarship and pedagogical frameworks, followed by a discussion of the course's curriculum design, teaching and assessment strategies and their alignment with pedagogical theory, and the challenges and opportunities of interdisciplinary collaboration. The discussion concludes by considering the potential of this initiative to inspire similar reforms in legal education both locally and internationally.

II THE PROBLEM: MENTAL HEALTH IN THE CRIMINAL JUSTICE SYSTEM IN NEW ZEALAND

The statistics related to mental health and criminal justice are stark. A significant proportion of people in criminal justice system in New Zealand have some form of mental health concern. Contrary to common misconceptions, mental disorder or disability does not predispose people to criminal or violent conduct, instead people with mental disorders or disabilities are more likely to become victims of crime and violence than the general population.[11] However, people involved in the justice system are significantly more likely to access mental health and addiction services compared to the general population.[12] While only 17% of the general public used these services within a year, the rates are notably higher among those interacting with the justice system: 38% of people who were dealt with by police, 42% of those charged in court, 55% of individuals beginning a community sentence, and 68% of those remanded in custody—either before or after their justice system involvement.[13] A 2016 study commissioned by Ara Poutama Aotearoa – Department of Corrections in New Zealand found that 62% of people currently in prisons had a diagnosis of mental disorder, while 91% of prisoners received a diagnosis of mental disorder in their lifetime.[14]

High rates of mental distress in people engaged with the criminal justice system presents challenges to the legal profession and criminal justice agencies, including the identification and management of mental health concerns in people who are interacting with the justice system. The implications are serious, if they are not properly managed and resourced, the challenges presented by having large numbers of people in mental distress in criminal justice settings give

[11] Eric Silver et al, 'Mental disorder and violent victimization in a total birth cohort' (2015) 95(11) *American Journal of Public Health* 2015, 2015.
[12] Ministry of Justice, *People in the justice system have high use of mental health and addiction services* (Report, 28 July 2017).
[13] Ibid.
[14] Devon Indig, Craig Gear and Kay Wilhelm, New Zealand Department of Corrections, *Comorbid substance use disorders and mental health disorders among New Zealand prisoners* (Report, 2016) 8.

rise to risks of human rights abuses, miscarriages of justice, negative and stigmatising experiences, and discriminatory and traumatising practices.[15]

III THE RESPONSE: COURSE DEVELOPMENT AND DESIGN

To respond to this gap in education for law and criminal justice students, a new third year elective course *Mental Health and Criminal Justice* was developed for the LLB and BCJ at the University of Canterbury. The primary motivation for developing the course was the hope that entry into the legal and justice professions of graduates better educated about mental health in the context of criminal justice will result in positive downstream effects on criminal justice policy and outcomes. In addition, increased awareness of the mental health of people working in legal and criminal justice careers and strategies to maintain their wellbeing is intended to contribute to their mental resilience.

The course draws on expertise from subject experts around the university specialising in law, psychology, Māori and Indigenous studies, and political science to create a curriculum that is holistic, interdisciplinary, and anchored in real-world practice. The diversity of subject areas and expertise consulted echoes the multidisciplinary nature of the criminal justice system, where professionals working in a wide range of specialisations and agencies must work together and in parallel in pursuit of its (often conflicting) goals. Course development required consultation with academics who teach in related disciples, as well as students in law and criminal justice and the University of Canterbury Students' Association ('UCSA') which represents students university wide. The course proposal received strong support from academics and student representatives alike. The UCSA was very supportive of the course, noting the course 'proposal builds on a recognised need for more expertise in the area' and 'clearly shows how it will address Aotearoa New Zealand's bicultural landscape'.

IV PEDAGOGICAL FOUNDATIONS AND SCHOLARSHIP ON MENTAL HEALTH, LAW AND CRIMINAL JUSTICE EDUCATION

The design of this course and its content have been developed purposely to be student-focused, as opposed to teacher focused, and to illustrate throughout that law and policy pertaining to mental health and criminal justice must be understood in light of the scientific evidence pertaining to psychology and psychiatry, and in the social, cultural and political context where it is applied. To meet these goals, the course content, delivery modes, and assessment practices (as described below) were informed by pedagogical theories, namely critical pedagogy, transformative learning, interdisciplinary pedagogy, culturally responsive pedagogy, constructivism, and universal design for learning ('UDL').

One of the key characteristics of the traditional model of legal education, as identified and criticised by Mary Keyes and Richard Johnstone, is that it conceives of law as an 'autonomous'

[15] Marozane Spamers, 'Contextualising mental health and criminal justice in Aotearoa New Zealand' in Marozane Spamers (ed), *Mental Health and Criminal Justice: A New Zealand Guide* (Canterbury University Press, 2025) 1, 3.

discipline that is isolated from other areas of academia.[16] However, effective legal practice calls for an understanding of the societal context within which the law is practiced, which requires a different pedagogy to impart than the traditional.[17] Keyes and Johnston also critiqued the teacher-centred approach of the traditional model of legal education where the focus is on the teacher imparting knowledge in a lecture with the learner considered a 'passive recipient' of such knowledge.[18] Legal knowledge transmitted in this way is often underpinned by the myth of a neutral and virtuous law resulting in students who either view law as innocent when it comes to inequities or who view law as the solution to all social problems.[19] This approach makes it harder for students to recognise the existence of structural injustice and the role of the law in such injustices.[20] Learner-centred approaches, conversely, allows students to actively drive the course content and engage with relevant law and policy and their implementation, as well as the evidence in support of or against such frameworks, in a problem-solving way.[21]

Paulo Freire's insights on critical pedagogy disclose an alternative view of legal education linked to social justice, liberation and critical self-reflection that is less disconnected from social context than traditional approaches.[22] The core idea is that education should empower students to challenge social injustices and power structures. Freire calls for education that poses problems relating to human beings and their interaction with the world.[23] In a critical pedagogical environment, problems are posed and reflected upon rather than being presented as settled, turning students into critical co-investigators.[24] Freire positions critical pedagogy in opposition to a conception of education as simple job preparation, resisting the reduction of knowledge into information and of a mode of education that reproduces and affirms social inequality.[25]

One framework rooted in critical pedagogy considers pedagogy as ideology and argues that the teaching of law and justice is not a neutral undertaking, but rather political and reflective of one version of reality as experienced by the teacher.[26] Sam Banks argues that the perception of a single, monolithic interpretation of law that disregards other interpretations and contexts should be challenged to better contextualise the law for all students.[27] Patricia Easteal describes a key aim of an alternative pedagogy as enabling students to understand the concept (or 'threshold idea') that there is a profound interplay between the law and its socio-cultural context, so much so that the translation of law into justice is contingent on these factors that

[16] Mary Keyes and Richard Johnstone, 'Changing Legal Education: Rhetoric, Reality and Prospects for the Future' (2004) 26 *Sydney Law Review* 537, 537.
[17] Patricia Easteal, 'Teaching about the Nexus between Law and Society: From Pedagogy to Andragogy' (2008) 18(1/2) *Legal Education Review* 163, 163.
[18] Keyes and Johnstone (n 16).
[19] Joel Modiri, 'The time and space of critical legal pedagogy' (2016) 27(3) *Stellenbosch Law Review* 507, 525.
[20] Ibid.
[21] Easteal (n 17) 164.
[22] Paulo Freire *Education for Critical Consciousness* (Continuum, 1974) 14-15; Modiri (n 19) 508.
[23] Paulo Freire *Pedagogy of the Oppressed* (Continuum, 1970) 80.
[24] Modiri (n 19) 525.
[25] NK Sam Banks, 'Pedagogy and ideology: teaching law as if it matters' (1999) 19(4) *Legal Studies* 445, 526; Ivan Petrov and Amina Yusuf, 'Reforming Legal Education in the Global South: Colonial Legacies and Critical Pedagogy' (2025) *Interdisciplinary Studies in Society* 4(1) *Law, and Politics* 220, 221.
[26] Banks (n 25) 446.
[27] Ibid 447.

affect people to which the law applies differently.[28] In context of mental health and criminal justice, teaching strategies that incorporate critical pedagogy encourage students to critically examine how the criminal justice system manages mental health, including how mental health intersects with issues of marginalisation, race, and systemic bias.

Mezirow's pedagogy of transformative learning is based on the idea that learning involves changing one's worldview through critical reflection.[29] He pioneered the principle of 'perspective transformation' whereby someone can have a meaning structural transformation through experience, critical reflection and rational discourse.[30] This can be particularly powerful applied in courses dealing with sensitive topics, like the intersection of law and mental health, where students may confront biases or assumptions about justice and wellbeing. Practices that facilitate transformative learning include, among others:[31] creating ideal learning conditions that promote a sense of safety, openness and trust; a learner-centred approach that promotes student autonomy, participation and collaboration; activities that encourage the exploration of alternative personal perspectives, problem-posing and critical reflection.

Transformative learning can be complemented by constructivist pedagogy,[32] which highlights the importance of social context for knowledge development.[33] Constructivism is a theory about knowledge and learning which describes knowledge as constructed explanations by humans engaged in meaning-making in cultural and social communities of discourse instead of as truths to be transmitted or discovered.[34] It is a point of departure on which to base a theory of learning rather than a ready-made pedagogy.[35] In constructivist theory, students construct knowledge actively through reflection and engagement rather than passively receiving information from a teacher.[36] In the context of the course *Mental Health and Criminal Justice*,, students are be encouraged to engage with real-world legal and mental health scenarios, fostering deeper understanding through case studies, role plays, and reflective writing. Further, interdisciplinary pedagogy that integrates knowledge and methods from multiple disciplines to solve complex problems can assist transformative learning and critical pedagogies by introducing different perspectives through which to view an issue, illustrating the range of considerations in question. This course, for example, draws on criminology, psychology, political science, law and indigenous studies are utilised.

Aotearoa New Zealand's history of colonisation and its unique bicultural heritage of Indigenous Māori emphasise the importance of incorporating culturally responsive pedagogies

[28] Easteal (n 17) 163; Banks (n 25) 451.
[29] Jack Mezirow, 'Perspective Transformation' (1978) 28(2) *Adult Education* 100, 101.
[30] Ibid.
[31] Edward W Taylor, *The Theory and Practice of Transformative Learning: A Critical Review* (Information Series No. 374, ERIC Clearinghouse on Adult, Career and Vocational Education, 1998) 8; Felisia Tibbitts, 'Transformative learning and human rights education: taking a closer look' (2005) 16(2) *Intercultural Education* 107, 109.
32 Tibbitts (n 31) 109.
[33] Geo Quinot, 'Transformative Legal Education' (2012) 129(3) *South African Law Journal* 411, 419.
[34] Ibid 418; Catherine Twomey Fosnot (ed), *Constructivism: Theory, Perspectives, and Practice* (Teachers College Press, 2nd ed, 2005) ix.
[35] Quinot (n 33) 419.
[36] Ernst von Glasersfeld, 'Introduction: Aspects of constructivism' in Catherine Twomey Fosnot (ed), *Constructivism: Theory, Perspectives, and Practice* (Teachers College Press, 2nd ed, 2005) 5.

into legal and criminal justice courses. Culturally responsive pedagogy is premised on close interactions among ethnic identity, cultural background, and student achievement.[37] Māori are overrepresented in criminal justice statistics in New Zealand. Despite only making up about 19.6% of the total population of New Zealand,[38] over half of the prison population are Māori.[39] This overrepresentation can in part be attributed to structural (and individual) bias and racism, and in part to the legacy of colonisation and deprivation that contribute to Māori experiencing a range of adverse early-life social and environmental factors result in a greater risk of ending up in patterns of adult criminal conduct.[40] Māori are also overrepresented in mental health statistics. The 2006 Te Rau Hinengaro suggested that Māori have a higher level of mental health needs than non-Māori,[41] which is also suggested by the over-representation of Māori in forensic mental health facilities.[42] In a New Zealand context, culturally responsive pedagogy includes integrating Māori perspectives, building a relationship between teacher and students where learning is interactive and dialogic, power is shared, and connectedness is fundamental.[43]

Together with critical pedagogy, which has the potential to be transformative and decolonise legal education by creating space for intersectional analysis and pluralism,[44] a pedagogy of anti-racism can be employed to counteract the effects of structural racism and creating the conditions for its dismantlement.[45] This approach achieves the twin goals of equipping all students to contribute to the dismantling of structural racism, as well as enabling racialised minority students to learn and achieve to their full potential by acknowledging the realities of the society in which they live instead of treating issues of race as neutral and thus shifting from understanding racism as individual acts to understanding its systemic nature.[46] Doron Samuel-Siegel suggests five components to achieve a pedagogy of anti-racism, which are broadly in line with culturally responsive and critical pedagogy, namely:

> (A) understanding antiracism and developing our own cultural proficiency;
>
> (B) understanding and accounting for our students' identities and experiences;
>
> (C) teaching substance truthfully and in context;

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[37] Geneva Gay, *Culturally Responsive Teaching* (Teachers College Press, 2nd ed, (2010) 27.
[38] Statistics NZ, 'Census population counts (by ethnic group, age, and Māori descent) and dwelling counts' (Web Page, 2023) <https://www.stats.govt.nz/information-releases/2023-census-population-counts-by-ethnic-group-age-and-maori-descent-and-dwelling-counts/>.
[39] 'Prison facts and statistics – June 2024', *Department of Corrections* (Web Page, 2024) <https://www.corrections.govt.nz/resources/statistics/quarterly_prison_statistics/prison_facts_and_statistics_-_june_2024>.
[40] Department of Corrections, *Over-representation of Māori in the criminal justice system: An exploratory report* (Report, 2007).
[41] JE Wells et al, 'Te Rau Hinengaro: The New Zealand Mental Health Survey: Overview of methods and findings' (2006) 40(10) Australian and New Zealand Journal of Psychiatry 835.
[42] Valmaine Toki, *Indigenous Courts, Self-determination and Criminal Justice* (Routledge, 2018).
[43] Mere Berryman, Dawn Lawrence, and Robbie Lamont, 'Cultural relationships for responsive pedagogy' (2018) 1 *SET: Research Information for Teachers* 3, 5.
[44] Petrov and Yusuf (n 25) 221
[45] Doron Samuel-Siegel, 'Reckoning with Structural Racism in Legal Education: Methods toward a Pedagogy of Antiracism' (2022) 29(1) *Cardozo Journal of Equal Rights and Social Justice* 1, 6
[46] Ibid.

(D) implementing inclusive teaching processes; and

(E) being actively accountable for our choices and harms.

One final pedagogical framework that influenced the design of the course is UDL.[47] The core idea of UDL is designing a curriculum that accommodates diverse learning needs and styles to ensure accessibility by offering multiple ways to engage, express, and reflect.[48]

V THE NEW COURSE: PEDAGOGICAL GOALS

The goals for the course *Mental Health and Criminal Justice* are not just academic achievement and mastering of law and theory, rather the aims include that students should critically engage with the systems they are likely to work in, develop empathy, and understand cultural frameworks such as Te Ao Māori (the Māori worldview). Another goal is for students to graduate equipped for the complex mental health related challenges they will face in their professional lives (their own or others'), irrespective of the career they might pursue in law or criminal justice.

The long-term goal of introducing the course in legal and justice education is systemic change. Graduates who are better informed about mental health can contribute to more compassionate and effective legal practice,[49] policy making, institutional culture and support rehabilitation efforts.[50] Better justice outcomes for offenders, victims and the community can be achieved through education of BCJ graduates who will go on to diverse careers in the criminal justice sector and consequent improved identification and management of mental disorders and distress at the various stages of the criminal justice system.

In the case of victims of crime and offenders experiencing mental distress, trauma-informed practice (which recognises and understands trauma) will lead to less traumatising legal and justice system interactions (therapeutic jurisprudence).[51]

An important aim of the course is to reduce harm for legal and criminal justice students and professionals themselves through awareness of the scope and risk of mental health and substance abuse concerns in the profession and proactive wellbeing strategies to improve resilience and wellbeing. In this course, the dedicated topic on the mental health of law and criminal justice professionals discusses the fact that people working in the space are at risk of negative mental health outcomes ranging from less serious wellbeing impacts to more serious harm and longer-term effects on functioning, including the potential for vicarious trauma as a

[47] CAST, 'CAST Universal Design for Learning Guidelines version 3.0', *CAST UDL Guidelines* (Web Page, 2024) <https://udlguidelines.cast.org>.
[48] Nina Saha-Gupta, Holim Song and Reginald L Todd, 'Universal design for learning (UDL) as facilitating access to higher education' (2019) 3(2) *Journal of Education and Social Development* 5, 5.
[49] Richard E Redding, 'Why It Is Essential to Teach about Mental Health Issues in Criminal Law (and a Primer on How to Do It)' (2004) 14 *Washington University Journal of Law & Policy* 407
[50] Evan M Lowder, Bradley R Ray and Jeffrey A Gruenewald 'Criminal justice professionals' attitudes toward mental illness and substance use' (2019) 55(3) *Community Mental Health Journal* 428, 437.
[51] Sarah Katz and Deeya Haldar, 'The Pedagogy of Trauma-Informed Lawyering' (2016) 22(2) *Clinical Law Review* 359, 361.

result of working with victims and offenders who have experienced serious trauma.[52] This is due to organisational and operational stressors – inherent in nature of the job.

Globally, including in New Zealand, surveys of law and criminal justice students demonstrate significant levels of mental health concerns, including depression, anxiety, suicidality and substance use disorders.[53] The scope and consequences of these issues have prompted a call in the US in 2017 to mandate a minimum of one class dedicated to the topic of substance use and mental health issues of their core Professional Responsibility courses in an effort to mitigate their negative effects.[54] Janet Stearns believes that fundamental and dedicated education about mental health and substance use concerns will benefit law students and better prepare them for their careers post-graduation.[55]

Besides the risk of harm to individual professionals, improper management of wellbeing leads to less resilient and effective criminal justice agencies due to high staff turnover and burnout.[56] It can also lead to miscarriages of justice if legal professionals are unable to do their jobs to the best of their abilities.[57]

VI COURSE FORMAT, LEARNING OBJECTIVES AND CONTENT

Mental Health and Criminal Justice is a 15-point course that equates to 150 hours of study, with one 2-hour lecture per week over 12 weeks. Lectures are delivered face-to-face but are also recorded and livestreamed. In line with UDL pedagogies, this is done to accommodate students who are unable to attend lectures in person due to health, parenting, work or other factors and to benefit students who might want to revisit lecture content as a learning tool. The two-hour class format allows for a mixture of formal instruction interspersed by smaller group discussions or group activities. Students are sometimes asked to reflect upon and answer one or more questions in small groups and then to report back to the class at large to allow consideration of multiple views and insights. Other times, a case-based activity relevant to the week's content is presented and discussed. The goal of these discussion opportunities is to shift the focus to the student and induce a transformation in thought and action through a process of increasing understanding of the multifaceted nature of the challenge presented by mental health in the criminal justice system. This type of active learning is inclusive and intended to facilitate class-wide learning in active participation instead of observation, which is aligned with anti-racist, constructivist and UDL pedagogies.

The learning objectives for *Mental Health and Criminal Justice* are to enable students to:

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[52] Ibid; Kim, Tyler and Tinsley (n 3).
[53] Jayson Ware, Helen Farley and William Grant, 'Criminal Justice and Criminology students' Mental Health and Psychological Well-Being: A Scoping Review of the Available Research Evidence' (2024) *Journal of Criminal Justice Education* 1, 2; Stearns (n 8) 499.
[54] American Bar Association, *National Task Force On Lawyer Well-Being, The Path to Lawyer Well-Being: Practical Recommendations for Positive Change* (Report, 2017) [39].
[55] Stearns (n 8) 518.
[56] Justin S Trounson and Jeffrey E Pfeifer, 'Corrections officer wellbeing: Training challenges and opportunities' (2017) 5(1) *Practice* 22.
[57] Kim, Tyler and Tinsley (n 3) 2.

- Demonstrate knowledge of the wide-ranging impact of mental health on the criminal justice system and the importance of evidence-based law and policy making in this context.
- Critically discuss the importance of interdisciplinary and interagency coordination and collaboration to facilitate best practice responses to the challenge of mental health in the criminal justice system.[58]
- Demonstrate bicultural competence and an understanding of Pacific perspectives in relation to mental health in the context of criminal justice.
- Identify areas of policy and law pertaining to mental health within criminal justice and criminal law where reform might improve outcomes for justice-involved people and their families, victims and people working in the field.
- Propose potential avenues of law or policy reform and critically evaluate the literature in support and in opposition to that course of action.
- Demonstrate the intellectual and practical skills necessary to identify, research, evaluate and synthesise relevant factual, legal and policy issues in relation to mental health and criminal justice and produce written work that is effective, appropriate and persuasive for specialist and non-specialist audiences.

Table 1 below sets out the content covered in each of the twelve weeks of the semester. The first part of the course is intended to equip students with a set of perspectives and arguments: that mental health and its overrepresentation in the criminal justice system is something that requires active consideration and analysis regarding its potential reform; that the principles of punishment and goals of the criminal justice system that are in play can be contradictory and overlapping; and that multiple things can be true at the same time. This framing is intended to emphasise that beyond black letter law, the implementation of law and policy will always have an impact on the outcomes and experiences of people interacting with the criminal justice system, that mental health in criminal justice is a human rights issue as well as a Māori and Pacific people's issue. The next topic centres Māori perspectives of mental health and justice to provide a lens through which to consider the predominantly Western-influenced legal and policy framework and the application of mental health professionals' expert evidence, discrete aspects of the criminal justice system – police, the criminal process and criminal law, and prisons. Then the content turns to the mental health of victims and criminal justice professionals, followed by an examination of contemporary issues and changing perceptions and attitudes.

[58] 'Interagency' refers to different criminal justice agencies (police, courts, corrections, social services, health services, etc.) working together to solve complex justice issues by sharing resources, expertise, and data.

Table 1: *Mental Health and Criminal Justice* – Weekly Topics

Week	Topic
1	Course introduction The history of mental health care
2	Bicultural perspectives on mental health in criminal justice
3	Mental health and the explanation of crime
4	The philosophy and rationale of punishment and human rights considerations
5	Mental health and police
6	Mental health and the criminal trial process
7	Mental health in criminal liability and sentencing
8	Mental health and expert evidence
9	Mental health and prisons
10	Mental health and victims of crime
11	The mental health of criminal justice practitioners
12	The changing landscape of mental health policy and attitudes Course summary and review

VII COURSE DELIVERY – TEACHING AND LEARNING STRATEGIES

A supportive and open class environment is fostered to create a space where students feel comfortable sharing their views. This is done through the Māori model of *whanaungatanga* (developing respectful and reciprocal relationships) where the lecturer creates a *whanau* (family/kinship) context by developing caring relationships with their classrooms.[59] This can be done by allowing students to get to know them better through sharing their background

[59] Russell Bishop, James Ladwig, and Mere Berryman, 'The centrality of relationships for pedagogy: The whanaungatanga thesis' (2014) 51(1) *American Educational Research Journal* 184, 191.

information and learning about the students' too, thus creating less of a power difference between students and teacher. This challenges the traditional student-teacher hierarchy to promote engaging students as co-creators of knowledge, in line with critical pedagogical and culturally responsive practice.[60] Space is also given for social discussion to allow students to get to know each other better and build connection.

As part of creating a safe class environment, the potential for course content or discussions to upset students with lived experience of mental disorder, trauma or the criminal justice system is acknowledged in the course outline, on the course webpage and at the start of lectures. Visual aids and pictures for lecture slides are chosen mindfully to ensure they do not depict graphic violence or distress, and the discussion of mental health is approached sensitively and never in a way that is intended to elicit a shock response. Students are also made aware of support services and coping strategies they may wish to utilise should they feel distressed by the course content.

The formal presentations are presented with visual and sometimes audio aids, or guest speakers who can offer practical or deeper insights into a particular subject area, illustrating the nuanced and multidisciplinary nature of the content. Guest lecturers in the course include experts in Māori and Indigenous Studies, criminal law and a psychologist experienced in corrective services (all of whom contributed to the book and were consulted during the development of the course), and a senior police inspector involved in policy change related to mental health incidents.

The assignment, which contributes 40% of the final grade, presents students with a realistic scenario involving two case studies of people from different backgrounds experiencing mental distress within the criminal justice system. Students are tasked with writing a report for the Ministry of Justice, identifying intervention points and proposing alternative approaches to law and policy supported by evidence. This design encourages critical thinking, creativity, and the application of interdisciplinary knowledge. It also reflects the course's commitment to preparing students for real-world challenges in legal and justice practice. To ensure that the quality of writing is high and that students demonstrate their learning, particularly in context of concerns with AI usage in higher education, the assignment is graded against a marking rubric with assessment criteria weighted towards research evidence and utilisation of course content (lectures and readings).

[60] Petrov and Yusuf (n 25) 221.

Table 2: *Mental Health and Criminal Justice* – Assessment Criteria

Criteria	**Weight**
Critical comparison and analysis (Thoughtful and well-reasoned evaluation of each intervention point; insight into systemic, cultural, and legal dimensions)	20%
Understanding of legal, policy, and cultural frameworks (Demonstrates sound understanding of mental health and criminal justice concepts, legal frameworks, bicultural perspectives, and relevant theories)	20%
Quality and feasibility of reform proposals (Proposes clear, feasible, and justified law and/or policy changes drawing from evidence and course content)	20%
Use of academic, legal, and policy sources (Engages with relevant academic literature, statutes, case law, and policy documents)	30%
Structure, expression, and referencing (Clear organisation, academic tone, grammar, and adherence to word count. Proper citation (APA/NZ Law Style))	10%

The course also makes use of a weekly online quiz (10% of final grade total), which is intended to encourage continual engagement with the course materials and gauge knowledge acquisition. Lastly, a final exam comprising the following question types contributes 50% of final grade:

- multiple choice and short answer questions to assess foundational knowledge and the ability to explain key concepts concisely (30% of exam);
- two essay questions test critical thinking, interdisciplinary synthesis, and policy evaluation (40% of exam);
- two problem questions assess students' ability to apply legal and policy frameworks to real-world scenarios involving mental health in the criminal justice system (30% of exam).

VIII THE TEXTBOOK – MENTAL HEALTH AND CRIMINAL JUSTICE: A NEW ZEALAND GUIDE

It became apparent early in the course proposal process that while there is ample literature on discrete topics related to mental health and criminal justice in New Zealand, there was no single, easily accessible resource. A custom textbook was thus developed to support the course – *Mental Health and Criminal Justice: A New Zealand Guide* – which was published in July

2025.[61] The book is the first in New Zealand to focus on mental health policy and law at different stages of the criminal justice process and contains chapters co-authored by a range of experts specialising in law, psychology, Māori and Indigenous studies, and political science. It aims to bridge the gap between theory and practice, equipping students with critical awareness and applied knowledge of the legal and practical realities of mental health in the justice system through a rights-based, evidence-informed, and culturally sensitive approach.

The book's content mirrors the course's progression from foundational and theoretical topics to applied areas of practice. The book supports constructivist and interdisciplinary learning by providing real-world case studies, bicultural and legal context and accessible explanations for complex topics. The digital edition of the book was published open access to ensure its accessibility to students, legal and criminal justice professionals and anyone with an interest in the subject matter. It is intended that future editions of the text will expand on the topics discussed and continue to evolve as our understanding of mental health in context of criminal justice evolves.

IX PEDAGOGICAL THEORY MAPPING TO COURSE DESIGN

The course's design reflects a deliberate integration of pedagogical theory into legal and criminal justice education. For example, the incorporation of Māori and Pacific content and practices grounded in te ao Māori, like *whanaungatanga* (as discussed above), *mihi* (formal greetings, introductions, and acknowledgements), often involving sharing lineage (*whakapapa*) and *pepeha* (identity), and *karakia* (chants or incantations used to ensure a favourable outcome to important events and undertakings) to start and end lectures and the option to submit assessments in Te Reo Māori align with culturally responsive pedagogy (LO3).[62] The emphasis on reform, interdisciplinary collaboration, and bicultural perspectives throughout the course content and the assignment aligns with critical pedagogy, empowering students to critique and improve systems (LO2, LO3, LO4, LO5). Students are asked to think critically about the issues at hand, rather than being presented with solutions.[63] This is reflected in the assignment, which has no one set correct answer. Students are instead encouraged to find solutions creatively and justify their suggestions with reference to evidence and literature.[64]

The inclusion of topics like cultural competence, victim mental health, and practitioner wellbeing encourages students to reflect on their own assumptions and biases, aligning with the pedagogy of transformative learning (LO1, LO3, LO4). The interdisciplinary nature of the course that integrates multiple disciplines to address complex issues supports holistic understanding of mental health in justice contexts (LO2, LO5, LO6).

Teaching strategies like the use of case studies in classes and assessments, guest speakers, and practical examples from the New Zealand criminal justice system simulate real-world mental

[61] Marozane Spamers (ed), *Mental Health and Criminal Justice: A New Zealand Guide* (Canterbury University Press, 2025.
[62] For further reading, see Erani Motu, et al, 'Turou Hawaiki: Morning Karakia and Waiata as culturally responsive pedagogy' (2023) 52(1) *Australian Journal of Indigenous Education* 1.
[63] Keyes and Johnstone (n 16).
[64] Freire (n 23) 88.

health and justice issues and decision-making align with constructivist learning (LO1, LO2, LO4, LO5, LO6). The textbook, *Mental Health and Criminal Justice: A New Zealand Guide*, reinforces constructivist learning by providing accessible, context-rich material. Lastly, the design of the course aims to make learning accessible and inclusive for all students, in line with the key ideas of UDL (LO6), including designing multiple means of engagement, representation, and action and expression.[65] This is achieved through:

- having lectures recorded and live streamed (UDL consideration 1.2);
- hosting online and in-person drop-in sessions and encouraging and facilitating *whanaungatanga* and discussion during lectures (UDL consideration 8.4);
- communicating weekly through the course's online webpage which has been designed to be accessible and comprehensive to supplement the in-person teaching offering (UDL consideration 5.1);
- using multiple assessment formats and authentic assessment in the assignment (UDL consideration 7.2);
- creating class routines via the use of *karakia* to open and close lectures and clarifying the objectives of each learning unit and why it matters (UDL consideration 6.1 and 8.1).

Table 3 below sets out selected pedagogical theories that underpin the design and delivery of *Mental Health and Criminal Justice*.

[65] CAST (n 47).

Table 3: Selected pedagogical theories that underpin the design and delivery of *Mental Health and Criminal Justice*

Pedagogical Theory	Key Concepts	Mapped to Learning Outcomes	Mapped to Assessments	Teaching Strategies
Constructivism	Knowledge is actively constructed through experience and reflection	LO1, LO2, LO4, LO5, LO6	Weekly quizzes, assignment, final exam, in-class activities	Case studies, discussion-based lectures, textbook engagement Real-world scenarios, guest speakers, policy analysis
Transformative Learning	Critical reflection leads to shifts in perspective	LO1, LO3, LO4	Assignment, final exam	Bicultural content, victim/practitioner mental health, reflective writing
Critical Pedagogy	Education as a tool for social justice and empowerment	LO2, LO3, LO4, LO5	Assignment, final exam	Focus on reform, systemic critique, interdisciplinary collaboration
Interdisciplinary Pedagogy	Integration of multiple disciplines to address complex issues	LO2, LO5, LO6	Assignment, final exam	Law, psychology, criminology, political science perspectives
Culturally Responsive Pedagogy	Teaching that respects and incorporates cultural backgrounds	LO3	Weekly quizzes, assignment, final exam	Māori and Pacific perspectives, te reo Māori assessment option
Universal Design for Learning	Inclusive curriculum design for diverse learners	LO6	All assessments	Recorded lectures, flexible formats, drop-in sessions, accessible textbook

X CHALLENGES AND OPPORTUNITIES

Designing and delivering an interdisciplinary legal curriculum on mental health and criminal justice presents both pedagogical and practical challenges. These challenges, however, also offer opportunities for innovation, collaboration, and systemic improvement.

A *Interdisciplinary Collaboration*

Working with collaborators with different subject expertise in writing the supporting textbook presented the challenge of navigating the diverse disciplinary languages and frameworks of law, psychology, Māori and Indigenous studies, and political science. Collaborators brought distinct epistemologies and terminologies, which sometimes led to misalignment in expectations and communication. This was unsurprising, as the same issues can be found in practice in criminal justice system collaboration between the mental health, legal and criminal justice professions. However, this diversity also enriched the course content, allowing for a more holistic and nuanced understanding of mental health in justice contexts. The process underscored the importance of fostering interdisciplinary literacy among educators and students alike.

B *Balancing Academic Rigour with Accessibility and Ensuring Curriculum Coherence across Diverse Student Cohorts*

Another challenge was ensuring that the course maintained academic rigour while remaining accessible to students from varied backgrounds. The course is an elective available to law and criminal justice students, who often have different strengths, interests, and levels of familiarity with mental health and legal concepts. Creating a coherent curriculum that resonated with students from different academic programmes requires careful scaffolding. The course is structured to build from foundational concepts to more complex applications, with each week focusing on a distinct aspect of the criminal justice system. The course accommodates diversity in the subject knowledge backgrounds of students enrolled in the course by offering an assignment that is flexible in its format as the research report can be tailored to either a more law-oriented or policy-oriented approach, both requiring research and integrating foundational content with applied learning. This approach allows students to engage with the material from different angles, depending on whether they are law or criminal justice students enrolled in either the LLB or BCJ, while still achieving the core learning outcomes. Students also benefit from having both law and criminal justice students in one class, as more diverse perspectives can be considered during discussions.

C *Avoiding Oversimplification or Pathologisation*

Mental health is a complex and sensitive topic. A key pedagogical challenge was avoiding the pathologisation of individuals with mental health concerns, while still addressing the realities of mental illness in the justice system. The course aimed to present mental health as a spectrum of experiences shaped by social, cultural, and systemic factors, rather than as a set of clinical diagnoses. This framing encourages students to consider the broader context of mental distress and its intersection with justice, while utilising culturally responsive, critical and constructivist teaching strategies.

XI CONCLUSION

This project is about justice in its broadest sense – not just legal outcomes, but the way people are treated in the system, and the wellbeing of those working within it. The development of the

Mental Health and Criminal Justice course represents a meaningful advancement in legal and criminal justice education in Aotearoa New Zealand. By integrating interdisciplinary content and culturally responsive and critical pedagogy, the course equips students with the knowledge, empathy, and practical skills needed to navigate the complex realities of mental health in law and justice contexts. The accompanying textbook further enhances accessibility and impact, offering a comprehensive and contextually grounded resource for learners and practitioners alike. This initiative demonstrates that legal education can and should respond to the evolving needs of society. The first offering of the course was completed in November 2025 and student feedback on the course and book was overwhelmingly positive, with some students writing they believed the course should be compulsory for law and criminal justice students. Students appreciated the accompanying textbook for its readability and comprehensiveness, as well as noting the value added to the course by the guest lecturers who brought their practical insights into the classroom. It is hoped that this model will inspire the integration of mental health meaningfully into legal and criminal justice education both locally and internationally, contributing to a more compassionate, effective, and equitable justice system.